

Reply of the of the Government of Hungary to the joint urgent appeal from the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

The Government of Hungary hereby submits the following observations concerning the joint urgent appeal from Special Rapporteurs dated 21 June 2017, ref: UA HUN 3/2017.

With regard to the appeal the Government wishes to make the following remarks concerning **the development of social services providing personal care – the road to de-institutionalization:**

Social services providing personal care include basic services and specialised care. Basic services are those that are necessary for independent living and are provided for users in their own home or living environment, while for people with greater needs, for whom basic services can no longer offer satisfactory support, specialised care accommodation is also provided.

In recent decades the system of social services has been changing continuously due to policy changes, and in accordance with international legal norms and guidelines. The period of the socialist regime was characterised by an exclusively paternalistic approach, which very much left its mark on social services, similarly to other areas of life. This attitude, however, began to disappear as services developed and new services occurred; due to socio-economic changes and the needs of users the exclusivity of the forms of service providing accommodation has also disappeared.

After 1990, following the democratic transition, Act III of 1993 on Social Administration and Social Services (hereinafter: Social Administration Act) was introduced, in which services already existing before, were prescribed for. This legal act described the care system that started to emerge in the 1950's and consolidated in the 1970's, and involved care provided in buildings, mansions and overcrowded institutes that were functionally unsuitable for this purpose. The regime of organising traditional institutional care was based on care provided for older persons on the one part, and on institutes providing care for disabled persons and persons with psychosocial disability, on the other part, which used to belong to the chronic care branch of the healthcare system.

Following 1990, there was a growing demand for care provided in small groups, based on individual needs. All national and EU development projects were realised in support of this. The first project phase started in 1998 in the framework of the programme for the development of residential homes under the first Orbán administration.

In recent decades a significant paradigm shift took place in European policies too, supporting social approach rather than the medical approach. As a result the focus shifted from providing care for persons with disabilities and psychosocial disability or addictions moved to promoting their community and social inclusion, and creating or facilitating a lifestyle as independent as possible. Consequently, the transition of institutions providing care for a large number of people is an important step.

Hungary is committed to improving the rights and equal opportunities of disabled persons, which is demonstrated by the fact that in 2007 it was one of the first countries to ratify the **UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to it**. Over the last two decades, the restructuring of institutions providing care for a large number of people has been also brought into legislation, and practical realisation is also under way by using national and EU funds. **Act XXVI of 1998 on the rights and equal opportunities of persons with disabilities** (hereinafter: Disability Act) contained provisions relating to replacement already at the time of its publication. Since its 2010 modification it regulates that institutes with a capacity of over 50 persons providing nursing and care services for disabled persons and persons with psychosocial disabilities must be replaced. The Disability Act also provided for the funds needed for the transition of institutional capacities, and the first phase of the replacement was co-financed by the European Union. The additional significance of the Disability Act is that its definition on residential homes as prescribed for in it, appeared in the Social Administration Act, as well. In 1998 a call for applications was issued for the development of the specialised forms of social services providing personal care, from national funds. Up until 2006 the Ministry of Social Affairs provided funds for the **development of residential homes** and for the spreading of community services, enabling by this the construction of several residential homes per year. As from 2011 new capacities could only be created in the form of residential homes. Residential homes for disabled persons and persons with psychosocial disability clearly represented a shift towards community-based services besides day-care institutions, and laid the foundations for transition.

Starting from the 1950's, long-term residential social institutions were mainly set up in nationalised or listed buildings, and the implementation of a reconstruction programme concerning these buildings (2001-2009) became vital (**Mansion Programme**) in order to be able to ensure a better and more liveable environment for care recipients until the transition of the buildings.

Pursuant to Act LXXXIX of 1992 on the **allocation and targeted support** system of local governments, and Government Decree 9/1998 (I. 30.) on the implementation of this act, local governments were able to submit a claim for allocations (priority development) every year. Obviously, the parties concerned could also apply for the renovation of social institutions. From the allocations the capacities of institutions providing care for older persons and disabled persons, the rehabilitation institutions for persons with psychosocial disability and disabled persons had to be expanded to enable local governments to fulfil their obligation to provide care. The programme ended in 2006. Within the framework of the programme it was possible to replace institutions or institutional units that could not be renovated or operated economically, by investing into new facilities.

