



Parallel report to the European Committee of Social Rights on Article 15(3) of the Revised
European Social Charter with regard to HUNGARY

Mental Disability Advocacy Center

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Introduction

The Mental Disability Advocacy Center (MDAC) is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research.

The Revised European Social Charter 1996 (hereafter *Social Charter*) was ratified by Hungary on 22 June 1998. The deadline for submitting the 7th report on the implementation of, *inter alia*, Article 15(3) of the Social Charter to the European Committee of Social Rights (hereafter *Committee*) was 31 October 2011. Although the Hungarian government has not yet submitted its State Report, MDAC would like to provide the Committee with information on the right of people with disabilities to independence, social integration and participation in the life of the community as enshrined in Article 15(3) of the Social Charter.

The rights set out in Article 15(3) of the Social Charter are picked up by the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which was adopted in 2006 and has been ratified by Hungary. MDAC respectfully suggests that the CRPD can be informative to the Committee in its examination of Article 15(3) of the Social Charter.

We have broken down this complex terrain into six indicators, and suggest that the Committee can use these to assess if the right to living independently and being included in the community is fully implemented in countries under its review, in this case, Hungary.

In the first section of this report MDAC enumerates the indicators, setting out the international law and standards underpinning each one. In the second section we answer the questions regarding the right to independence, social integration and participation in the life of the community of people with disabilities in Hungary. In this way the Committee will have a thorough insight into the legislation and policy related to the right to live in the community of people with disabilities.

Section 1

Indicators to assess the implementation of Article 15(3)

In this section MDAC provides six indicators that could be used in each and every case to assess if a State Party, which ratified Article 15(3) of the Social Charter, complies with the obligations enshrined in it.

First, what is the nature of Article 15(3) of the Social Charter? Article 15(3) sets out the right of persons with disabilities to independence, social integration and participation in the life of the community. The main article states that the **aim** is to “ensur[e] to persons with disabilities [...] the effective exercise of the right to independence, social integration and participation in the life of the community”, and that this should be done “irrespective of age and the nature and origin of their disabilities”. Thus the right applies to children and adults, with all types and severity of disability.

Article 15(3) goes on to specify how States can undertake to achieve this right. Importantly the provision sets out why the steps need to be taken, and this is to promote “full social integration and participation in the life of the community”. CRPD turns this on its head and sets out the result of not putting in these measures. Taking these measures, it says, needs to happen to “prevent isolation or segregation from the community”. An example of isolation is where a person is forced to spend all their time at home and not enabled to go out, because of inaccessible services. An example of segregation is if a person lives in a residential institution. In both these examples, it could be that the person is geographically located in the community, but excluded from the fabric of what community means in ordinary terms.

Article 15(3) of the Social Charter goes on to specify two ways through which States can achieve integration and participation. These are split into two clusters which are legally, philosophically and economically distinct:

The first cluster of actions are those which ensure **accessible regular services**, and the Social Charter specifies four areas which should be made accessible, namely, “transport, housing, cultural activities and leisure”. In a similar way, Article 19(c) of the CRPD sets out access to these types of services, articulating that the State has a duty to ensure that “[c]ommunity services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

The second cluster is the State obligation to provide **specialised assistance to help the person with their particular impairment**. These services need to be put in place to elevate the situation of a person with disability to achieve substantive equality in a way which simply removing barriers to the life-world (in the first cluster) may not achieve. Article 15(3) sets out that these specialised services include, “technical aids, aiming to overcome barriers to communication and mobility.” Article 19(b) of the CRPD frames this concept slightly more expansively, by specifying that States should provide, “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.”

Indicator No. 1

Is there any person with disability who is segregated or isolated from the community?

- a) How many people live in institutional/congregated settings?
- b) How many new admissions are there each year and how many people leave?

