

Anti-discrimination, equality before law and independent living of people with disabilities in Hungary

by Anita Rozália Nagy-Nádasdi

*with assistance of National Federation of Associations of Persons with Physical
Disabilities*

by the support of Visegrad Fund

September 2020

Contacts:

MEOSZ, 73, San Marco street, 1032 Budapest

<http://www.meosz.hu/visegradi/en/magyar-kapcsolat/>

This document has been produced with the financial support of the Visegrad Fund. The contents of this document are the sole responsibility of National Federation of Associations of Persons with Physical Disabilities and can under no circumstances be regarded as reflecting the position of the Visegrad Fund.

Table of content

ANTI-DISCRIMINATION, EQUALITY BEFORE LAW AND INDEPENDENT LIVING OF PEOPLE WITH DISABILITIES IN HUNGARY	1
I. INTRODUCTION	3
II. METHODOLOGY	3
III. INTERNATIONAL LEGAL FRAMEWORK	3
a. <i>General Comment No. 1 on Article 12 about equal recognition before the law</i>	5
b. <i>General Comment No. 6 on Article 5 about equality and non-discrimination</i>	6
c. <i>General comment No 5 on article 19 about independent living</i>	8
d. <i>Beyond CRPD : other international and european legal frameworks</i>	10
e. <i>CRDP and Hungary</i>	11
IV. NATIONAL LEGAL AND POLITICAL FRAMEWORKS	11
a. <i>Data and Definitions</i>	11
b. <i>Fundamental Law and Protection of Fundamental Rights</i>	12
i. <i>Duty of Equal Treatment</i>	13
ii. <i>Social Security</i>	13
iii. <i>Case law of Constitutional Court</i>	14
iv. <i>The Commissioner of Fundamental Rights as the ombudsman of persons with disabilities</i>	15
v. <i>Equal treatment and equal possibilities as horizontal regulation and its case-law</i>	16
c. <i>Private Law</i>	18
i. <i>Guardianship and legal capacity and Article 12 of CRPD</i>	18
ii. <i>Supported decision-making</i>	20
iii. <i>Problem with signature</i>	20
d. <i>Social support, independent living, housing, equal treatment and Article 19</i>	21
e. <i>Health, Rehabilitation</i>	24
f. <i>Employment</i>	25
g. <i>Education</i>	26
i. <i>School education and development</i>	26
ii. <i>Nursery education and early development</i>	27
h. <i>Right to election</i>	27
V. DESCRIPTION OF EVOLVEMENT- FINDINGS FROM INTERVIEWS	27
VI. CONCLUSIONS	29
VII. RECOMMENDATIONS	29
a. <i>Private law</i>	29
b. <i>Social administration, independent living, and housing</i>	29
c. <i>Health, Rehabilitation</i>	30
d. <i>Employment</i>	30
e. <i>Education</i>	30
f. <i>Voting Rights</i>	30
APPENDIX	31
<i>Legislation</i>	31
a. <i>Fundamental Law</i>	31
Non-discrimination and equal opportunities in XV. Article 4 (2) and (4) to (5)	31
Social security in Article XIX	31
b. <i>Disability Act</i>	31
c. <i>Civil Code</i>	32
BIBLIOGRAPHY	35
<i>Reports</i>	36
<i>Case law</i>	36
ECtHR cases	36
CRPD Committee case law, recommendation, and inquiry	36
<i>Interviews</i>	37

1. Introduction

This project is about support the disability organisations to be able to continue the work for changing legislation and practices in the field of equality, legal capacity and independent living. This report is summary of current national legislation from different angles.

2. Methodology

This research is based on an in-depth analysis of the international and national legislation on equality of person with disability.

The methodology was to review the existing legislation on equal recognition before law, independent living, and non-discrimination regarding persons with disabilities. Given that non-discrimination, recognition before law and independent living entail persons having access to a range of rights, including labour rights, right to education, voting rights, etc. the issues that this project seeks to address goes far more beyond than non-discrimination, recognition before law and independent living.

Besides the desk research and in-depth analysis of legislation, an empirical research was also conducted by personal interviews via questionnaire and/or online interviews. Two main advocacy organisations of persons with disability, the Hungarian Association for Persons with Intellectual Disability and National Autistic Association responded to the questions in a detailed manner. A judge, who is a leader of chamber at the Hungarian Supreme Court and leader of a group for unity of legal practice on guardianship cases also gave an interview. Two individual disability legal experts' opinion on reasonable accommodation and equality before the law and guardianship and Article 12 of the CRPD were incorporated in the report. Finally, an expert with severe physical disability gave his opinion on the issue as well. Besides the model questions of the project, each interviewee received special questions on their field of expertise. Thus, the same questions help comparison in the context of the project while the extra questions will provide additional national information.

3. International Legal Framework

Hungary was a pioneer in signing the UN Convention on the Rights of Persons with Disabilities (CRPD) and promulgated by Act XCII of 2007. The CRPD fills the existing human rights framework for people with disabilities with specific content tailored to their situation, based on the premise that all people

are entitled to human rights equally. The principle of equality is at the heart of the international protection of human rights. Universality and similarity are the basic principles of the first phase of modern discrimination law, which lasted from the 1950s to the 1970s. The basis of formal equality is that people in the same situation are treated in the same manner and people in different situations are treated in the different way, and there is a comparator of what they can be compared to.

At that time, anti-discrimination was not an independent right, it promoted the enforcement of other rights, ensuring procedural equality. The model of real difference up to 1990 accepts some differences as fundamental, such as pregnancy or disability, which can be traced back to biological differences. The task of law is to eliminate disparities due to biological or unchanging factors in an otherwise neutral social trajectory. At this point, the needs of the groups concerned came to the fore. We can begin the era of multidimensional and structural disadvantage in the mid-1990s, when complex individual and group identities call attention to further vulnerabilities in the neutral social playground. The individual may belong to several groups at a time (e.g., a Roma child with a disability, a woman), and while the complexity of human identity is ignored by previous models, it is addressed by a multidimensional approach to disadvantage. The model of equality of this era is built around the real disadvantage, and the complex, power, prerogatives, disadvantages are examined in context, looking at differences as a social construct. It does not change the foundations of the equality model of the 1950s, but it draws attention to its limits and calls for eliminating of discriminatory techniques and procedures. CPRD is a great example of this model. (Arnardóttir, 2009)

The CRPD follows the social and human rights model of disability (Broderkick, 2018), as opposed to the medical model still common in Hungary, according to which disability is an inherent defect in the individual, which is a medical-health issue. The CRPD ensures that people with disabilities are treated in the same way as others by breaking down barriers created by the community and the society. Going beyond this, the human rights model defines as a goal human rights and freedoms exercised in the same way as other people. This human rights model, to which Hungary is committed, is fundamentally opposed to the Hungarian reality, which includes restrictions on the right to vote, on legal capacity or provides for total exclusion, institutional placement.

Recital (c) of the CRPD states in principle the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms with regard to persons with disabilities, and the need to ensure that persons with disabilities are able to enjoy full enjoyment of rights without discrimination. (Halmos, 2019) Article 12 of the CRPD, which is the basis of the present research, states all persons with disabilities have the right to recognition as persons everywhere before the law, and States Parties also recognize that persons with disabilities should be treated in the same way as others, they has the capacity to act or act on the same basis. It also requires governments to make any support available that they may need to exercise their capacity to act.

The holistic approach of the CRPD results in the possibility that there are rights that enable persons with disabilities and the society around them to overcome obstacles of enjoyment or exercise fundamental rights and freedoms.

1.3.1 General Comment No. 1 on Article 12 about equal recognition before the law

The Committee on the Rights of Persons with Disability (CRPD Committee) is a UN specialized body responsible for implementation of the treaty. Their general concluding remarks for some articles of the CRPD not only serve as a guide, but also provide a legal background to disputes before the CPRD Commission as a dispute settlement forum. According to General Comment No. 1 on Article 12, there is no possibility of disregarding equality before the law. [5] A part of equality before the law is the capacity to act, which restricts and excludes many areas of life, voting rights, marriage, starting a family, and exercising reproductive rights. States need to examine holistically all areas of their legal systems to ensure that the capacity of persons with disabilities is not restricted. [7]

Paragraph 1 sets out the precondition for legal capacity as recognizing someone as a person. According to paragraph 2, "States Parties recognize that persons with disabilities have the same legal capacity in all areas of life". This paragraph simultaneously states that you may be a right holder and may exercise your rights by creating, changing, terminating legal relationships. This is a link to Article 12 (5), which requires that the state as a legal entity ensure the realization of these rights.

In the majority of States, the ability to act is examined in the context of mental abilities: either a status based on medical diagnosis or a negative outcome of decisions or the extent of decision-making function, i.e., understanding the consequences of decisions and evaluating relevant information in the process. In the view of the CRPD Committee, this discriminates against people with disabilities and, on the other hand, deprives fundamental human rights of those who do not perform well in investigations and hearings. [15] Article 12 of the CRPD does not allow for such an approach.

Under paragraph 3, "States Parties shall take appropriate measures to ensure that assistance which may be necessary for the exercise of the capacity of persons with disabilities is made available." This paragraph determines the role of the state as a service provider because the state must ensure access to subsidies and assistance for people with disabilities so as to enable them to exercise their capacity to act. In the view of the CRPD Committee, this kind of help and support should never reach a level that precludes independent decision-making.