Based on the changes that had taken place in the field of social services, in 2004 **support services and community-based care**, other than the traditional forms of care, were determined at statutory level. The introduction of these services had been preceded by a model programme, and then, after creating legislation, the range of basic services was extended specifically for persons with disabilities and persons with psychosocial disability or addictions.

Supported living, as a form of service was introduced in the Social Administration Act as of 1 January 2013. According to the new rules, new nursing and care capacities for people with disabilities, psychosocial disability or addictions can only be created in the form of supported living. Supported living creates appropriate conditions for persons with disabilities, psychosocial disability or addictions for receiving housing and social services corresponding to their age, health condition and self-sufficiency abilities. It is based on the principle that a distinction should be made between housing and social services. On the premises where housing services are provided – which can only be provided in a house/apartment accommodating maximum 6 persons, a house/apartment accommodating maximum 7-12 persons or a group of apartments or buildings for accommodating maximum fifty persons – no other social services can be operated. Instead of providing residential care for the people concerned in a ready-made “package”, supported living includes a flexible combination of different forms of housing services and assistance services, which are provided on different premises. Independent participation in community life is strengthened and encouraged by making sure that during the day care recipients stay at premises other than their place of residence. Service provision is based on the complex assessment of the users' need, which makes it possible to provide care better adjusted to individual demands.

On 21 July 2011 the Government adopted **Government Decision 1257/2011 (VII. 21.) on the strategy of the replacement of social institutional capacities providing nursing and care for people with disabilities and the implementation of governmental tasks**, which was a major step with regard to transition to community-based services. The Strategy published as an Appendix to the Government Decision (hereinafter: strategy) identifies disabled persons receiving care in an institution providing care for a large number of people as a direct target group. The target group also includes disabled persons with addictions or psychosocial disability. The National Body for the Coordination of Deinstitutionalization established on 11 August 2011 was designated specifically to coordinate the measures to be taken in connection with the implementation of the strategy.

Originally a 30-year horizon was determined for the strategy. In the first three years restructuring was realised on the basis of the strategy, in the framework of the project entitled Social Infrastructure Operational Programme – Replacement of residential institutions – social institutions component (hereinafter: TIOP-3.4.1.) with a budget of HUF 7 billion for restructuring in the first phase. The project is aimed at the replacement of the capacities at residential social institutions having capacities offering care and nursing to more than 50 persons with disabilities, psychosocial disability or addictions, in line with principles defined by the strategy.

In the framework of the TIOP-3.4.1. project 672 supported housing capacities were created using a total amount of aid of HUF 5.8 billion, during the restructuring of the following institutions: Szent Lukács Greek Catholic Aid Service's Nursing and Care Home, Szakoly; Aranysziget Home, Szentes; Home and Methodological Institute for the Elderly and the Disabled, Bélapátfalva; Somogy County Social Home, Berzence; the Local Government of the Town of Kalocsa, Kalocsa; Nursing and Care Home, Mérék.

The first five years of the implementation of the strategy ended in 2016, and it was necessary to summarise the available knowledge and experience, and to plan the following period based

on evidence and on the legislative changes that took place in the past period, involving all stakeholders along the entire spectrum of the relevant policies. For this reason – besides broad professional and civic participation – **Government Decision 1023/2017 (I. 24.) on the long-term concept for the transition of social institutional capacities providing nursing and care** for persons with disabilities was prepared and issued in January 2017, which shortens the duration of the entire replacement process by 5 years (2016-2036) as compared to the original plans (2011-2041). The vision was elaborated by summarising the experience gained in recent years, adopting a human rights approach, and taking into account recent legislative changes, focusing on community-based care provided for disabled persons. The Hungarian Government is planning to replace capacities for 10,000 disabled persons by moving them from institutions providing services for a large number of people to community-based housing arrangements. The main goal of the vision is to close institutions providing services for a large number of people, including the unit of Pest County Topház Combined Social Institution (Topház) situated in the city of Göd.

