

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences**

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 33/30, 26/20, 26/12, 33/9, 34/16, 34/19 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of segregating people with disabilities in closed-type institutions and denying them the support needed to live independent lives in the community. It was also reported that violence, cruel, inhuman and degrading treatment were widespread in these institutions, as well as an alarmingly high number of uninvestigated deaths in custody.**

Concerns regarding denying independent human rights organizations access to institutions and alleged reprisals for conducting unannounced monitoring visits were subject of a separate communication sent on 20 May 2017 (case no. HUN 3/2017). We encourage your Excellency's Government to send us a response at your earliest convenience.

According to the information received:

Topház Special Home, Topház hereinafter, is a segregated institution for children and adults with disabilities located in the town of Göd, approximately 30 kilometers from Budapest. This State-run institution was established in 1977 and

is functioning under the administration of the Pest County Council. The institution follows the regulations developed and supervised by the Directorate-General for Social Care and Child Protection, which is a semi-autonomous agency associated with the Ministry of Human Resources.

As of 18 April 2017, a total of 220 children and adults with disabilities were institutionalized at Topház without being offered adequate support to live independent lives in their communities of origin.

The majority of persons placed at Topház come from poor families which are likely unable to access the necessary financial support and services to provide for the needs of the child or adult with disabilities. Given the paucity of support and services available to persons with disabilities and their families, publicly-funded institutions are presented as the only choice.

Confinement to the institution does not require a court order and may be authorized by a close relative of the person with disabilities or their legal guardian. The persons with disabilities themselves do not have a say in the decision, and allegedly they have no or little power to influence the decisions imposed on them by their family members or legal guardians. The reports received suggest that institutionalized persons have no recourse to a competent court or independent judicial body to challenge their detention.

Once placed at the institution, both children and adults are kept under constant surveillance and cannot leave its premises without permission. All wards are locked from the outside and none of the persons placed at the institution have a key. In addition, the inside door-handles of the dormitories' doors can be removed. As such, the doors can only be opened by the staff members that carry around a portable door-handle. All windows have metal bars. The institution itself is surrounded by fences and an electronic gate controlled by a security guard. Access to external visitors is restricted and granted only upon the director's permission.

The institution has five closed wards, with a capacity of approximately 40 beds each: one ward for children; one for girls and women; two for boys and men; and another mixed gender ward for persons showing "challenging behaviour".

Reportedly, living conditions on all wards are poor, unhygienic and pervaded by stench. Excrement and urine can be found on walls, sheets, beds, in bathrooms and toilets. The flooring, walls, doors, bedding and furniture are dilapidated and inadequate for use. People are forced to live in dormitories with three or six others, each having very little personal space and no privacy.

Two bathrooms are located on each ward. Every bathroom contains two open toilets and one shower, which does not allow for privacy during usage. Apparently, the bathrooms do not meet the basic hygiene standards.

Many residents show evidence of poor physical and dental hygiene, including advanced and untreated tooth decay, untreated sores and dental malformations.

Both children and adults are said to be fed from baby's bottles. Reportedly, they indicate visible signs of malnutrition, such as emaciated limbs, apathy, low energy levels and minimal responsiveness to external stimuli. In several cases, urgent medical attention might be required.

Residents display signs of extensive detention in metal barred cage beds, including muscle atrophy, spinal contractures, and muscle underdevelopment that is unconnected to their impairment and most likely a consequence of long-term lack of activity or movement. In one case, a ten-year-old child was found in a cage with metal bars of approximately one meter in height. Another young woman was found in a cage with metal bars of approximately 1.5 meters high. In case of emergency, the person inside the cage can neither escape nor call for help.

Other forms of prolonged physical restraints, aimed at inhibiting the movement of the entire body, appear to be applied with regularity. These include strapping people down to their beds, tying them to an immovable object, or using makeshift straightjackets. It seems that chemical restraint is also consistently applied to keep people asleep during the day and manage their behavior.

According to testimonies, violence is common both among inmates and by staff. The resulting wounds and other injuries to their hands, faces and bodies are left unattended. It was reported that the wounds identified on one boy's hand exuded a rotting smell. Another boy had a serious infestation in his ear, which as well emitted a pungent odor.

There are serious allegations that staff members resort to various forms of physical punishment, such as forced cold showering.

Reports suggest that girls and women with disabilities are at increased risk of sexual and gender-based violence, including rape. While the allegations could not be verified due to the limited access to the victims, during an independent monitoring visit a girl-child was found to be placed in the same bedroom with four teenage boys and an adult man.

Children placed at the institution do not have access to education nor any other types of age-appropriate learning and skills development activities. Reportedly, all

children manifest signs of distress and neglect, including, in addition to the above, rocking rhythmically (akathisia), teeth grinding and being unresponsive to external stimuli.

Reportedly, independent human rights monitoring organizations are denied access to the premises. Since June 2016, a human rights advocacy organization had on several occasions sought to obtain access to the institution for the purpose of conducting a monitoring visit. However, their requests have been denied. Allegedly, keeping institutions closed and shielded from the public eye creates conditions conducive to abuse and neglect and other severe human rights violation.

According to the information available, the National Preventive Mechanism (NPM), which is part of the Hungarian Ombudsperson's office, visited the institution in January 2017, but has not publicly reported on its finding.

On 10 May 2017, Hungarian media reported that the Secretary of State, Mr. Károly Czigere, said that the director of Topház was immediately suspended and that the Government announced that it would initiate an investigation.

There is no publicly available information on the total number of similar institutions for people with disabilities, whether large or small, in Hungary. However, according to Hungarian Central Statistical Office's figures, an estimated 25,000 people are placed in such institutions.

Based on the information available, there have been 4,042 deaths in institutions in Hungary in 2015 alone. However, there is no disaggregated data available regarding the causes of death. Furthermore, it appears that there have been no police investigations into the causes of the deaths in institutions, in spite of the explicit requests put forward by human rights advocates.

Although Hungary has recently adopted the 'Long-term concept for the deinstitutionalization of social care homes for people with disabilities 2017-2036', which sets out a 30-year time frame for phasing out institutions, the Government continues to invest public funds, including funding from the European Union, into consolidating institutionalization, rather than building the infrastructures and services necessary to enable persons with disabilities to live independently as provided by the United Nations Convention on the Rights of Persons with Disabilities. According to a call for proposals published by the Government on 12 November 2016, a total 3.8 billion HUF (approximately 12.3 million EUR) will be invested in the refurbishment of institutions and on creating places for more persons with disabilities in existing institutions.

Without prejudging the accuracy of these allegations, we are expressing serious concern at the situation of the 220 children and adults with disabilities reportedly deprived of their liberty at Topház and the other 25,000 people that have been placed in other similar institutions across the country.

We would like to recall that your Excellency's Government bears the primary responsibility for guaranteeing enjoyment of human rights by persons with disabilities, and protecting those rights that are prone to disability-specific forms of violations, including deprivation of liberty on grounds of actual or perceived disability, denial of access to essential support services, segregation and institutionalization, ill-treatment and deaths in custody.

In particular, we are concerned about the systemic placement of children and adults with disabilities in segregated institutions. We would like to draw your Excellency's Government attention to the fact that despite their names, institutions like Topház cannot be considered homes. There are certain standards enshrined in multiple sources of international law that these institutions, both large and small, fail to meet. These include full and effective participation and inclusion in society, respect for the individual's choice and control by persons with disabilities over decisions affecting their lives and non-segregation from the community.

Against this background, we call on your Excellency's Government to undertake all necessary legislative and policy reforms in the areas such as legal capacity, social protection, health, housing, education, and employment to halt the practice of institutionalization. In particular, we urge your Excellency's Government to introduce a moratorium on new admissions to institutions and to revise the policy framework on deinstitutionalization by adjusting the timelines, the redistribution of public funds from institutions to community services and accelerating the development of a full range of in-home, residential and other community services for daily life, including personal assistance and supported decision-making services.

