



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

Communication No. 4/2011

Views adopted by the Committee at its tenth session (2-13 September 2013)

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| <i>Submitted by:</i> | Zsolt Bujdosó and five others (represented by counsel, János Fiala, Disability Rights Center) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Hungary |
| <i>Date of communication:</i> | 14 September 2011 (initial submission) |
| <i>Document references:</i> | Special Rapporteur's rule 70 decision, transmitted to the State party on 1 November 2011 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 9 September 2013 |

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| <i>Subject matter:</i> | Failure by the State party's authorities to eliminate discrimination on the ground of disability, and to respect the obligation to guarantee to persons with disabilities political rights, including the right to vote, on an equal basis with other citizens |
| <i>Substantive issues:</i> | Equal and effective legal protection against discrimination on the ground of disability, Participation in public and political life |
| <i>Procedural issues:</i> | -- |
| <i>Articles of the Convention:</i> | 12 and 29 |
| <i>Articles of the Optional Protocol:</i> | -- |
| | [Annex] |

Annex

Views of the Committee on the Rights of Persons with Disabilities under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities (Tenth session)

concerning

Communication No. 4/2011 *

Submitted by: Zsolt Bujdosó and five others (represented by counsel, János Fiala, Disability Rights Center)

Alleged victims: The authors

State party: Hungary

Date of communication: 14 September 2011 (initial submission)

The Committee on the Rights of Persons with Disabilities, established under article 34 of the Convention on the Rights of Persons with Disabilities,

Meeting on 9 September 2013,

Having concluded its consideration of communication No. 4/2011, submitted to the Committee on the Rights of Persons with Disabilities by Zsolt Bujdosó and five others under the Optional Protocol to the Convention on the Rights of Persons with Disabilities,

Having taken into account all written information made available to it by the authors of the communication, and the State party,

Adopts the following:

Views under article 5 of the Optional Protocol

1. The authors of the communication are Zsolt Bujdosó, born on 22 July 1976, Jánosné Ildikó Márkus, born on 29 August 1967, Viktória Márton, born on 20 October 1982, Sándor Mészáros, born on 11 January 1955, Gergely Polk, born on 18 June 1985, and János Szabó, born on 6 December 1967. All are Hungarian nationals. The authors claim to be victims of a violation by Hungary of their rights under article 29 of the Convention on the Rights of Persons with Disabilities (the Convention). The Optional Protocol to the Convention

* The following members of the Committee participated in the examination of the present communication: Mr. Mohammed Al-Tarawneh, Mr. Munthian Buntan, Ms. Maria Soledad Cisternas Reyes, Ms. Theresia Degener, Mr. Hyung Shik Kim, Mr. Lofti ben Lallahom, Mr. Stig Langvald, Ms. Edah Wangechi Maina, Mr. Ronald McCallum, Ms. Diane Mulligan, Mr. Martin Babu Mwesigwa, Ms. Safak Pavey, Ms. Ana Pelaez Narvaez, Ms. Silvia Judith Quan-Chang, Mr. Carlos Rios Espinosa, Mr. Damjan Tatic and Mr. Germán Xavier Torres Correa.

Pursuant to rule 60 of the Committee's rules of procedure, Committee member Mr. László Gábor Lovász did not participate in the adoption of the present Views.

entered into force for the State party on 3 May 2008. The authors are represented by counsel, János Fiala, of the Disability Rights Center.

The facts as presented by the authors

2. All six authors “suffer from intellectual disability”, and were placed under partial or general guardianship,¹ pursuant to judicial decisions. As an automatic consequence of their placement under guardianship, the authors' names were erased from the electoral register, pursuant to article 70(5) of the State party's Constitution, applicable at the time, which provides inter alia, that persons placed under total or partial guardianship do not have a right to vote. On 11 April 2010, parliamentary elections were held in Hungary. The authors could not participate, due to the restriction in their legal capacity. On 3 October 2010, municipal elections were held. Again, the authors could not participate. They remain disenfranchised today, and cannot participate in elections.

The complaint

3.1 The authors submit that as persons under guardianship, they were, by direct application of article 70(5) of the Constitution, automatically deleted from electoral registers. The decisions incapacitating them did not address their ability to vote, as they were automatically and indiscriminately disenfranchised by operation of the Constitutional provision, regardless of the nature of their disability, their individual abilities, and the scope of the incapacitation measure. The authors argue that they are able to understand politics and participate in elections if they were allowed to, and maintain that this automatic ban is unjustified, and breaches article 29, read alone and in conjunction with article 12 of the Convention.