As mentioned above, Article 15(3) seeks to move to a situation of inclusion and participation. A key way in which this is denied is if a person is forced to live in an institution. We define institutions as “any place in which people who have been labeled as having a disability are isolated, segregated and/or compelled to live together. An institution is also any place in which people do not have, or are not allowed to exercise control over their lives and their day-to-day decisions. An institution is not defined merely by its size”.¹

Institutionalisation based on disability leads to people’s segregation from the community. Institutions are a form of discrimination: they only apply to people with disabilities, and whilst the policy may be well-intended (many are not), there is ample research evidence to prove that institutionalisation has a negative impact on quality of life, educational attainment, employment opportunity, sexual and reproductive rights, health and happiness. Those who are cut off from the outside world are not only isolated but they also become stigmatised and marginalised. In the institutions people with disabilities are often physically and chemically restrained or are over-medicated with psychiatric drugs, without their consent. This culture of coercion which amounts to violence, exploitation and abuse can in many circumstances reach a level where the right to be free from torture, inhuman or degrading treatment or

¹ See European Coalition for Community Living: <http://www.community-living.info/?page=205> (last accessed 9 July 2012).

punishment is violated. For example in January 2012 the Grand Chamber of the European Court of Human Rights found that the applicant in the *Stanev v. Bulgaria* case² was forced to live for more than seven years in unsanitary and unliveable conditions in a social care institution, a violation of Article 3 of the European Convention of Human Rights (ECHR). Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has said that, “it is now widely accepted that large psychiatric establishments pose a significant risk of institutionalisation for both patients and staff, the more so if they are situated in isolated locations. This can have a detrimental effect on patient treatment.”³ Thomas Hammarberg, the former Commissioner for Human Rights, said that “malpractices, such as keeping persons in bed all day, over-medication and abuse of restraints must be stopped immediately.”⁴

Indicator No. 2

Does the law guarantee the right to live in the community?

The Committee has begun to flesh out what exactly is required by Article 15(3) of the Social Charter, and this includes comprehensive non-discrimination legislation.⁵ Similarly, Article 19 of the CRPD enshrines the right to live independently and be included in the community and specifies that people must be given choices equal to others, which includes choosing place of residence and where and with whom to live. Importantly the CRPD specifies that people should not be obliged to live in a particular living arrangement, a provision which can easily be read back into the Social Charter.

In its 2010 recommendation on deinstitutionalisation and community living of children with disabilities the Committee of Ministers of the Council of Europe recommended that Member States adopt, “specific legislation mandating the authorities responsible for creating new networks of community-based care provision and setting a

² European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, judgment 17 January 2012.

³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CTP/Inf/E (2002) 1 – Rev. 2010, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last accessed 11 June 2012).

⁴ Commissioner for Human Rights, *Human Rights and Disability: Equal Rights for All*, 20 October 2008, CommDH/IssuePaper(2008)2, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1355349&Site=CM> (last accessed 11 June 2012).

⁵ European Committee of Social Rights, *Conclusions: Georgia*, November 2008, available at http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Georgia2008_en.pdf (last accessed 11 June 2012).

deadline at which point the admission of children to institutionalised forms of care will cease should be adopted.”⁶

Indicator No. 3

Does the law allow and support people with disabilities to decide where and with whom to live?

Across much of the Council of Europe region, the legal capacity of people with disabilities is removed from them following a medical opinion and a court judgment. Once removed, their personhood and autonomy are compromised, and they are legally prohibited from making decisions about where and with whom to live. Financial decision-making is also restricted, and some rights are stripped from them altogether, including the right to participate in public life and the right to vote. Guardians can place the person with disabilities into an institution, even without consulting the person with disability, and even if great harm is caused as a result.⁷

In the *Shtukurov v. Russia* case the 23-year old applicant was placed under his mother’s guardianship without his knowledge, and his mother sent him to a psychiatric hospital. The European Court of Human Rights stated that “the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation.”⁸ In *Stanev v. Bulgaria*, a case where the applicant spent seven years in a social care institution the Court found that the institutionalisation constituted unlawful detention contrary to Article 5 of the ECHR, and noted “the growing importance which international instruments for the protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible.”⁹

⁶ Committee of Ministers, Recommendations to member states on deinstitutionalisation and community living of children with disabilities, CM/Rec(2010)2, 3 February 2010, available at http://www.coe.int/t/e/social_cohesion/soc-sp/integration/05_recommendations_and_resolutions/presentation.asp (last accessed 11 June 2012).

⁷ For graphic illustrations of this see European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, judgment 17 January 2012.

⁸ European Court of Human Rights, *Shtukurov v. Russia*, Application No. 44009/05, judgment 27 March 2008.

⁹ European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, judgment 17 January 2012.

In 2009 the Parliamentary Assembly of the Council of Europe adopted a resolution in which it, “invites member states to guarantee that people with disabilities retain and exercise legal capacity on an equal basis with other members of the society”.¹⁰

Thomas Hammarberg published an issue paper on the right to legal capacity for persons with intellectual and psycho-social disabilities.¹¹ In one of his viewpoints he said that “we should remember that there is a great difference between taking away the right to take decisions about one’s life and to provide “access to support.” The first views people with disabilities as *objects* of treatment, charity and fear. The second places the person with disabilities at the centre of decision-making and views them as *subjects* entitled to the full range of human rights.”¹²

The UN Committee on the Rights of Persons with Disabilities (hereafter *CRPD Committee*) in its first three Concluding Observations regarding Tunisia, Spain and Peru recommended the respective governments to review the laws allowing for guardianship and urges them to take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making.¹³

¹⁰ Parliamentary Assembly, Access to Rights for People with Disabilities and their Full and Active Participation in Society, Resolution 1642 (2009), available at:

<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1642.htm> (last accessed 11 June 2012).

¹¹ Commissioner for Human Rights, Who Gets to Decide? - Right to legal capacity for persons with intellectual and psychosocial disabilities, 20 February 2012, CommDH/IssuePaper(2012)2, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1908555> (last accessed 11 June 2012).

¹² Commissioner for Human Rights, Persons with Mental Disabilities should be Assisted but not Deprived of their Individual Human Rights, 21 September 2009, available at: http://www.coe.int/t/commissioner/viewpoints/090921_en.asp (last accessed 11 June 2012).

¹³ Committee on the Rights of Persons with Disabilities, Concluding Observations: Tunisia, 13 May 2011, CRPD/C/TUN/CO/1, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx> (last accessed 11 June 2012); Committee on the Rights of Persons with Disabilities, Concluding Observations: Spain, 19 October 2011, CRPD/C/ESP/CO/1, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx> (last accessed 11 June 2012); Committee on the Rights of Persons with Disabilities, Concluding Observations: Peru, 9 May 2012, CRPD/C/PER/CO/1, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session7.aspx> (last accessed 11 June 2012).

Indicator No. 4

Has the government made a public policy commitment to the right to live in the community?

Political will is critical to guarantee that people with disabilities fully enjoy their right to independence, social integration and participation in the life of the community. Government should demonstrably commit itself to this as a priority. The CPT has found that people with disabilities are often institutionalised “due to a lack of adequate care/accommodation in the outside community. For persons to remain deprived of their liberty as a result of the absence of appropriate external facilities is a highly questionable state of affairs.”¹⁴ The European Committee of Social Rights has made clear that Article 15(3) of the Social Charter requires States to adopt “a coherent policy on disabilities: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated.”¹⁵

Other COE entities have emphasised the importance of policy. The Committee of Ministers has said that, “at national level, there should [...] be coherent policies supporting the deinstitutionalisation approach across ministries [...] in order to ensure that specialist expertise is developed, accredited and used appropriately.”¹⁶ Furthermore, the Parliamentary Assembly considers that “the Council of Europe Disability Action Plan must serve as the reference document for any new disability-related policies and activities [...] to promote the [CRPD].” The Disability Action Plan takes due account among the fundamental principles of relevant existing European and international instruments, treaties and plans, particularly the developments in relation to the CRPD. The Parliamentary Assembly also invites member states “to include disability issues in every area of policy making, to ensure that disability-related programmes are sufficiently resourced and that people with physical and mental disabilities are able to enjoy full citizenship on an equal basis with others.”¹⁷

¹⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CTP/Inf/E (2002) 1 – Rev. 2010, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last accessed 11 June 2012).

