

Contributions of the Commissioner for Fundamental Rights to the UN – Convention on the Rights of Persons with Disabilities list of issues

(only those issues will be commented on which are of relevance for the Commissioner for Fundamental Rights and on which issues the Commissioner has appropriate experience)

5. Please provide information on the development of programs to promote the rights of persons with disabilities amongst the Roma people.

Disability and Roma origin are two characteristics, which are protected by numerous domestic rules of law, i.e. those concerned have the right to enhanced legal protection and they can make use of beneficial measurements. In state policy in the field of beneficial measurements these two characteristics are present parallel, the direct connection is quite rare. We have no information on a complex program focusing expressively on Roma people with disabilities.

6. Please provide more information whether the deadlines prescribed for by the law for accessibility of public services rendered by the state (31 December 2010) and accessibility of educational, health and social services as well as that of municipality client services (31 December 2008, 2009 and 2010 respectively) had been met as scheduled (paragraph 51 of the State Party's report). Also provide information whether there are any sanctions prescribed against those who violate the accessibility standards.

7. Please provide more information on implementation, in accordance with Article 9 of the convention, of Act LXXXVIII of 1997 on the formation and protection of the built environment and Government Decree 253/1997 (XII. 20) on National Requirements of Spatial Planning and Building (paragraph 52 of the State Party's report).

8. Are there any protocols for the handling of emergencies and risks (earthquakes, floods, fires) and do they include persons with disabilities? (paragraphs 72-73)

The Commissioner conducted a Disaster Management Project in 2011. During the project he examined whether there are any special rules, procedural regulations concerning groups of people who need special care and protection like children, old people and persons with disabilities. There is no Act or regulation determining the procedure to be followed in connection with groups to be protected in case of disasters. Organisations participating in disaster management (Hungarian Army, the Police, the National Disaster Management) have no internal regulation focusing on these groups of people either. The Police have an internal norm regulating generally the cases which effect and involve people belonging to the groups to be protected.

9. Please provide additional information on the practice regarding revisions of the court's orders on guardianship, including data disaggregated by sex on number of persons under guardianship and decisions revising the orders on guardianship (paragraphs 75, 76 of the State Party's report).

11. Please provide information on the number and the situation of persons with disabilities who are detained. Please explain if reasonable accommodation is provided to detainees with disabilities.

In the framework of the project “With Dignity – with Difference” – project on the rights of people with disabilities (2010) the Commissioner inspected the enforcement of the rights of detainees with disabilities.

According to the information received from the Chief Commander of the Prison Service there were 21 cells with 39 places which are easily accessible for detainees with disabilities in different detention institutions.

The Commissioner conducted an investigation at the Central Hospital of the Prison Service in Tököl where he found that bathrooms were not easily accessible, and there were no separate toilets for persons of impaired movement either.

In the medical centre of the Post-treatment Institute of the Prison Service, in Nagyfa there were no such observations. The building itself, bathrooms and toilets are easily accessible.

Following a complaint the Commissioner stated that transportation of detainees with disability has to be improved and solved because the way detainees with disabilities are transported is dangerous and violates fundamental rights and human dignity of disabled persons.

12. Please provide additional information on the legal guarantees given to "persons with limited ability to act or incompetent persons", in order to protect them from any medical or scientific experiments taken without their consent (paragraph 91 of the State Party's report).

13. Please provide information on which measures are being taken regarding the prevention, detection and treatment of abuses of children with disabilities as regulated by the Child Protection Act.

14. Please specify who is entitled to enter an action to the courts to sterilize an "incompetent" person. (Paragraph 101)

17. Please provide information on the number of persons with disabilities who are in institutions and living centers, and on what steps are being taken by the government to enable these persons to live independently in the community.

18. Please provide information on the operation of sign language interpretation services from January 1st 2011.

In the framework of the project “With Dignity – with Difference” – project on the rights of people with disabilities (2010) the Commissioner inspected the use of sign language. But the principal field of investigation was education.

20. Please provide information on which measures are being taken to prevent children with disabilities from being separated from their families and being placed in alternative care, many of them for a long period of time, and being institutionalized taking into account the Committee on the Rights of the Child's Concluding Observations (CRC/C/HUN/CO/2)

21. Please provide more information on the reasonable accommodation and support provided within the general education system to students with disabilities, in order to facilitate their effective education in accordance with paragraph 2 of article 24 of the CRPD. Furthermore, please provide information on the new Act on Public Education (Act' CXC of 2011).

23. Please, provide data, disaggregated by sex, on the number of persons with disabilities employed in the public and private sectors, social enterprises, and self-employed persons with disabilities, as compared with the general population.