3.2 Regarding exhaustion of domestic remedies, the authors allege that no effective remedy was at their disposal. They claim they could have submitted an application to lift their guardianship under article 21(2) of the Civil Code, but that this measure would have remedied the violation of their right to vote only if it had completely restored their legal capacity. This was neither possible, nor desirable for the authors, who recognize their intellectual disability and acknowledge that they require support in managing their affairs in certain areas of their lives. Hungarian law only provides for one legal measure, guardianship (plenary and partial), for persons with disabilities requiring assistance. While challenging their guardianship under the Civil Code was the only available remedy, it was not an effective remedy for the authors, as courts do not have the power to consider and restore a person's right to vote. The authors refer to the decision of the European Court of Human Rights, *Kiss Alajos v. Hungary*, in which the Court accepted this argument from

¹ Zsolt Bujdosó was placed under partial guardianship with general limitation on 23 November 2004, pursuant to a decision of the Gyula City Court. The limitation of his legal capacity was reviewed, and upheld by decision of the Pest Central District Court of 14 October 2010; Jánosné Ildikó Márkus was placed under plenary guardianship on 17 February 2003, by decision of the Battonya City Court ; Viktória Márton was placed under partial guardianship on 11 October 2008, by decision of the Budapest II and III District Court, with respect to application for social security benefits and disposal of such benefits, as well as regarding employment income; Sándor Mészáros was placed under partial guardianship with general limitation, by decision of the Buda Central District Court of 2 June 2010; Gergely Polk was placed under partial guardianship with general limitation on 14 September 2004, pursuant to a decision of the Buda Central District Court; János Szabó was placed under partial guardianship with general limitation on 7 October 2003, by decision of the Budapest II and III District Court. His incapacitation was reviewed, and upheld by the Pest Central District Court on 24 March 2009.

applicants who were similarly challenging the restriction imposed on their right to vote by reason of their legal guardianship.²

3.3 The authors further submit that they did not lodge a complaint under paragraph 82 of Law n° 100 of 1997 on Electoral Procedure regarding the deletion of their names from the electoral register. They allege that such complaint would have been dealt with by the Local Electoral Committee, and on appeal by the relevant City Court. However, none of these authorities have the power to restore the authors' right to vote and to order their inclusion in the electoral list, as this exclusion is Constitution-based. The authors refer to a decision of the Pest Central District Court, which decided on 9 March 2006, in a similar matter, that Hungarian courts do not have the power to overrule the exclusion from the electoral register, which is based on the Constitution.³ They thus contend that as this procedure could not lead to the restoration of their right to vote, it was not an effective remedy which they needed to exhaust.

3.4 The authors ask the Committee to find that they have been victims of a violation of article 29 and 12 of the Convention, to request the State party to introduce the necessary changes to the domestic legal framework, and to award them compensation for non-pecuniary damages on an equitable basis.

The State party's observations on the merits

4.1 On 16 January 2012, the State party informed the Committee that it would not challenge the admissibility of the present communication.

4.2 On 31 May 2012, the State party submitted its observations on the merits of the communication. It states that, since the authors' complaint was filed with the Committee, the relevant legislation became subject to significant changes. Hungary's Fundamental Law came into force on 1 January 2012, and abandoned section 70 (5) of Act XX of 1949 of the Constitution of the Republic of Hungary, which automatically excluded from suffrage all persons under guardianship, restricting or excluding their capacity for any civil law election. Contrary to the previous rigid provision, which has now become obsolete, the Fundamental Law now requires judges to make decisions on suffrage in consideration of the individual circumstances of each case. Therefore, adults with disabilities are no longer treated as a homogenous group. Under article XXIII, paragraph (6), a person disenfranchised by a Court due to his or her intellectual disability, by virtue of a decision made in due consideration of all relevant information obtained in the case, shall have no suffrage.

4.3 The State party further argues that this new provision is in conformity with the right to free elections enshrined in article 3 of Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and with the judgment of the European Court of Human Rights in the case *Alajos Kiss v. Hungary* (Application No.38832/06, 20 May 2010). According to the State party, several Member States of the European Union have set similar restrictive rules with respect to suffrage. It further notes that Parliament adopted the Transitional Provisions of Hungary's Fundamental Law as part of the Fundamental Law. This source of law also came into force on 1 January 2012, together with the Fundamental Law, and regulates the status of persons who were under guardianship when the Fundamental Law came into force. By virtue of article 26, paragraph

² Application no. 38832/06, Judgment of 20 May 2010, para. 9. The court found that the exclusion measure pursued a legitimate aim, but nevertheless ruled that it breached article 3 of Protocol 1 to the Convention, as it was an indiscriminate measure, lacking an individualized judicial evaluation.