According to paragraph 4, "States Parties shall ensure that all measures that relate to the exercise of legal capacity include adequate and effective safeguards for the prevention of abuse in accordance with international human rights law. Such safeguards shall ensure that the arrangements for exercising legal capacity respect the rights, will and choices of the person, are free from conflicts of interest and undue influence, are proportionate and tailored to the person's circumstances, are as short as possible and that the competent, independent and impartial authority or regularly reviewed by a judicial authority. Safeguards

shall be proportionate to the extent to which those measures affect the rights and interests of the individual.” According to the CRPD Committee, it is the responsibility of the state to establish adequate and effective safeguards to exercise its capacity to act. The primary function of these safeguards is to respect the rights, wills and wishes of the individual [20]. Undue influence occurs when there are signs of fear, aggression, threats, deception, or manipulation among stakeholders. Safeguards must include protection against undue influence but must also freedom of choice so that you can take risks and make mistakes. [22]

Paragraph 5 provides that “subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal enjoyment by persons with disabilities of the right to property and inheritance, control of their own finances, and access to bank loans, mortgages and other financial credits, equal access and ensure that persons with disabilities are not arbitrarily deprived of their property.” The CRPD Committee emphasizes that just as property rights cannot be restricted on the basis of disability, they cannot be restricted on the basis of disability, and instead of restricting legal capacity, there is a need to move towards supported decision-making [23].

As regards assisted decision-making, the CRPD Committee explains that a system of assisted decision-making, which is parallel to the disqualification regime, i.e. the Hungarian system, is not fully compatible with Article 12 of the CRPD [28]. The CRPD Committee also summarizes the main elements of supported decision-making which is in accordance with Article 12 as follows: decisions that are accessible to all, free of charge, instead of “best interests”, can be made on the basis of genuine will, sponsors are accessible and accountable, cannot be based on fundamental rights limitation, should not depend on the assessment of intellectual and mental abilities, guarantees should be provided, the sponsor may terminate, change, refuse the sponsor relationship at any time. [29]

The relationship between Article 12 and Article 5 described by the CRPD Committee that reasonable accommodation as a tool for exercising its capacity to act, while further emphasizing that the two institutions are not the same.

In summary, the CRPD Committee considers that “universal capacity to act” is the goal when all persons have capacity to act, and it is the responsibility of states to dismantle the denial of capacity to act, which is discriminatory in either its purpose or its effect. [25] Article 12 of the CRPD does not allow disability to be based on disability and / or decision-making capacity - and this is discriminatory; (Paragraphs 7, 15, 25, and 32). Substitute decision-making systems involving institutions of exclusive / totally restrictive and partially restrictive guardianship are not in line with Article 12 of the CRPD. (27-28; 50 (a)). (Gurbai, 2015)

1.3.2 General Comment No. 6 on Article 5 about equality and non-discrimination

The Committee summarizing the practice of implementation its jurisprudence on disability law in its general comments, and states that promoting equality and tackling discrimination are cross-cutting

obligations of immediate realization. They are not subject to progressive realization [12] in contrast with accessibility.

They distinguish between ‘equality under the law’ and ‘equality before the law’ stating that the recognition that all persons with disabilities are equal under the law which means that there should be no laws that allow for specific denial, restriction or limitation of the rights of persons with disabilities, and that disability should be mainstreamed in all legislation and policies.[14] ‘Equal protection of the law’ and ‘equal benefit of the law’ also include related but distinct concepts of equality and non-discrimination, and the latter expresses the duty of States to actively eliminate barriers by providing accessibility and reasonable accommodation. [16]

Disability-based discrimination is defined in Article 2 as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” This definition is based on legal definitions of discrimination in international human rights law but it goes beyond those definitions in two aspects: first, it includes “denial of reasonable accommodation” as a form of disability-based discrimination; second, the phrase “on an equal basis with others” is a new component.[17] It is crucial to highlight that that persons with disabilities are granted more or fewer rights or benefits than the general population, but it requires that States parties take concrete specific measures to achieve de facto equality for persons with disabilities to ensure that they can in fact enjoy all human rights and fundamental freedoms.

Regarding denial of reasonable accommodation as a form of discrimination, the first step is to understand what it contains. According to the Committee, reasonable accommodation is an intrinsic part of the immediately applicable duty of non-discrimination in the context of disability. Examples of reasonable accommodations include making existing facilities and information accessible to the individual with a disability; modifying equipment; reorganizing activities; rescheduling work; adjusting curricula learning materials and teaching strategies; adjusting medical procedures; or enabling access to support personnel without disproportionate or undue burden. [24] Although reasonable accommodation duties are different from accessibility duties. Both aims to guarantee accessibility, but the duty to provide accessibility through universal design or assistive technologies is an *ex ante* duty, whereas the duty to provide reasonable accommodation is an *ex nunc* duty. This means it is not ‘built in’ the system, not yet standardized.

The duty to provide reasonable accommodation is an individualized reactive duty that is applicable from the moment on when a request for accommodation is received. Reasonable accommodation requires the duty bearer to enter dialogue with the individual with a disability. It is important to note that the duty to provide reasonable accommodation is not limited to situations in which the person with a disability has asked for an accommodation or in which it could be proved that the alleged duty bearer was actually aware that the person in question had a disability. According to the Committee it should also be applied in

situations where a potential duty bearer should have realized that the person in question had a disability that might require accommodations to address barriers so as to be able to exercise his/her rights.

The reasonableness of an accommodation is a reference to its relevance, appropriateness, and effectiveness for the person with a disability. Therefore, an accommodation is reasonable, if it achieves the purpose (or purposes) for which it is being made and is tailored to meet the requirements of the person with a disability. Reasonable accommodation should also not be confused with “specific measures”, including “affirmative action measures”. While both concepts aim at achieving de facto equality, reasonable accommodation is a non-discrimination duty.

1.3.3 General comment No 5 on Article 19 about independent living

The Article 19 of CRPD is about independent living and living in a community. State Parties agree upon the right of persons with disability to live in a community and shall make all necessary and appropriate steps to provide the enjoyment of rights such as social inclusion. This means, among others, that persons with disability have the right to choose where and with whom they live on the same basis with others, and it is not obligatory to live in certain circumstances. State Parties shall ensure the access to several home, institutional and community support services to avoid isolation from the community. Article 19 also emphasizes the role of accessibility in the context of independent living, but this should be read with Article 9 of CRPD. Regarding accessibility of building and services the Article 19 highlights that they shall respond to individual needs.

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) Persons with disabilities have access to 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; (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

The CRPD Committee enlisted several frequent problems as it experienced a gap between the spirit of Article 19 and its implementation worldwide. The freedom to choose and control of one's own life are the two elements of the right to independent living. Primarily the state's obligation is to ensure the enjoyment of the right to live independently and included in the society. According to the CRPD

Committee, independent living means that a person is provided with all means to be able to choose and control over his/her life, not carrying out tasks alone but enjoy the freedom of choice. It also means being included in the community, living a full social life, and having access to all services offered to the public independent living arrangements. The defining elements of institutions/institutionalization are:

- obligatory sharing of assistance with others;
- no influence over whom one has to accept assistance;
- isolation and segregation from independent life;
- rigidity of routine;
- lack of choice over whom to live with;
- lack of control over day to day decisions;
- identical activities;
- paternalistic approach;
- proportion of number of persons can live together;
- persons with disabilities can choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; choices are often missing;
- they cannot make individual decisions because the lack of information is about the options or the legal capacity restricted, and it links here with the principle of equality before the law and the prohibition of discrimination based on disability;
- if persons with disability have to live in a specific area, building, block, it means the lack of proper transposition to Article 19;
- housing must be affordable.

Persons with disabilities have access to a range of in-home, residential and other community support services, including the necessary personal assistance to support their independent living and inclusion in the community as well as to prevent isolation or segregation from the community. That is a precondition of independent living and its provision is the obligation of the state, not only regarding housing but in every aspect of life. Freedom to choose is a key element of independent living.

Community services and facilities provided for the general population need to be available on an equal basis to persons with disabilities and they should be responsive to their special needs. These services are available for persons without disability: libraries, hospitals, schools, means of transport, shops, markets, museums, internet, social media. These must be available, universally accessible, acceptable, and adaptable for all persons with disability; they must be responsive to specific requirements and allow spontaneous participation within the community.

How does reasonable accommodation appear in the right of independent living? According to the CRPD Committee State parties are under an immediate obligation to eliminate discrimination against individuals or groups of persons with disabilities and to guarantee their equal right to living independently and participating in the community. The duty to provide reasonable accommodation (art. 5 (3)) is also not subject to progressive realization, thus it can be a facilitator to realize a more equal life in individual cases.

1.3.4 Beyond CRPD: other international and European legal frameworks

In addition to the provisions of the CRPD and the decisions and recommendations of the CRPD Committee as a specialized UN body, other mandatory international regulations and case-law of international dispute resolution bodies shall be considered. Although, unfortunately, it is not uncommon for national authorities and courts to refer to regulations and cases of international law. (Bárd-Bárd, 2017)

The articles of the UN Conventions providing for equal treatment (Articles 2 and 26 of the ICCPR, Article 2 (2) of the IESCR, Article 14 of the ECHR and CERD and CEDAW) do not specifically mention disability as a protected characteristic, it is only defined in CRPD which eliminates it in its Articles 5 and 12. Nevertheless, these conventions also protect people with disabilities in general.

Article 8 of the European Convention on Human Rights (ECHR), adopted by the Council of Europe (EC), provides for the right to respect for private and family life and states that everyone has the right to respect for his or her private and family life, home and correspondence. In its case-law on Article 8 of the ECHR, the European Court of the Human Rights (ECtHR), which decide on disputes arising from the implementation of the ECHR, has intensively affected the institution of guardianship, the legal consequences of custody and the exercise of personal rights. In *Shtukatur v. Russia* case, the ECtHR found a violation of Article 8 of the ECHR regarding the total deprivation of legal capacity, as it was a disproportionate means to achieve a legitimate aim. The ECtHR emphasized that the applicant's interference with his private life had been very serious in the case under review, and that the applicant had become completely dependent on his guardian in almost all areas of life following his deprivation of legal capacity. In *Krušković v. Croatia* case, the applicant had a baby daughter and made a paternity declaration with the consent of the child's mother. However, when the competent registry office became aware that the applicant had previously been deprived of his legal capacity, it initiated the cancellation of the applicant's registration as a father. The ECtHR found a violation of Article 8 because it was impossible for the applicant to have his paternity recognized under the provisions of national law merely on the ground of incapacity and did not accept the argument that this would have served in the best interests of either the father or the child. In *X and Y v. Croatia* case, the ECtHR explained the deprivation of rights in all areas of life. In the

case of *Kiss v. Hungary*, the ECtHR found an automatic violation of the Convention concerning the limitation of the right to political participation and the exclusion from the right to vote.

1.3.5 CRDP and Hungary

Following the ratification of the CRPD, a constructive dialogue on its implementation took place in 2012 between Hungary and the CRPD Committee. During the dialogue on Article 12 of the CRPD, in its concluding remarks the CRPD Committee expressed its concerns about the draft Act V of 2013 on the Civil Code (Civil Code) allowing for alternate decision-making and a derogation from the institution of guardianship. During the 2019 dialogue on Article 12 of the CRPD, in its concluding remarks the CRPD Committee stated that this law in force did not fully comply with the spirit of the CRPD, as it retained the legal authority of guardianship, in particular its form, which completely deprives and limits the ability to act of the person concerned.

The CRPD Committee also acts as a dispute resolution forum. In *Bíjdosó and others v. Hungary* case, the applicants were placed under partial or total guardianship on account of their intellectual disability. For this reason, they could not vote in the 2010 elections without examining all individual considerations and circumstances. This deprived them from the opportunity to participate in political life and their right to vote, which are also guaranteed by Articles 12 and 29 of the CRPD. The State has defended itself by changing the law, and in case of disqualification, the judge decides on the issue of suffrage separately in each case. In its decision, the CRPD Committee pointed out that the right to vote under Article 29 of the CRPD does not contain an exception for any of its disabled groups and does not contain any reasonable restrictions. Laws should be enacted that recognize the right to vote for all people with disabilities, including those who require more support. The latter must be given adequate assistance and reasonable accommodation to exercise their political rights. (Gurbai, 2015)

During 2019, the CRPD Committee conducted a requested investigation in Hungary, during which it interviewed 200 stakeholders, examined trends going back years, and therefore presents a broad, current situation. The CRPD Committee has found that Hungary is violating the right to equality before the law, the right to independent living and the right to equality and non-discrimination. Its recommendation includes the complete abolition of guardianship, the closure of institutions for the disabled and the provision of compensation, and the transfer of financial funds to independent living and community living.

4. National legal and political frameworks

1.4.1 Data and Definitions

During the last census in 2011, 490,578 people were registered as disabled, representing 6.2% of the total population. In contrast, during the micro census in 2016, their number decreased by 80,000 people,

making up 4.2% of the population. The decline is due to the reform of the support system. People with physical disability make up the largest proportion of the disabled population, almost half. Between 2011 and 2016, the number of people with intellectual disabilities and autism increased (by 11,000, 25% and 3,800, 74%, respectively) (Janák-Tokaji, 2018). Overall, women are just as slightly in the majority - 53% in 2011 and 2016 - as in the total population. 13% of the disabled population live in Budapest and 18% in county seats. About nine-tenths of those affected felt that their disability was an obstacle to the performance of certain functions. Most people with disabilities experience difficulties in everyday life, and even between 2011 and 2016, their proportion even increased from 53 to 59%. For nearly a half of them disability is also a barrier during transportation. Relatively many people find that their disabilities hinder their self-sufficiency and their learning and employment (Janák-Tokaji, 2018). According to the National Disability Program or the period 2012-2025, promulgated by Parliament Decree No. 15/2015. (IV. 7.), an expert estimation based on international surveys shows that on average 10% of the population has some form of disability, so the real number of the disabled population may be closer to 1 million.

According to the CRPD Committee, 98,539 people lived in institutions in 2018 out of which 26,953 were people with disabilities. In 2018, 57,983 people stood under the guardianship of legal capacity, and 5,556 persons during 2017. During 2017-2018, the number of people under guardianship with limited legal capacity increased from 19,135 to 24,212. (AJB- 2709/2016). As of March 31, 2015, 34,020 people were under fully restrictive guardianship, while 26,572 people were under partially restrictive guardianship. (AJB-/2016) During 2018, the court placed 3,539 persons under guardianship with legal capacity, of which 2,062 were under full custody and 1,477 under partial custody. The total number of professional caretakers is 757 in 2018. Based on the data of the Central Statistical Office (CSO), it can be stated that while in 2010, despite the declining population, 0.40% of the population was under guardianship, the proportion of those under guardianship increased to 0.58%.¹

In Hungary, the concept of disability covers names that vary from one branch of law to another and often other personal circles. The designation of persons with disabilities in line with the CRPD human rights model is rare, even in professional circles, and even the national guardian of human rights, the Constitutional Court, uses a name that evokes the medical model. (1/2018. (IV.6.) CC decision [15]) In addition to the symbolic significance, stigma, exclusion, and fear related to disability also contribute to the fact that in many cases the persons concerned do not consider themselves to be disabled. The lack of uniform definition results several problems

1.4.2 Fundamental Law and Protection of Fundamental Rights

¹ Table on population 2008- : https://www.ksh.hu/docs/hun/eurostat_tablak/tabl/tps00001.html, table on guardianship authorities https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsg004.html

Article Q of the Fundamental Law of Hungary contains the primacy of international law; Article XIX sets out the special protection of the rights of persons with disabilities and their requirement of equal treatment; while Article 5 deals with social security issues. In addition to the Fundamental Law, Act XXVI of 1998 on the Rights of Persons with Disabilities and Ensuring their Equal Opportunities (Disability Act) is a horizontal piece of legislation. The analysis of sectoral legislation is discussed under each chapter. The Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act) also appears horizontally in several areas of the lives of people with disabilities.

1.4.3 Duty of Equal Treatment

According to the interpretation of the Constitutional Court, “the prohibition of discrimination does not mean the prohibition of all discrimination, the prohibition primarily covers discrimination in the field of constitutional fundamental rights.” (Constitutional Court decision 14/2014. (V. 13.) point [32].) The interpretation of Article XV (2) of the Fundamental Law in decision 32/2015. (XI. 19.) [78]– [80] and [91] and in decision 16/2018. (VI. 6.) AB point [14]. Unlawful discrimination between persons can be established if a person or a group of people is treated more favourably in comparison with other persons or groups in the same situation. Discrimination is unconstitutional if the law distinguishes between (comparable) legal entities belonging to the same group from the point of view of the regulation, without any constitutional reason for it. The Constitutional Court also pointed out that the unconstitutionality of discrimination or other restriction between persons concerning other, non- fundamental rights can be established if the violation is related to a fundamental right, ultimately the right to human dignity, and the discrimination or restriction does not have objective discretionary reason, that is, arbitrary. This means a multi-stage test: 1.) at least a connection with a fundamental right must be proved 2.) an examination of arbitrariness must be conducted 3.) a comparable group is needed in the case of a restriction of a fundamental right 4.) whether there is a constitutional reason for discrimination. This approach is like the ECtHR's case law on non-discrimination.

1.4.4 Social Security

Article XIX of the Fundamental Law is typically about objectives and not fundamental rights. This article of the Fundamental Law provides a basic legal background for the legislation concerning the life situations enlisted, the condition for entitlement does not follow from the Fundamental Law, but the abstract entitlement derives from the Fundamental law. In connection with several rights included in the CRPD, social security appears in Hungarian constitutional law. For example, in the case of housing, support services or even normative budget support, the emphasis is on the fact that the state's economic performance limits the provision of state goals.

1.4.5 Case law of Constitutional Court

Even before the entry into force of the Fundamental Law in 2012, but already after the ratification of the CRPD, the Constitutional Court in Decision 74/2009 (VII.10.) stated that the existence of legal capacity is essential not only in judicial and administrative proceedings, but also in the legal relations between private legal entities. The primary purpose of the rules on custody is to protect the person and property of an adult who is unable to conduct his or her affairs and is therefore vulnerable. The institution of guardianship protects people who have a permanent or temporary impairment in their decision-making ability due to mental illness or loss of mental abilities. The starting point of this regulation is that the decision-making ability of those under guardianship is impaired to such an extent that the law must also protect the person concerned from the consequences of his or her own decisions, so the guardian of a person unable to represent himself or herself can ensure enforcing his or her rights. AB pointed out, however, that the provisions relating to the ordering of guardianship serve not only to protect the person under guardianship, but also to protect the personal and property interests of those entering into a legal relationship with the person under guardianship.

This protective or paternalistic approach of the Constitutional Court was carried forward, in connection with the Ombudsman's proposal for amending the provisions of the Civil Code about the differentiated system of rules on legal capacity is in line with Article 12 (4) of the CRPD. In its Decision 1/2014. (I.21.), the Constitutional Court stated that it can be concluded from the analysis of Article 5 of the Convention that Article 12 does not prohibit the institution of substitute decision-making, as it can only be achieved through differentiated legislation and individual judgments provide adequate assistance to a person having issues with legal capacity. According to the Constitutional Court, the already quoted General Comment Number 1 of the CRPD Committee requires guarantees to exercise its capacity to act. Furthermore, neither the CRPD nor the commentary addresses whether these guarantees may take the form of a substitute decision-making, where applicable. The maintenance of substitutional decision-making systems may also be in line with Article 12 (4) and (5) of the CRPD, provided that restrictive measures cannot be imposed in the interests of objective protection but substitutable decision-making has a function of individual autonomy. „This interpretation may have been born not only in Hungary because, although Article 12 was created with little compromises based on the *travaux préparatoires*, the wording of Article 12 (3) gives states sufficient flexibility to allow to take a position contrary to the spirit of the CRPD (Méhes Interview; 2020).

In the case concerning the interpretation of severe disability (Constitutional Court decision 1/2018 (IV.6)), the referring court considered it unreasonable to differentiate between persons with disabilities on the basis of whether or not their disability has locomotor origin. When defining persons with disabilities,

the Constitutional Court does not follow the definition of the CRPD but considers it to be a task tested for the legislator in the interpretative provisions of the legislation. Legislative interpretation must be in accordance with the Fundamental Law, and the Fundamental Law must be in accordance with international regulations. However, despite a somewhat idealistic argument, Constitutional Court concludes a need for an “open and decisive definition of disability” [23] and states that it is incompatible with Article XIX (1) of the Fundamental Law that there is no form of aid to support persons with physical disability in the same way as those with a musculoskeletal disability, but not due to a musculoskeletal disorder. This judgment highlights the problem that, due to the lack of a uniform definition, there are persons who, although meeting the definition of the CRPD, fall outside the scope of non-harmonized legislation and are therefore disadvantaged.

In its decision 39/2011. (V. 31.), Constitutional Court stated that the Parliament had implemented unconstitutionality manifested in its omission by failing to create the legal conditions and guarantees for the employment of incapacitated adults based on employment or other legal relations. In the reasoning of its decision, the Constitutional Court pointed out that the complete exclusion of incapacitated persons from employment may give rise to constitutional concerns. This judgment, in turn, points in the right direction with the employment article of the CPRD.

1.4.6 The Commissioner of Fundamental Rights as the ombudsman of persons with disabilities

Currently, the Commissioner for Fundamental Rights is one of the few organizations who has the right to turn to the Constitutional Court to amend a legislation that has already entered into force. In 2014, the Commissioner’s proposal for amending the Civil Code was rejected by the Constitutional Court for the reasons already set out.

Subsequently, while not disputing the institution of guardianship, in 2015 the Commissioner conducted a detailed nationwide inquiry concerning the guardianship procedure, which was extended to supported decision-making as in most of the cases the professional sponsor is a quickly retrained guardian under a ministerial decree. In addition to this personnel adversity, the report criticizes the legal institution of assisted decision-making which is built in the system of guardianship that threatens the violation of fundamental rights such as the right to equal human dignity, the requirement of rule of law and equal treatment, and the State’s obligation to give priority to the protection of persons with disabilities (AJB-2709/2016).

On 1 July 2013, Act C of 2012 on the Criminal Code entered into force, which established the crime of relationship violence as a new fact, which can also be applied for the relationship between the persons concerned and their relatives and guardians. Its basic case can be punished only on private motion, while

complaints against the guardian can be made by the guardianship authority. NGOs report complaints against caretakers from time to time, but the number is negligible compared to the number of more than 50,000 people under guardianship. (AOSZ interview, 2020)

1.4.7 Equal treatment and equal possibilities as horizontal regulation and its case-law

The CSO's micro-census conducted in 2016 revealed that one-fifth of people with disabilities have already experienced discrimination. Employment, transport, and health care are the three main areas where they are most likely to face discrimination and housing the least. It was also examined whether people with disabilities and those who considered themselves to be one are limited in participating in social life due to their perceived discrimination based on their health status, disabilities and, if so, in which areas. During the recording, they were asked about so called active or direct discrimination. About 280,000 people surveyed had experienced discrimination in the last 12 months prior to enrolment with no significant difference between the two sexes in this regard. Employment (8.4%), transport (7.5%) and health care (7.2%) are the three areas with the highest levels, and housing (1.6%) with the lowest level they had perceived negative manifestations. Among those included in the sample, about a quarter of the severely restricted experienced a negative reaction, various grievances in some areas of everyday life. Depending on the nature of the health impairment, half of the autistic, the mentally disabled and the speech-impaired, and roughly four-tenths of the mentally disabled — or caregivers — were affected by this problem (Janák-Tokaji, 2018).

Since its establishment in 2005, the Equal Treatment Authority (ETA) has been delivering decisions in more and more cases of disability discrimination every year. Act CXXV of 2003 on equal treatment and promotion of equal opportunities (Equal Treatment Act) names direct and indirect discrimination, harassment, and unlawful segregation. The violation of the requirement of equal treatment constitutes discrimination. According to the Equal Treatment Act the requirement of equal treatment discrimination is breached when someone is disadvantaged because of a so-called protected characteristic or characteristics enlisted in the law. The Equal Treatment protects characteristics that are typically innate, permanent, immutable, or difficult to change, that are essential to personality traits, group formation and prejudices, or are associated with a disadvantage.

When summarizing the cases of ETA between 2005 and 2020 on disability as a protected characteristic, it can be said that in 34% of the cases direct discrimination was found mainly in the field of services, public services, and education. In 63% of the cases, the legal dispute was settled, which concerned the field of services, education, and public services. In case of direct discrimination, the infringed party is much more confident about being treated differently, not being treated in the same way, which may be one of the reasons for the dramatically increasing number of direct discrimination cases in the last nearly 15 years.

Indirect discrimination	3
--------------------------------	----------

Public service	1
Service	2
Direct discrimination	75
Health, Public Services	2
Other, Public services	2
Employment	4
Official action	1
Authority measure, Public service	1
Public service	21
Public service, education	8
Education	13
Social security	1
Service	22
Agreement	137
Health, Public Services	5
Other	3
Employment	9
Official action	6
Public service	24
Public service, education	10
Public services, Social security	1
Housing	2
Education	30
Social security	1
Service	45
Other	1
Total	215

ETA's cases between 2005-2020 Disability as a Protected Characteristic, Source: ETA webpage

The Disability Act which is more than twenty years old aims to “define the rights of persons with disabilities, the means of enforcing them, and to regulate complex rehabilitation for persons with disabilities, and as a result to ensure equal opportunities, independent living and active participation in social life”. In the context of ensuring equal opportunities, it uses the term equal access and setting a clause „in the same way as others” as a benchmark. This wording is close to the CRPD’s human rights model and the idea of equality.

The Disability Act is referred by several sectoral legislations as a complex statute, representing the interests of a special social group. For example, the National Disability Program, which is based on the principle that in addition to non-discrimination „reasonable preference should be given because persons with disability can practise their rights in the same way as others less due to their condition, therefore in well based cases the possibility of ensuring proportionate and fair advantages provided.”

Article 4 of Disability Act uses the definition of equal access and combines services, buildings and information tailored to the principle of universal design with the phrase “everyone in particular” (Appendix No. 2). In connection with the provisions of equal opportunities and accessibility, as of 31 December 2013, the Disability Act no longer contains deadlines for ensuring equal access. According to ETA’ s legal interpretation and consistent practice, this means that after this date public services defined by law must be provided without any “grace period” in a way that is accessible to all, without hindrance. (ETA 2019) The definition of a disabled person laid down in Article 4 in Disability Act is the most generally accepted definition, which is often used literally or with historical interpretation despite the fact that the Constitutional Court also tried to expand the definition.

The ETA uses reasonable accommodation as a form of discrimination in disability cases, although the Disability Act does not specifically contain it as a form of infringement of equal treatment. That way the legal application corrects the missing implementation of the CRPD.

1.4.8 Private Law

1.4.8.1 Guardianship and legal capacity and Article 12 of CRPD

According to the Article 2:219-2:24 of Civil Code the court places under custody, in part or in full, a person whose legal capacity to conduct his or her affairs due to his or her mental disorder has been permanently or periodically severely reduced (partial restriction of legal capacity) or permanently or completely absent (full limitation of their capacity to act) and should therefore be placed under guardianship, taking into account their individual circumstances and family and social relationships. The definition of legal capacity in Article 12 of the CRPD and the Hungarian regulation are different. Legal capacity means that the actions and decisions of an individual are recognised by the law as valid and effective. The legal standing and the legal agency both needed to have legal capacity. Currently, the definition shows that the linkage is missing from the national law and academia, and it hinders the implementation of CRPD. (Kussinszky - Lux – Stánicz, 2020)

In case of partial restriction, the person’s capacity to act is limited only to certain categories of cases determined by the court in which legal declarations of the person under guardianship are valid only with the approval of his guardian, while all other legal declarations can be made independently. This form of guardianship must be reviewed by the court every 5 years. The declarations of a person under a completely restrictive guardianship are void. The guardian must consider the will of the person under guardianship who

is able to express an opinion, but the final decision is made by the guardian. This type of guardianship must be reviewed once every 10 years. The CRPD Committee's investigation found, based on official statistics, that guardianship was maintained in 80% of cases in 2014, 90% in 2015 and 2016, and 89% in 2017. This may also mean the *definitive* nature of custody and that it is virtually impossible to change the decision. The low proportion of the consideration of the individual situation and aspects is also indicated by the fact that the Article 2:28. of Civil Code makes the custody procedure mandatory for the guardianship authority, i.e. if close relatives do not want to initiate it, the authority must still take action. (AOSZ interview, 2020)

The Hungarian Supreme Court, the Kúria ensures the unity of application of law and its resolution of legal unity are binding on the courts. The working group for unity of application of law at Kúria have been examining more than 300 cases concerning guardianship during 2020 to harmonize the nationwide legal practice on this matter.

The Kúria also interpreted the content of Article 12 of the CRPD in its decision about the legal capacity of a person with a psychosocial disability. In its decision 2014.140 BH stated that it did not violate the law, nor was it contrary to the CRPD, to place the defendant under guardianship with limited capacity to act in order to protect his property in view of his permanent mental impairment of his ability to conduct his affairs excluded from the right to vote due to its influence. According to the Kúria, the “provisions of the CRPD, which enshrine equality before the law, equality and self-determination, are to be interpreted as meaning that the competent independent and impartial authorities and judicial bodies shall take all appropriate and effective measures to ensure the full personal, legal and property protection of persons with disabilities. Article 12 (4) and (5) make it clear that, in addition to ensuring access to rights, public authorities have a duty to ensure the property security of people with disabilities.”

It is vital to underline that as principle the limitation of capacity to act is based on the mental disorder of an individual. The position of the literature against these judgments arises as “one of the key issues of the current Hungarian civil law, due to the problems of the examination of capacity to act, which have not been explored so far, and the lack of a system-wide approach to the assessment of capacity to act. The Civil Code can still not fully serve the paradigm shift reflected in the CRPD.” (Bolyki, 2014) The problem around the examination of the capacity to act is that „the determination of capacity to act, the examination of decision-making ability is not a purely health / medical / mental medicine issue, but for many reasons ... requires complex expertise and, as a result, the creation of complex expert opinions.” One of the first steps in the system-wide change of approach is to “provide legal practitioners, including forensic psychiatrists, with appropriate number of hours and professional training” (AOSZ interview, 2020) and the professional content being in line with the spirit of CRPD. According to an disabled expert another step is to change the attitude of people with disabilities, because as he has called the current contains “system-produced personality traits”, “smoothing” and a unique, “warrior titans” fight (Kiss 2020).

The restriction and exclusion of the capacity to act can be traced back to the social structure. “On a moral basis, he sees accepted normality as an axiom and wants to protect people who become vulnerable in a given system, simply because their ability structure is different” (Kiss 2020).

1.4.8.2 Supported decision-making

A positive innovation of Civil Code is the introduction of supported decision-making, which is a legal institution in line with Article 12 of the CRPD, enacted by Act CLV of 2013. However, it conflicts with Article 12 because according to the national legislation supported decision-making can only be ordered if limitation of capacity to act is not a possibility. Contrary to the guardianship, the local guardianship authority is responsible to provide supported decision-making if the court ruled that the adult’s foresight reduced a bit, and s/he needs support in certain cases and asks for that support. One of the most forward-looking functions of supported decision-making for stakeholders is that the sponsor may be present at the request of the supported person in administrative, civil and criminal proceedings in which the supported person is involved and the sponsor consults with the supported person without disturbing the procedural order. The sponsor presents at the filing of the legal statement of the supported person, facilitates the filing of the legal statement with his advice and provides the necessary information to the supported person, assists in the decision - making of the supported person and contributes to his / her personal presence.

In the last more than 6 years, its application has become more widespread, yet in practice it hardly appears based on statistical data (AOSZ interview, 2020). The reasons behind the low number of its application may be that the assignment and control of the sponsor is the responsibility of the guardianship office which is responsible for the appointment of the guardian. Retrained caretakers “do not necessarily succeed in acquiring the supportive approach necessary for the performance of the task” (AOSZ interview, 2020) that undermines the performance of their task and can significantly reduce the level of support. Also concerning that “an adult in need of assistance due to a small reduction in foresight should only be able to benefit from supported decision-making, although everyone should be able to do so on the basis of the CRPD” (AOSZ interview, 2020). These phenomena could be mitigated by setting up a separate organization responsible for supported decision-making, but this is missing from the current system (ÉFOÉSZ interview 2020).

1.4.8.3 Problem with signature

Many people with severe disabilities are physically unable to sign official documents. According to the current Hungarian regulations, they must contact the notary. It often occurs that someone is placed under guardianship thus excluding their ability to act because they cannot sign or have communication difficulties. (MEOSZ, 2019) Non-governmental organizations suggested amending Civil Code, and the higher court rulings have an element in line with previous decisions, i.e. protection the data of subjects is

more important. Therefore, notarial certification is also required in case of administration of a bank account or taking receipt of a parking card. This approach makes it impossible to live an independent lifestyle, and approach mixes things. Certainly, there is a lack of functionality on a physical side, but they are treated as they have lack of other side of their life. This too protective approach tends to compensate for the actual lack of functionality but more. (Halmos 2020) Beside the amendment of legislation, the suggestion appeared in the interviews that used the supported decision-making as a tool in these cases. (Balóginé 2020)

Although this is not a form of direct discrimination, the rule also protects those who are unable to sign due to temporary damage. Rather, direct discrimination is the practice of complying with regulations that are detrimental to people with disabilities. There is also a lack of reasonable accommodation on both parts of the legislator and the service providers, which constitutes discrimination under Articles 2 and Article 5 (3) of the CPRD. To be precise, there might need a connection with other articles of CRPD such as Article 19 on the right to independent life to establish the infringement of disability rights. (Halmos 2020)

1.4.9 Social support, independent living, housing, equal treatment and Article 19

“Two basic conditions are necessary for a person with physical disability to live a life that is self-sufficient and as independent as possible, regardless of the degree of their disability. First, a solid legal background that can fix and guarantee the rights of everyone on the same basis in all areas of life, regardless of the degree of disability. Second, an institutional background that can shape fixed rights and opportunities into everyday practice. In Hungary, both are missing or very incomplete.” (Kiss 2020)

The Article 6 of Optional Protocol to CRPD provides the right to the Committee to commence an inquiry if they have the information that a State Party systematically and seriously violates the rights set out in the CPRD. The Committee with the cooperation of the concerned State Party investigates the situation and concludes its observations. In the case of Hungary, the inquiry based on the information from 2017 that several persons with disability were deprived from their right of equality before the law legally and practically. Additionally, institutional care of persons with disability supported with a significant amount of funds, of what hindering their integration into the society. Furthermore, the placement in institutions and guardianship of persons with disabilities can be regarded as discrimination based on disability. The Committee’s investigation finished in 2019 during which they made more than 200 interviews with all stakeholders and many persons concerned as well as took several visits to institutions.

According to the inquiry of the CRPD Committee, out of the total number of 98539 persons 26953 people with disabilities lived in institutions in 2018, as opposed to what is required by the CRPD. According to Article 17 of Disability Act, a person with disability has the right to choose a form of housing - family, residential home, institutional - in accordance with his or her disability and personal circumstances. In a forward-looking way, the National Disability Program prescribes community and infrastructural developments in connection with staying with the family in addition to the abolition of institutional housing.

However in practice, the free choice of the person concerned is questionable due to the institution of guardianship discussed above and the lack of reasonable accommodation during the of decisions-making.

Section 17 of Disability Act stipulates that development programs implemented with EU co-financing shall provide support for the replacement of state institutions providing care for at least 1,500 disabled and psychiatrically ill persons with larger space than 50 by 31 December 2013. Institutional seats that will not be replaced will be modified in the order determined by the Government. Replacement shall be carried out considering the provisions of Article 19 of the CRPD. In 2017, the replacement of institutions providing care and nursing care for more than 50 disabled, psychiatrically ill and addicted persons started using development funds of European Union amounting to 35 billion HUF and with the help of the EFOP tender an additional 53.5 billion HUF are devoted to this program in March 2017. An additional amount of 30-100 million HUF is available for modernization for the other institutions that are currently missing. (ANED, 2017) Based on the deinstitutionalization plan, at first 655 people were moved out of the institutions and then the government set a goal of relocating 10,000 people for the second period, starting in 2017 with the expected ending in 2036. However, the abolition of institutional care does not affect residential social care institutions where a significant number of people with physical disability live.

No action plan or legislation was adopted to eliminate the institutional care of children with disabilities, and it was even possible to apply for the renovation of the existing ones. Under Section 59 (1), of Act XXXI of 1997 on Child Protection and Guardianship Management (Child Protection Act) it is possible to accommodate 12 children up to 48, but more than 100 children were found in such homes during an OPCAT monitoring (AJB-1603/2016). The Child Protection Act contains a discriminatory provision applicable for the chronically ill and disabled children according to which they do not have to be placed with foster parents, they should be provided with institutional placement, despite the fact the general rules stipulation that children under the age of 12 are compulsorily placed with foster parents in the case of institutional placement since 2014 (Alternative Report). There were few foster homes available, especially for emergency short-term placements, or homes that could offer therapy for children with special needs. In 2015 a total number of 826 children while in 2017 a total number of 789 children lived in special institutions, which fall within the scope of Section 67 para. (2) of Act III of 1993 on Social Management and Social Service (Social Act) that provides institutional care for children thus providing large institutional environment which is contrary to Articles 7 and 19 of the CRPD. (MEOSZ, 2019) The Ombudsman has repeatedly indicated that the number of foster parents trained to care for children with disabilities is low, which increases the number of institutional placements.

One of the elements of independent living is housing and the accessibility of real estates. According to the micro census conducted in 2016, the total number of disabled populations living outside the institution and who have health problems that limited their performance of daily activities was 1,423,000 people. (Tokaji- 2018) For many years, the role of MEOSZ in providing subsidies for the accessibility of

housing has been significant, but further action is needed at the governmental and local governmental level in order to make the rental housing program and condominiums accessible.

Under the Social Act, institutions providing care and nursing services are accessible for the disabled persons. Another option is a rehabilitation residential home where people with disabilities also receive complex development. There is at least one such home in each of the 19 counties, and a total number of 329 in the country. According to the social register of the CSO, while home assistance service is available in almost all settlements, for example support services are available in four-fifths of the localities, and day-care homes for the disabled can only be used in half of them. The Section 75 of Social Act provides for supported housing. The housing service is provided for people with disabilities with the aim to maintain and facilitate independent living. To this end, the case management is using mental hygiene, social work and other supportive techniques, accompanying support for monitoring the living conditions of the patient, based on a complex needs assessment of the patient, if necessary, meals, nursing care, development, social life participation services are provided by an institution. Supported housing can be provided in an apartment or house designed for up to six people, or in an apartment or house designed for seven to twelve people, or in a combination of apartments and buildings for up to fifty people. In practice, in several cases the persons with disabilities receive quasi institutional support within the framework of subsidized housing.

Several social measures of a financial nature have been introduced in the recent years, such as Child Home Care Fee (GYOD), an old-age care for long-term carers. However, the newly introduced cash benefits are only a solution for some of those who are concerned, others are discriminated against such as GYOD, which do not consider family efforts.

The Social Act regulates community care for people with disabilities. The system of services provided to the disabled persons consists of the following elements: home assistance with a signal system (Section 67), institutional care, which can be provided in the home of the disabled (Section 72), and a rehabilitation facility, which serves to develop and restore the residents' ability to lead an independent life. Furthermore, the system consists of supported housing (Section 75), care homes for the disabled (Section 80) and residential homes for 8-14 people (Section 85/A), which have already been discussed. These systems often operate without coordination, are not accessible to all persons concerned, and thus violate the requirements of equal treatment and equal opportunities and are neither qualitatively nor quantitatively suitable for the provision of needs-based services.

Unfortunately, the domestic social welfare system remains *institution-based*, which does not meet the requirements of Article 19 of the CRPD. The lack of real community-based services that are organised in so-called service network and their limited access are still serious barriers to independent living and inclusion. Violations of equal treatment also occur in several cases in connection with deinstitutionalization. Behind direct discrimination, such as the lack of abolition of all institutional placements, the possibility of direct discrimination is raised by the fact that regulations are applied to people with disabilities, or that no legislation, plan or strategy is created at all. In these cases, the reasonable reason is the lack of resources in

most cases. On the other hand, equal treatment is described by the CPRD as an act of human rights and freedoms exercised in the same way as others, but these do not appear in institutional placement, and the exercise of many fundamental rights cannot be guaranteed (Gurbai 2015).

1.4.10 Health, Rehabilitation

The Disability Act emphasizes that during the health care of a person with a disability the needs arising from his or her disability must take into account, and that regular and effective health care must be provided to improve his or her condition and prevent it from deteriorating. Also, special training and further training for carers of people with disabilities should be provided. Efforts should be made to ensure that the care provided promotes the rehabilitation and social integration of the disabled person, and that it does not strengthen the awareness of the disease. Article 2 of Act CLIV of 1998 on Health (Health Act) stipulates at basic principle level that equal opportunities must prevail during the use of health services.

The OFP states that equal access to basic medical care and specialised care for all people with disabilities must be ensured, and that the necessary resources must be made available to ensure that people with disabilities have access to adequate services that are equally accessible to people with disabilities. The Action Plan regulating the implementation of the OFP was adopted by the Government in 2020, and prior to this NGOs proposed a number of amendments, including the accessibility of health care facilities, the renewal of the system of medical aids, and the amendment of the decree on rehabilitation.

In general, people with reduced mobility are not provided with full health care. Examination rooms, equipment as well as screening are not accessible, a disabled person can miss some of the examinations and interventions simply because the wheelchair is not transported with the patient by ambulances. ETA treats the lack of accessibility as a breach of equal treatment. Rehabilitation today is based on medical expert opinion, despite legal requirements, the expert group does not trace factors other than health status, and due to the lack of implementation of reasonable accommodation, there is no partnership with the person with a disability.

Extensive research has been conducted on the exercise of reproductive and sexual rights in case of persons with disabilities living in institutions, and in many cases coercive measures and procedures performed without consent have been revealed.

As a description of a common attitude, the case ETA/651/2009 can be mentioned, in which the dental care of the minor applicant was denied due to his childhood autism or pervasive developmental disorder. During the hearing, the parties reached an agreement in which the dentist expressed his regret and apologized for not performing dental treatment for the child due to the difficulties caused by his disability,

and did not make any suggestions or attempts to do so at a later date. He undertook to investigate and to maintain the requirement of equal treatment in the future

“The rehabilitation path on which such a person travels in good cases does not align with the views represented by the Convention, thus creating competence structures that make it difficult for society - and of course the legal system - to treat people with disabilities on an equal footing. This is not to say that this is okay. It is not okay. I am only pointing out that changes need to be generated at the level of culture to fulfil the intention of Article 12.” (Kiss 2020)

1.4.11 Employment

The requirement of equal treatment is laid down in Act II of 2012 on the Labour Code. It appears in Section 51 (5) of Labour Code, but unfortunately it does not state that its absence constitutes as discrimination, which is an achievement of the right to discrimination. ETA Advisory Board in its non-binding decree No. 6/2009 (XI. 23) TT held that the failure to comply with the requirement of reasonable accommodation also constituted a breach of the requirement of equal treatment regarding employment. An NGO turned to the ETA for further implementation without success. (AOSZ 2020) Adherence to the requirement of equal treatment is a fundamental principle of the Labour Code, supported by case law of the courts and ETA. The National Disability Program aims to improve supported employment for rehabilitation purposes through special grants and information. However, the elements of rehabilitation employment regulation such as qualification systems for becoming accredited employers fixed by domestic legislation and the benefits provided for employers and employees are not linked into one system. Furthermore, funding for employment services and supported employment services for people with disabilities is uncertain and project based.

The Equal Treatment Act Section 63 (4) that states that budgetary bodies and majority state-owned legal entities, employing more than fifty persons are required to adopt an equal opportunities plan for analysing the employment situation of disadvantaged workers, in particular women, Roma, disabled employees and applies to their working conditions, further training, training, child-raising and parental responsibility benefits. The plan should include measures that can help increase the proportion of people from disadvantaged groups in the employer, that people from disadvantaged groups receive equal pay for work of equal value and that they are treated equally in all employment.

As a policy level regulation according to Article 63(4) of Equal Treatment Act, budgetary bodies and majority state-owned legal entities employing more than fifty persons are required to adopt an equal opportunities plan for analysing the employment situation of disadvantaged workers, in particular women, Roma, disabled employees and applies to their working conditions, further training, training, child-raising and parental responsibility benefits. The plan should include measures that can help increase the proportion of people from disadvantaged groups in the employer, that people from disadvantaged groups receive equal pay for work of equal value and that they are treated equally in all employment.

1.4.12 Education

„If a child with disability is born in a rural area of Hungary today, the whole family is often excluded from society due to a lack of information and different systems.” (MEOSZ, 2019) Many problems are reported by NGOs, anti-discrimination organizations, such as lack of early development, inclusive education.

1.4.12.1 School education and development

The Act CXCV of 2012 on National Public Education (Education Act) prescribes the requirement of equal treatment in a general manner. Definition of disability in Education Act is the so-called children with special educational needs (CSN), providing a good example of the lack of united definition of disability. Article 47 of Education Act provides for the framework of CSN education, upholding the right of the parent to choose an institution. According to article 13/A of Education Act the local school district provides a network of traveling special educators and traveling conductors for CSN, not only if the educational institution does not have a special pedagogue or conductor-qualified employee. Furthermore, pursuant to Section 27 (7) of Education Act, in view of his/her status as a private student, CSN must receive 10 hours of subject preparation per week in the framework of co-education, which is a solution that points in the direction of inclusive education, but is far from it.

In its report No. 1672/2017 on the education of children with disabilities the Ombudsman also found that only 33% of students with severe and multiple disabilities had access to 20 hours of weekly schooling per week, while 19 % studied in their own homes and 48 % in residential social services, with the latter groups having less than 20 hours per week.

Complaints for non-compliance or inadequate fulfilment of additional obligations are much more common in ETA case law than in “classic” discrimination cases (ETA, 2017). Legislation or expert opinion may prescribe special care and development for children with disabilities and special educational needs, which is part of accessibility, and its failure violates the requirement of equal treatment. The development prescribed by the expert opinion must also be provided by the public educational institution designated in the expert opinion in the case of school-age children with special educational needs. Until 2017, in addition to its maintainers’ right, the operator's rights were exercised in a centralized manner, and then the operator’s rights were transferred to the local level, to the local education district, so the number of organizations responsible for education matters continued to grow.

The appropriate assistance and reasonable accommodation are missing conditions in case of children with autism spectrum that deter their inclusion and they frequently suffer from bullying and physical abuse and the risk of dropping out is significant. (Kussinszky-Lux-Steniczy)

1.4.12.2 Nursery education and early development

In connection with kindergarten and school education, (EBH/131/2014, EBH /558/2016), the lack of proactivity of local governments in disputes arising in connection with the development and special education of children but non-compliance with mandatory legal requirements (EBA/36/2016) results in discrimination against children. In a school case, a child with autism was discriminated against because of a delay in specialist service. (EBH /60/2016)

1.4.13 Right to election

Under Article 29 of the CRPD, adults cannot be deprived of the right to vote, even if they have been placed under guardianship, and the CRPD Committee entrusts States, inter alia, with the task of exercising their right to vote in the same way as others. As a result, the exercise of the right to vote in the case of persons under guardianship is assessed separately in the court procedures, but the rate of disenfranchisement is also increasing.

The electoral law and the Fundamental law amended following the *Bujdosó and Others v. Hungary* case before the CRPD Committee. In its recommendations, the CRPD Committee recommended several steps to reduce discrimination beyond legislative change such as application of reasonable accommodation to facilitate those who cannot have access to buildings, services on the same basis with others.

The separate assessment of individual cases was not always evident (Fiala, 2011), it became a practice after the decision of ECtHR on *Kiss Alajos v Hungary*, but it was highlighted as a positive change (AOSZ 2020). The reasoning of the current Hungarian regulation when considering individual situations is the same as can be seen in the already cited Kúria judgment: in the case of persons with disabilities, they restrict from their rights in order to their „own protection”, even arguing with paragraph 12 (3) of the CRPD. Some academics and disability organisations expressed their views according to which Article 12 and 29 of CRPD do not allow any assessment of foresight or other capacity but provide equal voting rights. Therefore, judicial assessment of voting rights and the legislation behind it infringe the Article 29 of CRPD. (ÉFOÉSZ 2020)

5. Description of evolvement- findings from interviews

Besides the already cited thoughts of the conducted interviews we have more complex views. Regarding legal capacity and **Article 12 of the CRPD** NGOs responded that the CRPD did not prohibit the well-founded limitation of capacity to act but prescribes that disability cannot be the sole reason to deprive from capacity to act (ÉFOÉSZ 2020). As a suggested solution and request, the dissemination of knowledge at administrative and judicial level about supported decision-making appeared in several interviews (ÉFOÉSZ 2020) and the lack of knowledge might be a reason behind the low number of

application of this instrument. The need for an independent expert committee to assist the institution of supported decision-making appears. (ÉFOÉSZ 2020) Very few training provided for judges are available that might help them to deal with the burden of hearings (Faiszt 2020) and NGOs highlighted the need for the so-called easy to understand communication trainings, documents for officers of authorities and judges (ÉFOÉSZ 2020) and for forensic based on the state obligation prescribed in Article 12(3) (AOSZ 2020). The issue of foresight arose several times, one missed the legal definition (Faiszt 2020) others found concerning that a smaller decrease of foresight provides enough reason for adolescents to use supported decision-making (ÉFOÉSZ 2020). There is an unlawful tendency that the courts based on their decision on the report of medical experts (ÉFOÉSZ 2020) that frequently does not consider other points besides strictly medical one (AOSZ 2020). The legislation prescribe that court has to map the supporting environment and use the limitation of capacity to act as a last resort (AOSZ 2020, Faiszt 2020) Fortunately, some positive changes appear: a supreme court decision that annul such rulings, echoing abovementioned reasons (Faiszt 2020). The forensic with special pedagogical education would be a suggestion to examine the foresight in an expert team instead of a strictly medical point of view (AOSZ 2020). A general shift in the medical model is suggested but not just in case of administrative and judicial procedure but generally in the families, experts working with persons with disabilities. In several cases, the procedure for placement under guardianship initiated by parents after their children reach adulthood because they do not understand how supported decision-making works. (AOSZ 2020).

The inquiry of the CRPD Committee is an imprint of the current situation in Hungary that covers almost a decade long period, at least of a documentation of this era. There are more information but still the Committee went to different institutions, made several interviews, this inquiry is informative. (Méhes 2020)

Regarding **Article 19**, besides supported decision-making the supported housing could serve the most significant way the independent living of persons with disability, and appropriate level of support services i.e. transportation. Unfortunately, the level of info-communication accessibility is low, although several positive changes noted in the field of accessibility (AOSZ 2020).

Denial or lack of reasonable accommodation as form of discrimination as it stipulated in Article 2 and Article 5(3) and the Article 12 have an interconnection in CRPD. But in the national legal practice there is not any evidence that besides the recommendations and suggestion of CRPD Committee this interconnection caused any effect. The courts, authorities try to consider any personal circumstances, but the heart of the reasonable accommodation is the communication and preventive actions of both sides. Certainly, the current element of adjustment in guardianship cases or closing large scale institutions appears and the benevolent but sometimes not informed attitude of stakeholders lead to overprotection of persons with disabilities that might infringe their right to dignity.

6. Conclusions

At the beginning of the research it was clear that the guardianship and substitute-decision making shall cease. But as the research proceeded it became clear that the Article 12 CRPD is ambiguous, several countries have not ceased substitute-decision making. The employment of retrained guardian-sponsors that has a significant impact on the supported decision-making system. Other authorities lack regular training which might help the evolvement of their own procedure, changing their attitude. Also, the lack of sufficient financial support of these key actors has a discouraging effect. The state of the system and the general attitude of the society are crucial. In the words of an expert, “In an infantilizing system, the question is not only whether this right exists, but also whether the disabled person has the opportunities to exercise that right.” (Kiss 2020) There are several great steps toward a CRPD-like such as decisions of supreme court but these also shed light that those who cannot or do not want to exercise their right to justice and appeal they might face a different attitude in cases about legal capacity. These “warrior Titans” (Kiss 2020) who turn to the court of appeals or ETA from half a million persons concerned are shaping the disability law but also signal that very few of the all people concerned stand up for their rights.

The ombudsman as advocate of people has several steps facilitating a more CRPD-like practice such as the request for amendment of Civil Code, the regular and ad-hoc inquiries of institutionalized persons with disabilities, but its general approach could be more active in the field according to some interviewers.

The denial reasonable accommodation as a form of discrimination does not have a long history in Hungary. There are very few cases in the practice of ETA, less in court caselaw but as a tool can be used in the future, if a preferable, well prepared legal context awaits its implementation (Halmos 2020). This could be a useful tool to reform the disability system in a constructive way.

7. Recommendations

1.7.1 Private law

First, we propose to set up a supported decision-making system in line with the position of the CRPD Committee and to move towards full capacity, in line with the spirit of the CRPD which is complemented by reasonable accommodation. The lack of these legal institutions and the fact that they are not functioning properly are discriminatory for people with disabilities. It is necessary to clarify by legislative amendment that, in the case of persons who are unable or unwilling to write, the handwriting is the same as a handwritten signature in order to ensure equal treatment.

1.7.2 Social administration, independent living, and housing

A comprehensive reform of social law is needed, which must be brought into line with the requirements of the CRPD. In the field of social administration, a community service operating in the service ring, a 24-hour support service with nationwide coverage, should be introduced to assist in the adoption and upbringing of children with disabilities. The institutionalized living conditions need to be eliminated in accordance with regulation of CRPD.

1.7.3 Health, Rehabilitation

The lack of accessibility of health services violates the requirement of equal treatment. We also recommend setting up a multidisciplinary team and pilot program that can perform a truly complex qualification in line with international trends, treating stakeholders as partners.

1.7.4 Employment

In order to encourage people with disabilities to work in the open labour market, an incentive support system that is predictable and secure for economic operators, tailored to employment needs, must be developed, including the necessary financial resources, the employment of people with increased support needs.

1.7.5 Education

We ask for professional and financial support to enable children to meet their compulsory schooling obligations through inclusive education, in addition to individual development programs, with reasonable accommodation, rather than home care.

1.7.6 Voting Rights

Ensuring universal, equal voting rights without an assessment of insight and mental status is a solution that is in line with the requirements of the CPRD.

8. Appendix

1.8.1 Legislation

a. Fundamental Law

1.8.1.1.1 *Non-discrimination and equal opportunities in XV. Article 4 (2) and (4) to (5)*

„(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. (4) By means of separate measures, Hungary shall help to achieve equality of opportunity and social inclusion. (5) By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities.”

1.8.1.1.2 *Social security in Article XIX*

„(1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the event of maternity, illness, invalidity, disability, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act. (2) Hungary shall implement social security for those persons referred to in paragraph (1) and for others in need through a system of social institutions and measures. (3) The nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary’s activity. (4) Hungary shall contribute to ensuring a life of dignity for the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. An Act may lay down the conditions for entitlement to state pension also with regard to the requirement for stronger protection for women.”

b. Disability Act

Article 4 a) a disabled person: a person who has a durable or permanent sensory, communication, physical, intellectual, psychosocial impairment, or any accumulation thereof, which, in interaction with environmental, social and other significant barriers, restricts or impedes effective and equal participation in society;

Article 4 h) equal access

(ha) the service is accessible on an equal access if its use, with appropriate independence to the recipient’s condition, is accessible, predictable, interpretable and perceptible for all, in particular persons with reduced mobility, vision, hearing, mental and communication functions,

(hb) the building has equal access if everyone, especially people with reduced mobility, vision, hearing, mental and communication functions, can access the part open to the public, leave it safely in an emergency, and the objects and equipment in the building are intended for everyone can be used

(hc) information is accessible on an equal footing if it is predictable, interpretable and perceptible for all, in particular people with reduced mobility, vision, hearing, mental and communication functions, and is barrier-free for the user.

c. Civil Code

Section 2:19 [Partial limitation of capacity to act]

(1) An adult shall have partially limited capacity to act if placed by the court under custodianship to that effect. (2) The court shall place an adult under custodianship partially limiting his capacity to act, if, due to his mental disorder, his ability required to take care of his own affairs is significantly reduced, permanently or in a temporarily recurring manner, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified with regard to specified categories of affairs. (3) In the judgment on partial limitation of the capacity to act, the court shall specify those categories of affairs of a personal or property nature in which the capacity to act is to be limited. (4) Capacity to act may not be limited, not even partially, if protecting the rights of the person concerned can be ensured by other means not affecting his capacity to act. (5) Persons having partially limited capacity to act shall be able to make valid juridical acts independently in all affairs which do not belong to those categories of affairs in which the court has limited their capacity to act. Section 2:20 [Juridical acts of a person having partially limited capacity to act] (1) For juridical acts by a person having partially limited capacity to act to be valid in the categories of affairs specified by the court judgment, the consent of his custodian shall be required. If a person having partially limited capacity to act obtains full capacity to act, he shall decide on the validity of his pending juridical acts. (2) Disputes between a person having partially limited capacity to act and his custodian shall be adjudicated by the guardianship authority. (3) In the categories of affairs specified by the court judgment, persons having partially limited capacity to act a) may make juridical acts of a personal nature to which they are entitled by law; b) may enter into low-value contracts covering common everyday needs; c) may dispose of their income to a proportion specified by the court and may make commitments to that extent; d) may enter into contracts by which they obtain only advantages; and e) may give gifts up to a commonly accepted degree, without the consent of their custodians. (4) If the protection of the interests of a person having partially limited capacity to act, or his protection from any damage requires immediate action, the custodian may act independently in matters requiring his consent, and may make juridical acts for the person concerned. The custodian shall inform the person having partially limited capacity to act and the guardianship authority thereof without delay.