The deinstitutionalization process continues during the EU's 2014-2020 financial cycle. Three EU projects are under way (with code numbers EFOP-2.2.2-16, VEKOP-6.3.2-17, EFOP-2.2.5-17), with a budget of HUF 78 billion regarding different regions, entitled “Promoting transition from institutional care to community-based services”. The projects are aimed at the complete transition of institutional service forms having more than 50 capacities, authorised in respect of the target groups, offering care and nursing to persons with disabilities, psychosocial disability or addictions, and at the creation of community-based service forms of high quality, responding to residents' needs.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

Concerning the statements made by the Special Rapporteurs, we respectfully indicate that according to the statement made by Károly Czibere (Secretary of State for Social Affairs and Social Inclusion, Ministry of Human Capacities), as the investigations stand now, the [REDACTED] [REDACTED] was not duly authorised to prepare and publish the documentation they made at the unit of Pest County Topház Combined Social Institution (Topház) situated in the city of Göd without the guardians' permission. The Government, however, **did not deny entry for [REDACTED] experts into the institution.**

Since the summer of 2016 [REDACTED], the State Secretariat for Social Affairs and Social Inclusion, and the Hungarian Directorate-General for Social Affairs and Child Protection had been involved in several rounds of negotiations concerning the details of the monitoring activity. At the point where an agreement was reached during the negotiations, the head of [REDACTED] said (quote from the letter written by [REDACTED] on 16 November 2016 and addressed to the Deputy Secretary of State of the State Secretariat):

„ I understand that you provided your agreement that [REDACTED] monitoring teams will have access to institutions maintained by SZGYF where children with disabilities are residents. We have provided our assurance to you that no individuals will be identified, including by video, picture or oral recording, without their consent or that of their legal guardians. ... You raised

questions about [REDACTED]'s collection and use of identifiable personal data of child residents of institutions. We are fully committed to protecting all forms of personal data, including sensitive and protected information, which is collected on the course of our activities in strict compliance with the law"

After this our State Secretariat did not receive any information from and was not contacted by [REDACTED]. In December 2016 we requested information from the organisation, but did not receive a reply. On the basis of the above **we reject the assertion that the monitoring staff of [REDACTED] was denied entry by the Hungarian Government.**

It was after this that [REDACTED] published its report on Topház. On the same day, **the Ministry of Human Capacities (EMMI)** suspended the director of the institute and ordered extraordinary investigations. In response to the statements included in the report prepared by the Mental Disability Advocacy Centre and published on 3 May 2017, and in response to the results of the operator's inspection performed in 2016 by the Hungarian Directorate-General for Social Affairs and Child Protection and the inspection carried out by Pest County Government Office in 2017, EMMI **undertook an overall professional investigation** in the institution, involving the ministry's experts and **independent experts** ([REDACTED])

[REDACTED]). The purpose of the investigation was to examine the lawfulness, professionalism and efficiency of the activity performed by the institution, and the quality of service provided. During the investigation records and reports of inspections carried out at the institution in the previous years were also reviewed (the records of the official inspection carried out by Pest County Government Office on 8 April 2015, the inspection report made by the Pest County Office of the Hungarian Directorate-General for Social Affairs and Child Protection and dated on 22 October 2016, the report of the Commissioner for Fundamental Rights made in Case No. AJB-257/2017). During the investigation the experts used the following methods: on-site inspection; requesting data and information from Pest County Government Office, from the operator, from the institution, from the social care rights and the children's rights advocate, and from the Pest County Child Protection Centre and Regional Child Protection Specialist Service; verification of documents; interviews with employees, relatives, guardians, the protective guardian and care recipients.

The Ministry of Human Capacities prepared a 30-point action plan to solve the problems identified at the unit of Pest County Topház Combined Social Institution (Topház) situated in the city of Göd, and designated the Hungarian Directorate-General for Social Affairs and Child Protection, as operator, the head of the institution and the head nurse as the parties in charge of performing the tasks. 10 points of the plan were implemented with immediate effect. As a result of the investigation it can be established that the accusation relating to starvation and torture described in the [REDACTED] report has no real bases, so it is not correct. The institute pays particular attention to nursing and care provided for incapacitated persons confined to bed. The condition of the wasted care recipients lying in bed shown in the pictures is partly due to muscular atrophy and partly to the poor utilisation of nutriment

(malabsorption). It is all associated with the care recipients' clinical picture and condition. Furthermore – also with regard to the interviews made with parents – no signs of abuse could be observed during the inspections. However, the living conditions and the status of the home is unacceptable and needs to be changed. During the investigation serious failures and deficiencies were identified in the institute:

1. Physical infrastructure (overcrowded, run-down, lack of privacy, etc.): the exterior of the facade and the doors and windows have been recently renovated, but inside the building is very overcrowded, the rooms, the sanitary units and the community areas are neglected, run-down and unsafe. Due to the large number of beds in the rooms and without personal items there is a lack of privacy.
2. Low quality of the professional work (inadequate group-forming methodology; schematic individual development plans; inadequate spare time activities)
3. Human resources problems (high rate of fluctuation; significant shortage of professional employees).

At the same time, Pest County Police Headquarters started investigations in response to the report prepared by the experts of [REDACTED], as the likelihood of the infringement of the care recipients' rights and fundamental human rights arose. The Special Rapporteurs wrote in their letter that “[REDACTED] *took all the precautionary measures to protect the identities of the persons detained at TOPHÁZ*”. Despite this, several photographs of the residents could be seen on the internet, in which the residents could be clearly recognised, for example on the basis of their individual characteristics, physical signs, clothing, material environment. In the following the representative of [REDACTED] had the opportunity to attend the meeting of the National Disability Council, where the representative acknowledged the fact that the documentation about the residents was prepared without permission. Referring to the letter written by [REDACTED], [REDACTED] broke its promises included therein.

Furthermore, we declare that the Hungarian Government fulfils its obligations determined in the UN Convention on the Rights of Persons with Disabilities (CRPD) and in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as well.

This is also demonstrated by the fact that in the same period – at the time when [REDACTED]'s document was published – the Office of the Commissioner for Fundamental Rights was conducting investigations in the institute to examine the notifying parties' working conditions. In Hungary the national institute of the OPCAT mechanism operates within the frames of the Office of the Commissioner for Fundamental Rights, and [REDACTED] is also a member of the consultative civil body of the Office of the Commissioner for Fundamental Rights. Despite this, the Office of the Commissioner for Fundamental Rights did not initiate further – OPCAT – investigations.

- 2. Please provide information concerning the legal grounds for preventing independent civil society organisations from monitoring the human rights situation of persons with disabilities deprived of their liberty in segregated State-run**

institutions and how they are compatible with Hungary's obligations under international human rights law.

Social institutions providing personal care are used on a voluntary basis, at request. The regulations relating to the operation of the institutions are meant to ensure the rights of the care recipients living in the institutions. The lawful operation of social services is ensured on the basis of the provisions included in the professional legislation, through the cooperation of several state authorities.

In the scope of the operation of social institutions providing personal care, rules relating to entering the institutes and to communication are of special significance, not simply with regard to inspection, but rather in the interest of protecting fundamental rights of the residents and care recipients.

Act III of 1993 on social administration and social care, in the chapter on care recipients' rights, regulates visits, but does not contain specific rules on visiting or entry relating to third persons, consequently general rules on visiting and communication must be applied; furthermore, in respect of issues not regulated by the Act, the general civil law, privacy and data protection provisions shall apply.

Due to their nature, visiting and entry rules affect personality rights, so in each case Act V of 2013 on the Civil Code regulating personality rights applies. It is first of all the head of the institute who is obliged to make every effort to protect the residents' fundamental rights.

Care recipients are entitled to maintain family relationships and receive relatives and visitors. The head of the institution may determine the order of visiting in the manner regulated in the rules of the house, in which the cases must be determined when visitors can contact care recipients outside visiting hours. When receiving visitors, attention should be paid to personality rights, e.g. the peace of mind of other persons living in the institution. The head of the institution may take measures in the way and in the cases set out in the rules of the house against persons who intentionally and severely disturb the order of visiting.