¹⁵ European Committee of Social Rights, Conclusions: Georgia, November 2008, available at http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Georgia2008_en.pdf (last accessed 11 June 2012).

¹⁶ Committee of Ministers, Recommendations to member states on deinstitutionalisation and community living of children with disabilities, CM/Rec(2010)2, 3 February 2010, available at http://www.coe.int/t/e/social_cohesion/soc-sp/integration/05_recommendations_and_resolutions/presentation.asp (last accessed 11 June 2012).

¹⁷ Parliamentary Assembly, Access to Rights for People with Disabilities and their Full and Active Participation in Society, Resolution 1642 (2009), available at: <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1642.htm> (last accessed 11 June 2012).

Indicator No. 5

Is there a plan with a timeline and concrete, measurable steps to enable people with disabilities to enjoy their right to independence, social integration and participation in the life of the community?

In order to implement a community living policy governments should publish a plan about how this will happen. This should include a moratorium on new admissions to institutions. The closure of institutions itself is not enough unless sufficient community-based services are set up which are provided for people with disabilities according to their needs. The severity of disability is not a valid argument to keep one in a social care home segregated from the society.

As Commissioner, Thomas Hammarberg clarified that resources should be maximised, even in times of austerity: “suitable alternatives must be developed and supported by the authorities – also in a period of economic crisis.”¹⁸ Financing needs to be provided to fund the shift from institutional care to community-based services, but there is no evidence that the latter is more costly than the former.¹⁹ Budgets already exist and they fund institutions: this needs to be used creatively.

For its part, the CPT considers as a favourable development, “the tendency [...] to reduce the number of beds in large psychiatric establishments and to develop community-based mental health units.”²⁰ The Committee of Ministers is also of the view that, “deinstitutionalisation requires a number of general actions to support the strategic approach at national level involving all stakeholders. Deinstitutionalisation being a long-term process, a well-planned and structured transition process is necessary. The planning should involve government representatives covering all policy areas [...]”²¹

¹⁸ Commissioner for Human Rights, Society has an Obligation to Support Abandoned Children and Offer them a Positive Home Environment – also When Budget Resources are Limited, 28 December 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/091228_en.asp (last accessed 11 June 2012).

¹⁹ Mansell J, Knapp M, Beadle-Brown J and Beecham J, *Deinstitutionalisation and community living – outcomes and costs: report of a European Study*, 2007, p 97, available at: http://www.kent.ac.uk/tizard/research/research_projects/DECLOC_Volume_1_Exec_Summary.pdf (last accessed 11 June 2012).

²⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CTP/Inf/E (2002) 1 – Rev. 2010, available at <http://www.cpt.coe.int/en/documents/eng-standards.pdf> (last accessed 11 June 2012).

²¹ Committee of Ministers, Recommendations to member states on deinstitutionalisation and community living of children with disabilities, CM/Rec(2010)2, 3 February 2010, available at http://www.coe.int/t/e/social_cohesion/soc-sp/integration/05_recommendations_and_resolutions/presentation.asp (last accessed 11 June 2012).

Thomas Hammarberg highlighted a problem even when action plans are adopted: that they remain paper promises, unimplemented and unmonitored.²²

Indicator No. 6

Is any international and/or national funding financing being spent on building, expanding, or refurbishing institutions, or to developing community support services?