³ Decision no. 1.P.50.648/2006/4, also mentioned in the ECHR decision *Kiss Alajos v. Hungary*, see above, note 2, para. 9.

2, “a person under guardianship which restricts or excludes his or her legal capacity under an absolute sentence at the time of the coming into force of the Fundamental Law shall not have suffrage until such guardianship is terminated, or *until a court establishes the existence of his suffrage*” [emphasis added by the State party]. The Transitional Provisions thus make it possible to address the issue of suffrage separately from that of placement under guardianship allowed for the separation of the issues of placement under guardianship from suffrage.

4.4 The State party further submits that Act CCI of 2011 on the Amendment of Certain Acts Related to the Fundamental Law, which came into force on 31 December 2011, incorporated the provisions on the guardianship procedure, along with several relevant provisions.⁴ As a result of such amendments, court decisions on the exclusion from suffrage shall be made in guardianship procedures. Placement under guardianship may not be a ground for exclusion from suffrage. However, a decision shall be made on the exclusion from suffrage in respect of every person under guardianship. In their rulings on placement under guardianship restricting, or excluding legal capacity, and upon reviewing guardianship, courts shall decide on the exclusion from suffrage. Courts shall exclude from suffrage any adult whose discretionary power required for exercising suffrage (a) has been significantly reduced, whether permanently or recurrently, due to his or her mental state, intellectual disability or addiction; or (b) is permanently missing in its entirety, due to his or her mental state or intellectual disability. Courts shall rely on expert opinions of forensic psychiatrists to decide on the exclusion from suffrage.

4.5 Where a court so excludes an adult from suffrage, the person under guardianship shall not be entitled to active or passive suffrage under article XXIII, paragraph (6) of the Fundamental Law. Active suffrage concerns the right of a person to cast a vote in an election for an office, while passive suffrage is the capacity of a person to be elected to an office. Such exclusion, and the termination of the exclusion, may be requested by any person entitled to file for termination of guardianship. Consequently, a person under guardianship may reclaim suffrage without losing the protection offered by guardianship, provided that he or she is capable of exercising such right.

4.6 The State party adds that any exclusion from suffrage shall be subject to review in any procedure for the compulsory review of guardianship, which shall be no later than five years after the ruling becomes absolute. Also, by virtue of the Transitional Provisions, the situation may now be reviewed in an extraordinary procedure at the request of any person entitled to file for a guardianship review (i.e. the person under guardianship, his or her spouse or registered partner, a next-of-kin, brother or sister, the guardian, the guardianship authority, or the Prosecutor). Alternatively, the exclusion may be revised in the course of the next compulsory review.

4.7 As the relevant laws came into force very recently, the State party submits that it is not in a position to inform the Committee of their implementation in practice. It concludes by submitting that in its view, by introducing the above mentioned amendments, it has brought its laws in compliance with article 29 of the Convention. Consequently, the State party demands that the authors’ request for legal amendment and non-pecuniary compensation be dismissed by the Committee.

⁴ Act IV of 1959 on the Civil Code (Section 15/B) ; Act C of 1997 on the Elections Procedures (Chapter III/A) ; and Act III of 1952 on Civil Procedure (Sections 311-312).

Third-party intervention

5.1 On 23 June 2012, the Harvard Law School Project on Disability (HPOD) submitted a third-party intervention in support of the authors' communication. On 19 September 2012, during its 8th session, the Committee decided, based on Rule 73, paragraph 2, of its Rules of Procedures, to request the written consent of the authors, with respect to the submission of the third-party intervention by the HPOD. On 17 October 2012, the authors transmitted their formal consent to the Committee in this regard.

5.2 In its intervention, the HPOD ("the interveners") noted that according to Article XXI (3) of the Basic Law of Hungary, a person loses his/her right to vote if a court finds that he/she lacks capacity to vote. Such assessments only affect persons under guardianship, who are all persons with psychosocial or intellectual disabilities. The Hungarian legislation thus permits the disenfranchisement of persons with disabilities on the basis of a perceived lack of capacity to vote arising from their disability status. The interveners stress that article 29 of the Convention provides for an unconditional right to vote for all persons with disabilities, and does not allow any implicit restrictions on the basis of real or perceived ability to vote, whether imposed through an overall ban on broad categories of disabled persons or on bans on all persons with particular types of disabilities who are presumed to have limited voting capability or through an individualized assessment of the voting capacity of specific disabled individuals.⁵ The interveners submit that Article 29 of the Convention does not provide for any exception from the universal right to vote on the basis of the person's disability. Instead, the Convention mandates that no individuals with disabilities, including the most "profoundly disabled", may be disenfranchised on the basis of their disability.

5.3 The interveners observe that the practice of most States of the world is in stark contrast with the standard expressed above. According to a study from 2001, 56 out of the 60 surveyed countries restricted the right to vote in some way on the basis of disability.⁶ A similar result was found by a 2010 report of the European Union's Fundamental Rights Agency (FRA): only 7 European countries out of the 27 EU member states did not restrict franchise on the basis of disability.⁷ The situation among other European states, non-members of the EU, is even more depressing. According to the interveners, the present case therefore raises issues which have implications for many other countries besides the State party.

5.4 The interveners stress that restricting the right to vote on the basis of disability constitutes direct discrimination, and is predicated on the unacceptable and empirically unfounded stereotype that all persons with disabilities are incapable. This is equally true for classifications that target specific sub-groups of persons with disabilities, such as persons

⁵ The interveners here refer to the Committee's concluding observations on Tunisia, when it required that state to adopt "urgent legislative measures" so that all persons with disabilities "including persons who are currently under guardianship or trusteeship" could exercise their right to vote (CRPD/C/TUN/CO/1, 5th session, 11-15 April 2011, para. 35.) They also refer to the Committee's concluding observations on Spain, in which the Committee expressed concern that domestic legislation allowed for an individualized assessment of voting capacity, which in turn led to the disenfranchisement of persons with disabilities. It therefore recommended that "all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote and participate in public life, on an equal basis with others."

⁶ André Blais, Louis Massicotte, Antoine Yoshinaka, *Deciding who has the right to vote: a comparative analysis of election laws*, Electoral Studies 20 (2001), 51.

⁷ Fundamental Rights Agency, *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, October 2010.

under guardianship. These restrictions directly arise from the status of persons having disabilities, and must therefore be rejected as contradicting article 29 of the Convention. In addition, some states disenfranchise people with disabilities on the basis of an individual assessment of their right to vote. A common justification of such evaluations of voting capacity is the proportional nature of restrictions on this fundamental right. The European Court of Human Rights addressed, and rejected this argument when assessing the State party's practice of disenfranchisement on the basis of guardianship in the case of *Alajos Kiss v. Hungary*.⁸ The State party argued that its measure constituted a proportionate interference with the right to vote. However, the European Court rejected that argument, holding that disenfranchisement on the basis of guardianship "without an individualised judicial evaluation" of a person's ability to vote constitutes a disproportionate interference, and is not compatible with the European Convention of Human Rights. The ruling, however, left open the possibility that disenfranchisement could be acceptable under the European Convention with an individualized assessment of voting capacity, and that any such measure should be analyzed and decided in the framework of proportionality.

5.5 The interveners invite the Committee to decide the present case beyond the narrow issue of the violation of the human rights of the authors in the State party contrary to article 29 of the Convention, and to rule explicitly on the other question raised by this case, namely, that subjecting persons with disabilities to individualized assessments of their voting capacity is in itself a violation of article 29 of the Convention. According to the interveners, such decision, adopted with a convincing explanation shedding light on the reasons behind the Convention's provisions, would be a very effective tool to convince States parties, and allay any concerns national stakeholders might have in implementing article 29. The Committee could also strongly influence the understanding of the European Court of Human Rights and other regional and national courts and tribunals, all of whom are likely to be approached on this same issue, and thereby strengthen the protection of rights of persons with disabilities worldwide. Such approach would also be entirely consistent with the purpose of the Convention to realize the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities (Article 1), as every person disenfranchised through an individual assessment suffers a violation of her right to vote, but very few can seek justice before the Committee. Nor can it be the Committee's task to remedy every instance of disenfranchisement, as this would be simply impossible due to the number of victims of such measures, taking into account all the countries where these violations are taking place. According to the interveners, to ensure that the right to vote can in fact be enjoyed by persons with disabilities at large, the Committee must address the situation of those who are not currently before it but who are similarly restricted.

5.6 Turning to the substance of the justification advanced by the State party, the interveners submit that the right to vote —a fundamental human right— should never be subject to a proportionality assessment and justification, because disenfranchisement could never be a proportional interference, for three central reasons: (a) Capacity assessments constitute discrimination on the basis of disability; (b) it inevitably results in disenfranchising capable individuals; and (c) in practice, its application leads to disenfranchisement of a large number of persons with disabilities.