The rules relating to entering and leaving the institutions are contained in the rules of the house. The rules of the house are approved by the operator. Both in the social area and in the area of child protection there are implementing rules at ministerial level that contain detailed regulations relating to that the rules of communication, visiting, leaving and returning to the institution must be regulated in the rules of the house [Decree 15/1998. (IV. 30.) NM of the Ministry of Welfare, Decree 1/2000. (I. 20.) SzCsM of the Ministry of Social and Family Affairs].

Pursuant to Section 419 Subsection (2) of Act CCXL of 2013 on the imposition of punishments, measures, certain compulsory measures and detention for petty offences, special rules apply to reformatory institutions, in accordance with which the persons listed must be ensured the possibility of uncontrolled communication, in compliance with the institution's rules of the house.

In respect of data requested by third persons it can be stated that Act CXII of 2011 on Informational Self-Determination and the Freedom of Information provides legal option for submitting requests for access to public information in respect of data of public interest and data accessible on public interest grounds processed by public bodies. According to Hungarian legislation it is already regarded as special (sensitive) data when an identifiable natural person is the resident of a social institute providing personal care, this fact cannot be learned by requesting access to public information.

In the interest of protecting personality rights, the head of the institute is obliged to make sure that only authorised visitors can enter the institute, and only those can have access to sensitive personal data, who are entitled to it, especially on the basis of the concerned person's explicit approval. Consequently, from a legal aspect it is also strictly regulated how any of the residents' data can be accessed by civil organisations, what they can use it for, who they can forward it to and in what form.

It must be pointed out that in compliance with the applicable Hungarian law, the EU legal act, the so-called General Data Protection Regulation, which will become directly applicable in Hungary too as from 25 May 2018, also determines strict requirements in respect of processing personal data.

In the case of fulfilling the requirements relating to resources in staff and equipment and professional conditions, any operator can operate social and child welfare services and institutes and special child protection services, if the social service provider or social institution operated by it has been legally registered in the register of service providers. The body authorising operation inspects compliance with the requirements determined in the legal acts and in the register of service providers regularly, at specified intervals, which provides a guarantee of the operation of the institution in accordance with the regulations. Furthermore, residential social institutions can operate exclusively in possession of other (public health, epidemiology, fire safety, building) authorisations granted by regulatory authorities.

The rights of both adults and children using social services and institutes are protected from several aspects, **they can resort to complex legal protection**, if there is a case or suspicion of legal anomaly or infringement.

Pursuant to social sector rules, care recipients and children have the right to complain to the head of the institute, they can turn to the interest protection or interest representation forum to be set up with obligatory effect in residential social institutes and in home providing child protection institutes, or they can contact the social care rights advocate or the children's rights advocate, who will assist them in exercising their rights. Legal protection is also ensured by the procedure of the commissioner for citizens' rights and by the person of the guardian and the child protection guardian.

According to Section 92/B Subsection (1) points b) and d) of the Social Administration Act and Section 104 Subsection (1) points c) and e) of Act XXXI of 1997 on the protection of children and on guardianship administration (hereinafter: Child Protection Act), the operator is obliged to inspect regularly the lawfulness of the operation of the institute and the efficiency of professional work.

According to Section 92/K Subsection (4c) of the Social Administration Act and Section 98 Subsection (9) of the Child Protection Act, the proper operation of social, child welfare and child protection service providers and institutions in compliance with the legal act is inspected by the body authorising operation. Government Decree 369/2013 on the official registration and monitoring of social, child-welfare and child-protection service providers, institutions and networks designates the county and metropolitan government office as the body authorising operation, which performs regular inspections *ex officio* – at least once a year in the case of home provision, follow-up care and regional child protection specialist services, every two years in the case of daytime care of children, at least every three years in the case of social services – in the institutions, and also proceeds as a matter of urgency, if it gains knowledge of that the human or technical resources or the operation endangers the life, physical integrity or health of the care recipients or the development of the children in care, or violates any other rights, or that the legal acts relating to operation or the provisions included in the register of service providers have been violated. During inspection, in respect of the realisation of the professional programme or the professional compliance of the services, the state body performing national methodological tasks may also be seconded as an expert by the government office.

