

Mandates of 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

REFERENCE:
UA HUN 3/2017

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/20, 34/18 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning intimidation of staff members of Mental Disability Advocacy Center (MDAC), an international human rights non-governmental organization based in Budapest which is carrying out monitoring and advocacy work for the rights of persons with disabilities.

Concerns about restrictions to the freedom of expression of non-governmental organizations and on their ability to operate through proposed new legislation was the subject of a joint letter by Special Procedures on 9 May 2017 (HUN 2/2017).

According to the information received:

On 3 May 2017, the Mental Disability Advocacy Centre (MDAC) publicly released a monitoring report uncovering the dire human rights situation of 220 children and adults deprived of their liberty at the state-run Topház institution for persons with disabilities, in the city of Göd.

Human rights monitors from MDAC visited the institution between February and April 2017, during which they found children with disabilities kept in cage beds, carrying signs of malnutrition, untreated wounds and one child in a makeshift straitjacket. The report also contained photos taken at the institution and depicted the findings from the monitoring visit.

Since the beginning of 2016, MDAC had on several occasions sought to obtain access to the institution; however, the Hungarian Government denied access to the premises. Due to the issues in gaining official access, MDAC requested the National Preventive Mechanism (NPM), which is part of the Hungarian

Ombudsman, to carry out a monitoring visit at Topház. According to the information available, the NPM visited the institution in January 2017; but has not publicly reported on its findings.

In February 2017, MDAC once again sought access to the institution to identify children or adults with disabilities who could speak about their lives at a conference. Their request was accepted and MDAC conducted several visits which allowed them to observe the situation at the institution and to compile their findings in a report.

The MDAC has publicly called on the Hungarian Government to investigate the alleged human rights violations, bring to justice those responsible for such violations and provide adequate remedies to victims. The organization has also urged that the Government take immediate steps to close Topház and other segregated institutions where people with disabilities are detained, and to ensure that adequate support and services for their transition to the communities of their origin are made available.

Furthermore, at a press conference held on 10 May 2017 at the European Parliament, the organization appealed to the European Commission, Parliament and Council, calling upon them to protect the rights of persons with disabilities residing within the EU and to ensure accountability for the appalling human rights violations perpetrated in institutions such as Topház. MDAC has also requested that the European Anti-Fraud Office (OLAF) open an investigation on the use of the EU Structural and Investment Funds which are administered by the Hungarian Government, especially as the EU has ordered Member States not to use such funds on institutionalisation of persons with disabilities.

Since the release of the report, it is reported that the Government has publicly delegitimized the work conducted by MDAC, threatening the organization to open criminal proceedings as well as intimidating its staff members.

It is said that the Topház institution, which operates under the direct management of the Directorate-General for Social Care and Child Protection and the Ministry of Human Resources, has brought a complaint to the police against “unknown offenders” working for MDAC for their actions, including encouraging the guardians of those detained at Topház to pursue legal proceedings for disclosing personal information. There are further allegations in the state-affiliated media that the photographs published by MDAC have been deliberately arranged.

According to the existing evidence, MDAC took all the precautionary measures to protect the identities of the persons detained at Topház, by keeping confidential names, refusing to release precise ages or other information which would make

them identifiable, and blurring all faces in the pictures that had been disclosed in their public report of 3 May 2017.

On 10 May 2017, Hungarian media reported that the Secretary of State, Mr. Károly Czibere, has said that the serious allegations made by MDAC are not substantiated by the findings of the on-going government investigation. The media quotes him as saying that MDAC entered Topház without permission and published the photographs without the permission of the legal representatives of the people detained there. He is further cited as saying that he will cooperate with some selected civil society “that don’t break the law”, but not with organizations such as MDAC. He further stated in comments to the media that ‘rights cannot be protected by using methods that break the law’, and that the MDAC, instead of promoting children’s rights, is actually violating them.

The director of Topház was suspended with immediate effect and the Government announced that steps are being taken to address the situation in the Institution. Meanwhile, Mr. Károly Czibere announced in the media that no abuse had taken place in the institution and their own internal investigation found only minor irregularities.