Financing for institutions includes government funding, international development agencies, private/corporate sponsors, foreign aid, intergovernmental entities such as the European Union and the World Bank. Although renovation of institutions serves the short-term needs of staff and residents, it goes against the grain of the right to live in the community, and is unacceptable when viewed through the lens of human rights. In a number of States huge amounts have been spent on the “humanisation” of institutions instead of providing adequate community-based services for people with disabilities. The Committee of Ministers recommended to member states, that “building of new institutions should be discouraged by refusing to approve and fund proposals for this type of project”.²³

Section 2

Implementation of Article 15(3) in Hungary

In this section MDAC analyses the implementation of Article 15(3) of the Social Charter in Hungary using the above described six indicators.

Indicator No. 1

²² Commissioner for Human Rights, A neglected human rights crisis: persons with intellectual disabilities are still stigmatised and excluded, 28 December 2009, available at: http://www.coe.int/t/commissioner/Viewpoints/090914_en.asp (last accessed 11 June 2012).

²³ Ibid.

Is there any person with disability who is segregated or isolated from the community?

- a) How many people live in institutional/congregated settings?
- b) How many new admissions are there each year and how many people leave?

According to the available data of the Central Statistical Office 8,889 people with psycho-social disabilities and 16,230 people with other disabilities were living in institutions in 2011. There is no available data regarding how many new admissions there are and how many people leave each year.

One of the largest institutions in Europe is the Home of Psychiatric Patients of the Metropolitan Municipality in Szentgotthárd (Fővárosi Önkormányzat Pszichiátriai Betegek Otthona)²⁴ where 734 people with psycho-social disabilities live together. It is very unlikely that in such a huge institution individualised care based on a former needs assessment is provided.

People often spend the whole day in their bed or in a closed room or unit. Some weeks ago MDAC carried out a visit to the Ray of Hope Habilitation Institution (Reménysugár Habilitációs Intézet)²⁵ where adults and children with disabilities live together. We saw a nine-year-old child who according to the staff was unable to walk or speak, and who spent most of the day in his room, effectively in solitary confinement. He is taken to another room (which is called a "school") every morning and spends most of the afternoon in his room. MDAC asked the director how many people had moved out of the institution last year and she said that since she had been director, over the last five or so years there, she only remembered one case. This nine-year old child, therefore will most probably spend all his life in the institution, without any hope to be included in the community.

Indicator No. 2

Does the law guarantee the right to live in the community?

Despite ratifying the CRPD in 2007, the Hungarian government has taken no steps to insert the right to live in the community onto the statute books. The government committed itself to deinstitutionalisation in the Act XXVI of

²⁴ Website of the social care home: <http://www.gotthardotthon.hu/> (last accessed 11 June 2012).

²⁵ Website of the social care home: <http://www.rhi.hu/index.php?mode=&page=&langu=H&wm=> (last accessed 11 June 2012).

1998 on ensuring equal opportunities for persons with disabilities (hereinafter *Equal Opportunities Act*).²⁶ In this Act the government set out a gradual transformation of institutions providing permanent residence for persons with disabilities by 1 January 2010. The rhetoric of the Equal Opportunities Act is that people with disabilities should be offered care in residential homes where care is humanized and the living conditions are modern and therapeutic. A failing of this Act is that it only applies to people with disabilities who are “capable” (as judged by State doctors) of living independently with support, whereas nothing is planned for those people who do not pass the test. This approach is based on the medical model and fulfils the needs of services rather than people. Distribution of resources according to perceived severity of disabilities could well amount to discrimination.

Although the 12-year deadline passed at the beginning of 2010, no significant changes were implemented. Since then the Equal Opportunities Act has been amended and a new deadline of 31 December 2013 has been set, for 1,500 places for people with disabilities in social care institutions, that provide care and nursing for more than 50 persons with disabilities, will be replaced in the development programmes co-financed by the European Union. On 9 July 2012 the Hungarian Parliament adopted an amendment to the Social Act (1993:III) which introduced the following forms of protected housing:

- a) a flat or house for up to six people or
- b) a flat or house for seven to twelve people or
- c) flat or block of buildings for up to fifty people (living centre).