At the same time, if accurately reported, the appalling conditions of living at Topház and the alleged abuse and coercion, would amount to cruel, inhuman or degrading treatment, and in certain circumstances, may even constitute torture. Therefore, we call on your Excellency's Government to take immediate actions aimed at investigating all allegations of human rights abuse, to hold perpetrators accountable and to provide remedies for victims, including adequate compensation, reparation and rehabilitation.

We are equally concerned that the risk of abuse is further exacerbated by the absence of public monitoring. Therefore, we urge that your Excellency's Government ensure regular and appropriate independent monitoring of all institutions, until they are

phased out, and to design accessible procedures, support and accommodations as may be needed to assist individuals to put forward their complaints and claim their rights.

Furthermore, we express grave concern at the high number of deaths of persons with disabilities while in the custody of these institutions and the apparent lack of investigations into their causes. We urge your Excellency's Government to investigate and elucidate the circumstances which led to the deaths of persons placed in these institutions and to prevent any further deaths from occurring by putting an end to life-endangering situations and taking strong measures aimed at safeguarding the right to life of all persons with disabilities.

We are equally concerned by the information that public money continues to be invested in expanding institutions such as Topház rather than building the infrastructures and services necessary to enable the transition to community living. Moreover, it appears that European Structural and Investment Funds administered by the Hungarian Government were used to maintain this outdated system of institutional care thereby defeating the potential of these funds to advance social inclusion of persons with disabilities and promote adequate livelihood of poor and excluded people.

In connection with the above-mentioned allegations and concerns, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case.

We would like to draw your Excellency's Government's attention to the Convention on the Rights of Persons with Disabilities, ratified by Hungary on 20 July 2007, which is the highest international standard to promote and protect the rights of persons with disabilities. We would like to stress in particular the rights of persons with disabilities, as enshrined in articles 10 (right to life), 14 (liberty and security of the person), 15 (freedom from torture or cruel, inhuman or degrading treatment or punishment), 16 (freedom from exploitation, violence and abuse), 17 (protecting the integrity of the person), 19 (living independently and being included in the community), 25 (health), and 28 (adequate standard of living and social protection) of the Convention on the Rights of Persons with Disabilities. We also wish to refer to the concluding observations of the Committee on the Rights of Persons with Disabilities (CRPD/C/HUN/CO/1), following its consideration of Hungary in September 2012.

Article 14 of the Convention requires that all persons with disabilities, on an equal basis with others, enjoy the right to liberty and security of person and explicitly prohibits unlawful or arbitrary detention of persons with disabilities. Moreover, article 14 also specifies that the existence of a disability shall in no case justify a deprivation of liberty and, in conjunction with articles 12 on equal recognition before the law and 19 on independent living in the community, outlaws forced institutionalization as a form of disability-specific deprivation of liberty.

Article 19 sets out the right of people with disabilities to “live in the community with choices equal to others” and requires that states develop “a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community and to prevent isolation or segregation from the community”. Article 19 has to be read together with article 28 on adequate standard of living and social protection, which sets out the States’ obligation to develop alternatives to institutional care for persons with disabilities and to further their deinstitutionalization, including by ensuring access to public housing programmes.

As stated in the facts, institutional environments can be conducive to physical, sexual and other forms of abuse. To this end, article 16 affirms the States’ obligation to protect persons with disabilities from all forms of exploitation, violence and abuse, including their gender-based aspects. It sets an obligation for States to prevent the occurrence of all forms of abuse by ensuring the independent monitoring of all facilities and programmes designed to serve persons with disabilities and calls for thorough investigations of allegations concerning serious human rights violations.

With regard to the rights to seek accountability and remedies for violations, article 13 of the Convention refers to an all-encompassing and stand-alone right of access to justice for persons with disabilities. As long as institutionalization continues and where persons with disabilities are deprived of their liberty through any process, States should secure effective exercise of their rights to bring proceedings before court to challenge the lawfulness and arbitrariness of detention and to receive appropriate remedy. In order to ensure effective access to justice for persons with disabilities, States should establish accessible complaint procedures and provide legal advice and other support services in a manner that takes into account the individual needs of persons with disabilities to assist them in bringing their case before the justice actors.

Furthermore, the above-mentioned facts appear to be in contravention of article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency’s Government on 17 January 1974, which guarantees the inherent right to life of every individual and that no one shall be arbitrarily deprived of his or her life. Following General Comments 6 and 31 of the Human Rights Committee, the inherent right to life must not be narrowly interpreted. States are not only prohibited from directly violating the right to life but also required to adopt positive measures to protect this right and prevent violations, both by State and non-State actors, from happening. In the above-mentioned case of deaths in state-run institutions, the responsibility of the State to respect the right to life of people with disabilities appears to be engaged.

When depriving an individual of their liberty, States are held to a higher level of diligence in protecting that individual’s rights. If an individual dies as a consequence of injuries sustained while in State-run institutions, there is a presumption of State

responsibility. As the Special Rapporteur on extrajudicial, summary or arbitrary executions has shown, any deprivation of life resulting from a violation of procedural or substantive human rights safeguards, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful. Some of these deaths may even result from arbitrary killings, where it can be shown that they have resulted from conditions of institutionalization amounting to inhuman or degrading treatment or torture, or inappropriate or unnecessary medical or other treatment (A/HRC/35/23). We would like to recall that the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65) provide that all cases where complaints by relatives or other reliable reports suggest unnatural death should be subject of thorough, prompt and impartial investigation (Principle 9).

We would also like to refer to the right of individuals not to be arbitrarily deprived of their liberty for reasons of discrimination based on disability and the right to equal recognition before the law as enshrined, inter alia, in articles 9 and 14 of the International Covenant on Civil and Political Rights.

We also refer to articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Hungary on 15 April 1987, which provide for the prohibition of torture and other acts of cruel, inhuman or degrading treatment or punishment as one of the few absolute, non-derogable and peremptory human rights standards. We would also like to draw the attention of your Excellency's Government to article 12 of the Convention, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention, which requires State parties to prosecute suspected perpetrators of torture.

In this context, we recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment has stated that solitary confinement and restraints, applied for even a short period of time, may conflict with the prohibition of torture and ill-treatment and called for an absolute ban on such practices (see A/HRC/22/53, para 63).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 explain the legal basis and the reasons for the institutionalization of children and adults with disabilities and measures that have been put in place to prevent their separation from families.
3. Please provide information regarding the deinstitutionalization process and other measures taken to ensure that persons with disabilities are not forced to live in institutions and can access support to transition to communities and lead independent lives. Please include details on the forms of housing available for persons with disabilities and which constitute an alternative to institutionalization, including the numbers of persons with disabilities benefiting from them; and the available schemes of personal assistance and other services, which are necessary to encourage and support independent living and prevent isolation or segregation, as well as the number of persons with disabilities benefiting from such schemes.
4. Please explain how your Excellency's Government is ensuring the involvement of persons with disabilities, their representative organizations and civil society in the development and monitoring process of legislation, policies and programs that directly or indirectly concern them.
5. Please explain if persons with disabilities can access free legal assistance and other appropriate support services, and what redress, rehabilitation and compensation is provided to persons with disabilities whose rights have been violated.
6. Please provide details on what measures have been taken to prevent, detect and address all forms of violence and abuse perpetrated against persons with disabilities in state-run institutions, including the existence and activity of independent monitoring entities mandated to visit institutions, conduct impartial investigations upon complaints and bring violations before the law enforcement authorities.
7. Please provide details, and where available the results, of any investigation, including judicial or other inquiries, and prosecutions carried out in relation to violence, abuse and deaths in the custody of state-run institutions for persons with disabilities. Have penal, disciplinary or administrative sanctions been imposed on the responsible authorities and remedies provided to the victims? If no inquiries have taken place, or if they were inconclusive, please explain why.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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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