We are strongly concerned that children and adults with disabilities are excluded from society and deprived of their liberty in segregated State-run institutions. Furthermore, we are concerned that the Government appears to impede independent human rights organizations from monitoring the situation of those detained in institutions and deliberately hinder such organizations from exposing to the public eye their findings, including investigation of alleged severe human rights violations which might amount to abuse and ill-treatment perpetrated against the inmates.

We are strongly concerned at the public statements made by high officials against the monitoring report launched publicly on 3 May 2017, their refusal of any prospects for cooperation with MDAC, and what appears to amount to intimidation strategies aimed at curtailing the organization’s rights to freedom of expression, including threats of opening criminal proceedings against MDAC and its staff members for illegal conduct.

We are concerned that these intimidations and restrictions on the work of human right defenders and non-governmental organizations, take place in a context of increasing Governmental pressure against non-governmental organizations. We are further concerned that these measures contribute to a chilling effect on civil society as a whole, thereby reducing the public’s access to information about Government activities and potentially reducing Government accountability.

We are seriously concerned that institutions for persons with disabilities remain outside of the regular monitoring work conducted by the existing national preventive mechanism. As a consequence, those detained in institutions, such as Topház, remain

particularly vulnerable to abuse and ill-treatment. Having the Government itself supporting the monitoring by establishing adequate independent national mechanisms designated to ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored to prevent the occurrence of all forms of exploitation, violence and abuse, and reacting promptly to their allegations, including by initiating proper criminal investigations and securing access to legal assistance for victims, would be an important part of ensuring better human rights for persons with disabilities.

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 16 and 19 of the Convention on the Rights of Persons with Disabilities, ratified by Hungary on 20 July 2007. When read in conjunction, these articles provide that States should recognize the equal right of all persons with disabilities to live in the community and have a responsibility to prevent the occurrence of all forms of exploitation, violence and abuse against persons with disabilities. For this purpose, States shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities. As States are moving towards phasing out institutionalization practices and replacing them with a system of community based supports and services, they shall take effective and appropriate measures to ensure that regular monitoring of institutions, such as Topház, is conducted.

The imperative of monitoring mechanisms in the protection of human rights is also recognized under the Optional Protocol to the United Nations Convention against Torture Regular, acceded by Hungary on 12 January 2012. Accordingly, the National Preventive Mechanism (NPM), established by the State should make sure that it conducts regular and independent monitoring visits to all places where persons with disabilities might be deprived of their liberty and presents its findings in a public report.

With reference to Hungary's obligations under the article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Hungary on 17 January 1974, which guarantee freedom of expression and opinion to everyone, the public dissemination of the results of such independent monitoring visit should not be hindered. Article 19(2) guarantees "freedom to seek, receive, and impart information of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." By being forced to choose between being fully funded, or operating without a stigmatizing label, the above restrictions in the Bill would significantly restrict NGOs' freedom of expression and ability to operate.

While the right to freedom of expression is not absolute under ICCPR Article 19(3), restrictions on expression are only appropriate under narrow circumstances. Restrictions must be provided by law, and necessary and proportionate to protect the rights or reputations of others or for the protection of national security, public order, or public health and morals. While fighting money laundering and terrorism funding (which

are stated as concerns in the preamble) are indeed legitimate and important State interests, it is unclear how forcing NGOs to register as “foreign-supported organizations” furthers those State interests.

Additionally, under the provisions of Art 6 of the Declaration on Human Rights Defenders (Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144) ‘Everyone has the right, individual and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) (...) freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms’.

Furthermore, Art 12 of the Declaration states that ‘The State shall take all necessary measures to ensure the protection by the competent authorities of everyone (...) against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration’.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for preventing independent civil society organizations 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.
3. Please explain what measures have been taken by the Government to protect from retaliation any person or organization for having communicated to the independent monitoring organizations any information, whether true or false.

4. Please explain how the Government is planning to address the allegations raised by MDAC 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on the rights of persons with disabilities

David Kaye
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Special Rapporteur on the situation of human rights defenders