With the legal definition of living centres as protected housing the Hungarian government’s intention is to retain institutions in the Hungarian legal system and practice.

Indicator No. 3

Does the law allow and support people with disabilities to decide where and with whom to live?

The Civil Code²⁷ still includes both full and partial guardianship while supported decision-making and advance directives do not exist under Hungarian law. Currently, the Ministry of Justice is leading the codification of a new

²⁶ Available at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV (last accessed 24 May 2012).

²⁷ Act 4 of 1959 on the Civil Code, available at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=95900004.TV (last accessed 22 May 2012).

Civil Code²⁸. The new Civil Code would retain full guardianship with a different name (fully restricted legal capacity). Although the new Civil Code brings in the concept of supported decision-making the regulation is not fully satisfactory as the support person would be appointed by the guardianship authority. The still existing substituted decision-making system impedes persons with disabilities under guardianship from choosing their place of residence on an equal basis with others and therefore living in the community.

According to the registry of the National Office for the Judiciary, which manages the data on the number of people under guardianship gathered from the guardianship authorities, as of 31 May 2012 59,927 people were placed under guardianship out of which 33,914 were under plenary and 23,335 were under partial guardianship (there was no data available regarding 2,678 people).

Indicator No. 4

Has the government made a public policy commitment to the right to live in the community?
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In 2011, a government decree was adopted on the deinstitutionalisation strategy (*thereafter* DI Strategy).²⁹ It is the first coherent strategy on deinstitutionalisation since the Equal Opportunities Act was adopted in 1998. One of the positive reforms is the introduction of the “protected housing” which had not existed before. On the other hand, the DI Strategy has several shortcomings which endanger the implementation of Article 15(3) of the Social Charter. One of the most significant disadvantages is that the DI Strategy sets a 30-year implementation period (2011-2041) without intermediate measurable indicators. Under the DI Strategy the Minister of National Resources has to develop an Activity Plan every three years³⁰ but to achieve the overall aim there are no tied financial resources.

²⁸ Available at

<http://www.kormany.hu/download/0/d7/70000/%C3%9A%20Polg%C3%A1ri%20T%C3%B6rv%C3%A9ny%C3%B6ny%20-%20a%20Kodifik%C3%A1ci%C3%B3s%20F%C5%91bizotts%C3%A1g%20Javaslat%20-%20k%C3%B6zz%C3%A9t%C3%A9telre.pdf> (last accessed 22 May 2012).

²⁹ 1257/2011 (VII.21) government decree on the governmental tasks regarding the strategy and implementation of the deinstitutionalization of residential places of social care homes for persons with disabilities. Available at <http://www.fszk.hu/fszk/forrasok/jogszabalyi-kornyezet/Kormanyhatarozat-es-Strategia-a-fogyatekos-szemelyek-szamara-apolast-gondozast-nyujto-szocialis-intezmenyi-ferohelyek-kivaltasarol.pdf> (last accessed: 21 May 2012).

³⁰ Article 3 of the 1257/2011 (VII.21) Government Decree.

Indicator No. 5

Is there a plan with a timeline and concrete, measurable steps to enable people with disabilities to enjoy their right to independence, social integration and participation in the life of the community?

On 27 January 2012 a deinstitutionalisation tender was issued by the Ministry of National Resources (entitled “Deinstitutionalisation – Social care homes component A” reference TIOP.3.4.1.A-11/1.³¹, hereafter DI tender). The value of this tender is 7 billion HUF which is roughly 24 million EUR. Up to ten projects will be funded, each of minimum 250 million HUF to maximum 1 billion HUF. The funding comes from two sources: the EU Regional Development Fund (ERDF) and the Hungarian state budget. The period of application is from 1 July to 1 October 2012. The DI tender allows managers of social care institutions to apply for funding to implement one of three goals:

- Construct or renovate apartments in the community, or
- Construct or renovate “group homes” which in Hungarian legislation have a minimum of 8 and a maximum of 14 beds, or
- Construct so-called “living centres” (“lakócentrum”), which are a group of buildings with structures of flats where up to 50 people with disabilities would live in a congregated setting.

Regarding option 3, the tender stipulates that this option is only to be developed in exceptional cases where it is “justified by the residents’ care needs”, but the document does not define “exceptional cases” or “care needs”. MDAC and several other NGOs find it inconceivable that a 50-bed residential setting could be anything other than a segregated institution and, therefore, in breach of Article 19 of the CRPD. We have brought this to the attention of the European Commission, which seems to be unable to act. It would be useful if the European Committee on Social Rights could weigh in on this issue. Appendix No. 3 sets out the NGOs’ letter to the European Commission of 3 May 2012³², whilst Appendix No. 4 is the European Commission’s 22 June 2012 reply.

³¹ The tender is available in Hungarian at http://www.nfu.hu/download/38466/Palyazati_utmutato_Bentlakasos_intezmenyek_kivaltasa_A.pdf (last accessed 24 May 2012).

³² The letter was signed by Zsolt Bugarszki, Social Policy Expert; the Hungarian Civil Liberties Union, the Disability Rights Center, the Open Society Mental Health Initiative and the Mental Disability Advocacy Center.

The tender is not based on the needs of people with disabilities, but on the needs of staff employed in current and future services. It is based on a premise that people 'need' institutions of a certain number of people, rather than the reality that people need housing and other types of services, shared with people they choose themselves. The plans seem entirely service, rather than needs-led. Community living cannot be viewed in isolation from training, education, employment, leisure activities, health, social, accessibility or other areas of life, as it is enshrined in Article 15(3) of the Social Charter, which needs to be comprehensively assessed and planned - elements which are not evident in the current plan.

Indicator No. 6

Is any international and/or national financing being spent on building, expanding, or refurbishing institutions, or to developing community support services?

Since 1998 when deinstitutionalisation was set as a priority in the Equal Opportunity Act, the Hungarian government has spent 23 billion HUF (roughly 80 million EUR) to renovate and build new institutions.³³ If this significant amount of money had been used for deinstitutionalization and for the establishment of adequate community-based services, Hungary would have been closer to implementing Article 15(3) of the European Social Charter and people with disabilities would be closer to independence, social integration and participation in the life of the community.

³³ Hand in Hand Association (ed), *Expert Material for the Reform of Residential Institutions*, (Budapest: Hand in Hand Association 2008). Available at http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CE8QFjAA&url=http%3A%2F%2Fsoember.hu%2Findex.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D97%26Itemid%3D154&ei=bNG8T5P_BoiSOuCPnDQ&usq=AFQjCNFyCYe7Xn36mcqki0yEB9GzyZvDg&sig2=pCC1bfXfdkyb1JLx-82ptQ (last accessed 23 May 2012).



Conclusion

Article 15(3) implementation

MDAC hopes that this parallel report has enabled the Committee to break down the Article 15(3) obligations into bite-sized policy pieces. In this way we hope that the Committee is able to apply the indicators in the application of Article 15(3) of the Charter irrespective of the country. The indicators can serve as benchmarks both for the Committee, State Parties and civil society.

Hungary

MDAC is disappointed that the Hungarian government has neglected its Charter obligation to submit the State report on time. Whatever the reason for the lack of reporting, the effect is that the Committee is not provided with information about the rights of people in Hungary to enjoy the provisions which Hungary has ratified. These include people with disabilities whose rights for many years have been violated thanks to governmental inaction and use of resources to fund human rights violations, rather than implementation.