In Section 1 Subsection (4) of Government Decree 331/2006. (XII. 23.) on the performance of child protection and guardianship duties and competences and on the organisation and jurisdiction of the guardianship authority, within the scope of the professional control of child protection and guardianship duties, it is made possible for the Minister of Human Capacities to contact directly any organisation exercising the powers of the guardianship authority, if urgent measures are required in the interest of a child or person under guardianship or a person affected by a procedure aimed at being placed under guardianship.

All the above clearly shows that the Government of Hungary is committed to the protection of the rights of persons with disabilities. There is no legal obstacle to examining the human rights situation of disabled people living in institutions. The Hungarian Government fulfils its obligations determined in the UN Convention on the Rights of Persons with Disabilities (CRPD) and in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

Government Decision 1023/2017 (I. 24.) on the long-term concept for the transition of social institutional capacities providing nursing and care for persons with disabilities contains the obligation relating to the further operation of the National Body for the Coordination of Deinstitutionalization, and determines its tasks. In particular, these tasks involve that the Body should monitor the residents' quality of life and its changes during the entire term of the deinstitutionalization process, starting from planning. Another task is to monitor the organising activities of the relevant public bodies with regard to care.

At the initiation of the State Secretariat, the Body set up a subcommittee at its latest meeting to focus on institutions that have not joined the deinstitutionalization process yet. Monitoring includes an assessment of the lawfulness of operation, the professional standard of the services, and the assertion of different rights that individuals have. The subcommittee operates with 7 members, on the basis of the decision of the National Body for the Coordination of Deinstitutionalization. It is chaired by the head of the National Council of

Associations of Persons with Disabilities (currently the head of the Hungarian Autistic Society), and the representatives of 3 further interest protection organisations (Hungarian Association for Persons with Intellectual Disability and their Helpers, Mental Health Interest Forum and the Hungarian Deafblind Organization) also participate in the work, as well as the representative of the National Disability Expert Group and an employee of the Department for Social and Child Welfare Services and an employee of the Department for Disability Affairs.

3. Please explain what measures have been taken by the Government to protect from retaliation any person or organisation for having communicated to the independent monitoring organisations any information, whether true or false.

This issue is not applicable, as there are no signs of retaliation in connection with any monitoring activity. In Hungary there are constitutional guarantees to ensure the rights of citizens and civil organisations, offering a wide range of possibilities for submitting complaints and resorting to legal remedy, in the scope of which, however, the principle of proper exercise of rights and the prohibition of the abuse of rights must be fully applied.

4. Please explain how the Government is planning to address the allegations raised by [REDACTED] and cooperate with the staff members that have documented the situation for the purpose of investigating the situation and holding accountable those responsible for perpetrating severe human rights violation under the custody of State-run institutions.

The Hungarian Government is open to cooperation with any Hungarian or international civil organisation that contacts it to initiate joint work. The investigations instituted by Pest Council Police Headquarters against [REDACTED] have not been ended yet, and **we cannot cooperate with the mentioned organisation until the end of the investigations.** We are open to any dialogue, and the National Disability Council (independent coordination mechanism according to article 33 point 1 of the CRPD), which consists of members delegated by the advocacy organisations of disabled persons and a representative of EMMI (1 person), discussed the case of Topház on two occasions. On one occasion the representative of [REDACTED] participated in the meeting and spoke several times. The representative of [REDACTED] acknowledged the fact that they had taken photographs of the residents without permission, they had not met or interviewed the employees or the relatives, they had not consulted the institute's paediatrician, and they had not studied the public documents.

Furthermore, as it has been mentioned above, EMMI has suspended the head of the institute and ordered extraordinary investigations on the day when [REDACTED] report was published. As a result of the facts revealed, the Ministry prepared a 30-point action plan and implemented 10 actions described in the plan with immediate effect.