Section 2:21 [Full limitation of the capacity to act]

(1) An adult shall have no capacity to act if placed by the court under custodianship fully limiting his capacity to act. (2) The court shall place an adult under custodianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified. (3) The court shall be allowed to limit the capacity to act in full if the

protection of the rights of the person concerned cannot be ensured by means that do not affect his capacity to act or by partial limitation of his capacity to act.

Section 2:22 [Juridical acts of an adult having no capacity to act]

(1) Juridical acts of an adult having no capacity to act shall be null and void; his custodian shall act on his behalf. (2) Contracts of minor importance concluded and performed by an adult having no capacity to act shall not be null and void for the lack of capacity to act if their conclusion is widely practiced in everyday life and does not require special consideration. (3) Prior to making a juridical act that affects the adult having no capacity to act, if the adult is able to express his views, the custodian shall hear his requests, and shall take such requests into account if possible.

Section 2:23 [Requirement of the guardianship authority's approval]

(1) For juridical acts of a person having partially limited capacity to act, of his custodian and of the custodian of an adult having no capacity to act to be valid, the approval of the guardianship authority shall be required, if the juridical act concerns a) the maintenance of the adult having partially limited capacity to act or having no capacity to act; b) the rights or obligations of the adult having partially limited capacity to act or having no capacity to act acquired through an inheritance relationship; c) the acquisition by the adult having partially limited capacity to act or having no capacity to act of not unencumbered real estate, or the transfer of ownership of real estate or encumbrance in any other way of real estate that belongs to him; d) the property of the adult having partially limited capacity to act or having no capacity to act transferred to the guardianship authority; or e) any other asset having a value exceeding the amount specified in the decision appointing the custodian that belongs to the adult having partially limited capacity to act or having no capacity to act. (2) In exceptional and duly justified cases, the guardianship authority may, at the joint request of the person having limited capacity to act in financial affairs and his custodian, approve the outlays made from the property of the person concerned: a) for a descendant of the person concerned to establish and maintain his own household or to achieve some other important objective; this support, however, shall not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at the time when the approval is granted, of the descendant; or b) for benefits free of charge, waiver of rights without consideration, or offer for public purposes, if the legal transaction does not pose a threat to the subsistence of the person concerned. (3) In exceptional and duly justified cases, the guardianship authority may, at the request of the custodian of an adult having no capacity to act, approve the outlays made from the property of the person concerned for a descendant of the person concerned to establish and maintain his own household or to achieve some other important objective; this support, however, shall not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at the time when the approval is granted, of the descendant. (4) The approval of the guardianship authority shall not be required if the real estate of the adult having partially limited capacity to act or having no capacity to act is, at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted

to the person giving the benefit free of charge. (5) The approval of the guardianship authority shall not be required if the validity of the juridical act has already been adjudicated in court or in a notarial procedure.

Section 2:24 [Relative nullity of juridical acts made by an adult having partially limited capacity or no capacity to act]

Nullity based on partially limited capacity or the lack of capacity to act may be invoked in the interests of the person whose capacity to act is partially limited or who has no capacity to act.

9. Bibliography

Cozzi, Alessia, Athanassia Sykiotou, Dagmara Rajska, Ivana Krstic, Maria Filatova, Nikolina Katic, Petra Bard, and Stephanie Bourgeois. 2016. Comparative Study on the Implementation of the ECHR at the National Level. Belgrade: Council of Europe.

(Cozzi et al. 2016)

Oddny Mjöll Arnardóttir. 2009. A Future of Multidimensional Disadvantage Equality? in The Convention on the Rights of Persons with Disabilities, European and Scandinavian Perspectives, eds. Oddny Mjöll Arnardóttir-Gerard Quinn, Martinus Nijhoff Publishers, International Studies in Human Rights Vol. 100 (Arnardóttir 2009)

Fiala János. 2010. A fogyatékossgal élő személyek választójogának kérdései a Kiss Alajos kontra Magyarország ügy, Fundamentum (3), (Fiala 2010)

Gurbai Sándor. 2015. A gondnokság alá helyezett személyek választójoga a nemzetközi jog, az európai regionális jog és a komparatív közjog tükrében. Pázmány Péter Katolikus Egyetem Jog- és Államtudományi Kar Doktori Iskola, Budapest, doi: 10.15774/PPKE.JAK.2015.001 (Gurbai 2015)

Halmos Szilvia. 2019. Támogatott életvitel és támogatott döntéshozatal – a CRPD 12. és 19. cikkének konzisztens végrehajtásának lehetőségei Magyarországon. Pázmány Law Working Papers No. 3, <http://plwp.eu/files/2019-03Halmos.pdf> (Halmos 2019)

Kussinszky Anikó -Lux Ágnes-Stánicz Péter 2020. Az ENSZ Fogyatékossgal élők Személyek Jogainak Bizottsága legfrissebb megállapításai Magyarország tekintetében: a különleges jelentésből levonható legfőbb következtetések. Családi Jog. No.3. 9-16. (Kussinszky-Lux-Stánicz 2020)

A fogyatékos és az egészségi ok miatt korlátozott népesség jellemzői. 2018. eds: Janák Katalin és Tokaji Károlyné Központi Statisztikai Hivatal, Mikrocenzus No. 8. https://www.ksh.hu/docs/hun/xftp/idoszaki/mikrocenzus2016/mikrocenzus_2016_8.pdf (KSH 2018)

Az Egyenlő Bánásmód Hatóság tapasztalatai az oktatás területén előforduló diszkriminációról. 2017. ed.: Lukovics Adél EBH tematikus füzetek No.4. <https://www.egyenlobanasmod.hu/hu/ebh-fuzetek> (EBH 2017)

Az Egyenlő Bánásmód Hatóság tapasztalatai az egészségügy területén megjelenő diszkriminációról. 2019. ed: Lukovics Adél. EBH Tematikus füzetek No. 6. <https://www.egyenlobanasmod.hu/hu/ebh-fuzetek> (EBH 2019)

Andrea Broderick. 2018. Discrimination on the grounds of disability: The UNCRPD and EU law https://www.era-comm.eu/anti-discri/kiosk/e_presentations/1_Broderick_118DV20/index.html (Broderick 2018)

1.9.1 Reports

1. Alternative Report on the UN CRC (HUNGARY) on behalf of the Child Rights NGO Coalition. 2019
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7 (CRC 2019)
2. MEOSZ CRPD National Federation of Associations of Persons with Physical Disabilities (MEOSZ)
3. Hungary .2019. Alternative Report for the Periodic Review on the implementation of UN Convention on the Rights of Persons with Disabilities (CRPD) in Hungary.
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7 (MEOSZ 2019)
4. ANED országjelentés <https://www.disability-europe.net/country/hungary>

1.9.2 Case law

1.9.2.1 ECtHR cases

1. Shtukatur v. Russia, judgement of 27 March 2008, application no.44009/05.,
2. Krušković v.Croatia, judgement of 21 June 2011, application no. 46185/08.
3. X. and Y. v Croatia, judgement of 3 November 2011, application no. 5193/09.
Kiss Alajos v. Magyarország, judgement of 20 May 2010, application no. 38832/06

1.9.2.2 CRPD Committee case law, recommendation, and inquiry

1. Zsolt Bujdosó and five others v. Hungary, Communication No. 4/2011, Views adopted by the Committee at its tenth session (2–13 September 2013) No. CRPD/C/10/D/4/2011

2. Committee on the Rights of Persons with Disabilities, General comment No. 1 (2014) Article 12: Equal recognition before the law, CRPD/C/GC/1 <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>
3. Inquiry concerning Hungary carried out by the Committee under article 6 of the Optional Protocol to the Convention, Report prepared by the Committee on 13 September 2019, CRPD/C/HUN/IR/1, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7

1.9.3 Interviews

1. Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ 2020)
2. National Autistic Association (AOSZ 2020)
3. Barbabrá Méhes LL.M., individual disability expert (Méhes 2020)
4. Csaba Kiss, egyéni szakértő (Kiss 2020)
5. Szilvia Halmos Ph.D., individual disability expert (Halmos 2020)
6. Judge Judit Balóginé Faiszt, President of Chamber at Kúria, Supreme Court of Hungary (Faiszt 2020)