Within the framework of the labour law project entitled “Dignity of work”, the Ombudsman examined the employment situation of persons with disabilities. In the light of the findings of the inquiry the Ombudsman has established that the rules of law in force at present do not fully comply with those laid down in the Europe 2020 Strategy as drawn up by the European Union. Furthermore, they do not comply with the norms relating to independent living and participation in society laid down in the UN Convention on the rights of persons with disabilities, promulgated by Act XCII of 2007. The current employment and subsidy system, which is not transparent enough and lacks sufficient detail, does not promote the integration of persons with disabilities into work and their active participation therein. Consequently, this constitutes an infringement of the right to human dignity and of the right of persons with disabilities to freely choose their jobs; the protection of persons with disabilities, as laid down in the Fundamental Law, and the requirement of equal treatment is not ensured either. In addition, the uncovered legal practice and the uncertainties arising in many cases in the course of the work of organs applying the law constitute an impropriety relating to the requirement of legal certainty, as derived from the rule of law, in respect of the persons affected.

25. Please provide information on how homeless persons with disabilities and more specifically with psychosocial disabilities are being protected.

27. Is there any disability- based restriction on the right of Hungarian citizens to hold public office in accordance with their skills, qualifications and professional knowledge, and or their right to petition (paragraph 233 of the State Party's report)?

29. Please provide information as to. whether there have been cases where the "Parliamentary Commissioner for Future Generations" had to intervene on behalf of children with disabilities (paragraph 245 of the State Party's report).

Above all, the Commissioner for Future Generations was an environmental ombudsman, his principal responsibility was to safeguard citizens' constitutional right to a healthy environment.

In this capacity he investigated complaints relating to a broad range of environmental issues such as the degradation of urban green areas, noise pollution by aviation, licensing of individual industrial installations, etc.

Secondly, as a guardian of future generations, he acted as a policy advocate for sustainability issues across all relevant fields of national or local legislation and public policy. This varied from the financing of environmental authorities, through the role of civil society in environmental decision-making to transport infrastructure development.

As of the 1 January, 2012 there is a unified Ombudsman institution in Hungary. Instead of the previous four Parliamentary Commissioners (Commissioner for Civil Rights, Commissioner for Future Generations, Commissioner for the Rights of National and Ethnic Minorities and Commissioner for Data Protection and Freedom of Information) there is one Commissioner for Fundamental Rights working with two specialised Deputy Commissioners (responsible for the Rights of Future Generations and for the Rights of National and Ethnic Minorities). According to the Fundamental Law, the previous Commissioner for Data Protection ceased to operate as a separate Ombudsman; his tasks are performed by an independent authority.

31. Please provide information on the possible progress made in appointing a national independent monitoring mechanism on the implementation of the Convention, as well as on the participation of organisations of persons with disabilities in the preparation of the State Party's report, in accordance with the provisions of paragraph 2 of article 33 of the Convention (paragraph 261 of the State Party report).

Article 33 of the UN Convention on the Rights of Persons with Disabilities stipulates the establishment of a multi pillar control mechanism in order to fulfil national implementation and control. State Parties have to designate besides one or more focal points within government and the coordination mechanism within government a framework including one or more independent mechanism with regard to the legal status and functioning of national institutions for protection and promotion of human rights.

According to Section 1 paragraph (3) of the Act CXI of 2011 on the Commissioner for Fundamental Rights in the course of his activities the Commissioner for Fundamental Rights pays – especially by conducting proceedings ex officio –special attention to assisting, protecting and supervising the implementation of the UN Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

In February 2012 the responsible ministerial commissioner personally inquired if the Commissioner for Fundamental Rights is willing to act as one pillar of the control mechanism fulfilling the tasks and competencies laid down by Act CXI. of 2011. In the opinion of the ministerial commissioner it would be necessary because the current control mechanism (National Disability Council, Equal Treatment Authority) is split up and that these institutions are not fully capable to regularly and continuously fulfil the task of control as laid down in the Convention. In his response the Commissioner for Fundamental Rights expressed that the Office of the Commissioner for Fundamental Rights can undertake this task and the special tasks accompanying if appropriate personal and financial means are available. He noted that

years ago during the project on persons with disabilities in 2009 and during the preparation of the Act on the Commissioner for Fundamental Rights there had already been discussions on these tasks furthermore this function would be suitable for the institution being the UN national human rights institution as in the case of OPCAT.

An Act on the competence of the Hungarian ombudsman would mean clear framework for undertaking the task but until today there has been no declarative government regulation passed.