

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on extreme poverty and human rights

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 42/16 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **discharge of hospitalized individuals in Hungary, whose continued care and treatment, including for chronic and terminal diseases, are at risk following a government order to all Hungary's hospitals to free up 60 percent of their beds to make room amid the COVID-19 pandemic.**

According to the information received:

On 30 March 2020, Hungary's parliament adopted a state of emergency law due to the COVID-19 pandemic, allowing the Government to rule by decree for an unlimited time. This allegedly enabled the Government to set aside and adopt laws selectively and without proper discussion. The parliament is still in session.

On 7 April 2020, the Hungarian Minister of Human Capacities reportedly sent a letter to all Hungary's hospitals ordering hospital directors to free up 60 percent of their bed capacity by 15 April, in order to make room for COVID-19 patients.

While the text of the Minister's letter is not available, credible reports indicate that hospital directors were not provided guidance or instructions on what criteria or basis to select patients to send home or transfer to other care institutions.

The order reportedly required hospitals around the country to free a total of 36,000 beds. As a result, many individuals who have been using healthcare services in hospitals, were hastily discharged, including individuals in need of continued care and treatment for chronic and terminal diseases. Considering that neither the Government nor hospitals have publicly shared the number of patients forcibly discharged, the exact number of persons affected is currently unknown.

Allegedly, two hospital directors have been fired for not complying with the Minister's order. The letter reportedly did neither contain any guidance nor strategy to ensure that patients discharged during the emptying of hospitals could be provided continued care in other care institutions or family homes.

During a confidential interview, a home care worker who is volunteering services vis-à-vis the situation, revealed that 10 patients, nine of whom had cancer, were discharged from hospital with 24 hours' notice. The 10 individuals were sent home from hospitals without proper medical services, medicines, prescriptions or equipment for home care. Family members were not provided information on how to ensure home care. It is reported that nine, out of the 10 patients, have subsequently died.

Another survivor with amputated appendages was also allegedly sent home but managed to find a bed in a rehabilitation home. In other cases, hospitalized individuals were reportedly sent home without supplies such as diapers or oxygen.

According to the information received, several affected persons were told by hospital staff they had just few days to leave the hospital, without further information on how their care was going to be provided. Family members of hospitalized individuals are reportedly unsure as to how they are expected to provide care for family members without adequate medical knowledge or tools to do so.

Furthermore, it is reported that Hungary's public health care system is severely underfunded and understaffed, with a large shortage of medical staff, including doctors and nurses. A sudden surge of persons in need of home care will likely result in further strain put on an already strained State-subsidized home care system.

As per the information received, the Hungarian Constitution and the Health Care Act guarantee the right to health and the right to access health care justified by the person's health condition without discrimination. However, to date, it is reported that the Government has not used its powers under the state of emergency law to set aside relevant health care provisions concerning the right to health and access to health care.

While we do not wish to prejudge the accuracy of the information received, we wish to express our serious concern at the physical and mental integrity and well-being of hospitalized individuals who have been forcibly discharged from hospital. We appreciate that the COVID-19 pandemic has led to the reorganization and repurposing of healthcare systems around the world, including restrictions on or suspension of treatments deemed as "non-essential." However, the measures taken in Hungary do not seem to be in

accordance with international human rights standards. They seem not to be guided by a rational, evidence-driven plan of how alternate measures will be implemented to avoid, in the context of the wider pandemic, impacting on individuals already in vulnerable medical situation who are further in need of, and receiving, in-hospital care.

In this connection, we would like to remind your Excellency's Government of its obligations under article 12 (right to health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Hungary on 17 January 1974. Accordingly, States must create "conditions which would assure to all medical service and medical attention in the event of sickness" (ICESCR article 12.2(d)). In its General Comment No. 14 (E/C.12/2000/4), the Committee on Economic, Social and Cultural Rights indicates that a "State which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations under article 12 of the Covenant" (para 47).

Moreover, all health facilities, goods and services must be respectful of medical ethics (para 12(c)). This includes the duties of physicians towards patients such as the obligation to respect human life and act in the patient's best interest when providing medical care. Healthcare workers, including community workers, policy makers, economists and administrators, cannot be reprimanded for acting within the framework of the right to health and in line with medical ethics.

Although the right to health is of progressive realization, subject to the availability of resources, it contains obligations of immediate effect, including taking steps "towards the full realization of article 12. Such steps must be deliberate, concrete, and targeted towards the full realization of the right to health" (para 30). States are not to adopt retrogressive measures, including that people are not denied essential health care they previously had access to. "If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights protected by the ICESCR in the context of the full use of the State party's maximum available resources" (para 32). In the present case, all alternatives do not seem to have been considered or duly justified.

Finally, the Committee has stressed that the limitation clause (ICESCR article 4) that allows for the potential limitations of rights on the grounds of public health, is primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States. A State party restricting others' rights has the burden of justifying such serious measures which must be in accordance with human rights standards, compatible with the nature of the rights protected by the Covenant, in the interest of legitimate aims pursued, and strictly necessary. These principles do not seem to have been applied in Hungary.

We also would like to draw the attention to your Excellency's Government to the disproportionate burden that falls on women when measures adopted imply that patients are discharged from hospitals and have to be taken care of at home (see, inter alia, the report of the former Special Rapporteur on extreme poverty and human rights on unpaid work, poverty and women's human rights (A/68/293) (2013)).

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 comments you may have on the above-mentioned allegations.
2. Please provide information on the steps taken by the Government to ensure that all hospitalized individuals ordered to vacate hospitals (to make room for COVID-19 patients) are receiving continued medical treatment and services in line with Hungary's international obligations.
3. Please explain whether the Government has allocated extra funds and human resources to ensure that hospitalized individuals affected by the Minister's order receive adequate medical treatment and care in their homes as per their health conditions.
4. Please provide information on the number of hospitalized individuals that have been discharged from hospitals as a result of the order. Please indicate how many, out of the total number of discharged individuals, were referred to alternative care institutions. Please also indicate how many, out of the total of individuals discharged, were sent home or to relatives.

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 may 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 issues in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights