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# „Whose decision is it? “ For equality of people with disabilities before the law

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2020. Október 27.

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# Overview

Hungarian legal framework

CPRD 5. 12., 19.

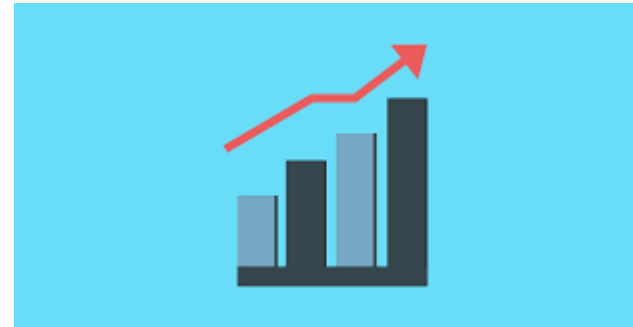
International experiences

# Hungary and disability in numbers

- In the last census, 490,578 people were registered as disabled, representing 6.2% of the 2011 total population.
- During the 2016 micro census, 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 reduced mobility 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)

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# Legal Framework

## Fundamental Law

- Article XV. Discrimination Clause
- Article XIX. Social security

## ● Constitutional Court

- infringement of equal treatment: infringement of fundamental rights+arbitrary discrimination + multi level test

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CONSTITUTIONAL COURT  
OF HUNGARY



# Hungarian legislation- overview

Act XXVI of 1998 on the rights and equal opportunities of persons with disabilities (Disability Act)

- Definition of disability
- Equal access to services, buildings, information
- key questions

Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act)

- Easy access procedure
- Discrimination based on disability 2005-2015

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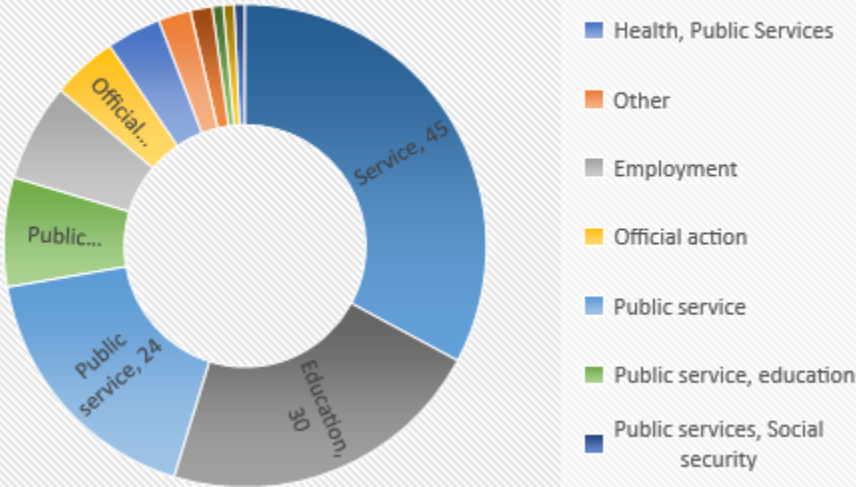
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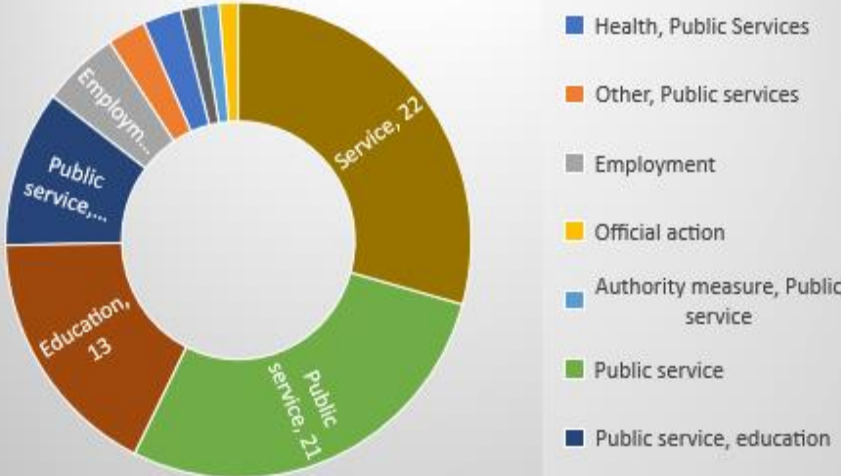
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# Cases of Equal Treatment Authority 2005-2020

Agreements between 2005-2020: 137 cases



Direct discrimination 2005-2020: 75 cases



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# Article 5

**Equality and non-discrimination**

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Art. 5(3) - Reasonable  
accommodation as a way forward

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# Reasonable accommodation

- CRPD Art 2. para 2 and para 3. and Art. 5(3) as a complex formula for equality
- few cases on RA but emerging in
  - CRPDde - mobility
  - ECtHR - housing
  - CEU - employment
- accessibility is not RA
- implementation issues in Hungary
  - Employment: only implementation but still partial
  - Disability Act and Equal Treatment Act way forward



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# Reasonable accommodation and Article 12

- General Comment No 1.: CRPD Commission also presents reasonable accommodation **as a tool for exercising its capacity to act**, further emphasizing that the two institutions are not the same
- General Comment No 6.: A key difference between the reasonable accommodation obligation under article 5 of the Convention and the support that must be provided for persons with disabilities exercising their legal capacity under article 12 (3) is that **there is no limit on the obligation under article 12 (3)**. The fact that support to exercise capacity may impose a disproportionate or undue burden does not limit the requirement to provide it.
- Interview: no limit support can be applied only for state institution, in private matters it raises questions

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# Article 12

**Equal recognition before the law**

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Legal capacity

# Legal Capacity in private law



- Ombudsman request for modification of Civil Code in 2014
- Constitutional Court decisions
  - 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 with issues with legal capacity
- Kúria as Supreme Court decision on legal capacity
  - 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 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.

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# Signature issue



- 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 happens that someone is under guardianship that excludes their ability to act because they cannot sign or have communication difficulties
- Ministry respond: protection of persons with disability is more important
- 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 the part of both the legislator and the service providers, which is discrimination under Articles 2 and Article 5 (3) of the CPRo

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# Article 19

**Living independently and being  
included in the community**

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# Institutional living

- CRPD Committee from 98539 people 26953 people with disabilities lived in an institution in 2018, as opposed to what is required by the CRPD.
- Article 17 of Disability Act a person with a 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 in the family in addition to the abolition of institutional housing.
- In practice, however, the free choice of the person concerned is questionable due to the institution of guardianship discussed earlier and the lack of individualization.
- 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

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# Recommendations

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# Some key suggestions

- supported decision-making, full capacity, reasonable accommodation

“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)

- Social reform, a community service operating in the service ring, a 24-hour support service with nationwide coverage. The institutionalized living condition need to be eliminated in accordance with regulation of CRPD.

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# Thank you for your attention!