(a) *Capacity assessment as discrimination on the basis of disability*

5.7 Assessments of voting capacity rest on the assumption that it is permissible to protect the integrity of the political system from individuals who are unable to formulate a

⁸ See above, note 2, para. 44.

valid political opinion. According to the argument, those objectively found to lack capacity to vote are by definition unable to vote competently. According to the interveners however, the legitimacy of such aim is itself questionable, since it is not for the state to determine what is a valid political opinion. While conceding that there are persons with disabilities who are unable to formulate a rational political opinion, the interveners stress that the inability to cast a “competent” or “rational” vote is by no means specific to persons with disabilities. Consequently, if there are both disabled and non-disabled persons unable to cast a competent vote, it cannot be maintained that only the latter should be subject to assessment of their capacity. Only long-entrenched prejudice against persons with disabilities justifies the current practice, and must be rejected under the Convention.

(b) *Inevitable disenfranchisement of capable individuals*

5.8 According to the interveners, capacity assessments are not a proportionate means of assessing competence in this context. Capacity assessments rest on the assumption that it is possible to objectively separate the “incapable” voters from the rest. However, that assumption is not well-founded according to psychological experts. There is no scientifically determinable cut-off point between persons having and those lacking capacity to vote. Accordingly, incapacity assessments will always result in disenfranchisement of at least some capable voters with disabilities.

5.9 The interveners add that the state’s goal of protecting the integrity of the electoral system is neither compelling—given that it targets only a small subset of the potentially incompetent voters, those who are labelled as having a disability—nor legitimate since it is discriminatory.

(c) *Capacity assessment in practice*

5.10 Additionally, the interveners stress that the practice of many countries shows that if capacity assessment on the basis of disability is permitted, it will result in the disenfranchisement of a large number of persons with disabilities based solely on their disability status. The interveners refer to the Committee’s Concluding Observations on Spain, in which it noted with concern “the number of persons with disabilities denied their right to vote”, and that “the deprivation of this right appears to be the rule and not the exception.”⁹ According to the interveners, the situation in the State party equally infringes the rights of persons with disabilities: as of 1 January 2011, 71,862 persons, constituting some 0.9 per cent of the adult population of the State party were excluded from the right to vote.¹⁰ However, only 1,394 persons are registered under the qualification of “severe or profound intellectual disabilities”, therefore being the primary target and justification of the policy of exclusion.¹¹ There is thus a huge disconnect between the number of those whose competence to vote could conceivably be questioned and those currently disenfranchised, with the number of the latter constantly growing. Regardless of how these assessments will be changed by the State party’s government in the future, it is a fair prediction that the number of disenfranchised persons will be much larger than those who could be reasonably considered “incapable of voting” under any scientifically acceptable test.

⁹ See above, note 6, para. 47.

¹⁰ Letter No. 10586/2011/2. OIT Hiv., from the Office of the National Judiciary Council (OITH) (on file with authors).

¹¹ According to the 2001 census there were 38,841 adult persons with intellectual disability in Hungary, see the results of the census at <http://www.nepszamlalas.hu/>. Persons with severe and profound disabilities are estimated to constitute 3.5 per cent of all persons with intellectual disability, see Martha A. Field & Valerie A. Sanchez, *Equal Treatment for People with Mental Retardation*, 33 (1999).

5.11 The interveners underscore the long-entrenched beliefs that persons with disabilities are incapable to manage their affairs, to make competent decisions, and to participate in public affairs. They add that professionals participating in the assessment process, such as judges, psychologists, psychiatrists, social workers and others, are also not immune to this prejudice. This is why any system permitting exclusion will produce a disproportionate number of disenfranchised persons with disabilities, and this is one of the reasons why it should be abolished under the Convention.¹² Article 29 of the Convention requires states to adapt their voting procedures to facilitate the exercise of the right to vote by persons with disabilities, and to ensure that they are able to cast a competent vote. Their capacity to vote should not be contested, and nobody should be forced to undergo an assessment of voting capacity as a precondition of participating in elections.

State party's observations on the third-party intervention

6.1 In this submission of 30 January 2013, the State party submits that the Fundamental Law of Hungary came into force on 1 January 2012, and brought a significant change to the regulation in the field of suffrage of persons with disabilities. While the previous Constitution automatically excluded from suffrage all persons under guardianship, restricting or excluding their capacity in terms of any civil law election, the new Fundamental Law empowers courts with the right to remove the right to vote in the sole case of a complete lack of legal capacity. Removal of the right to vote may only take place based on the individual assessment of the person's individual situation, and only if his/her legal capacity is limited to such extent that s/he is incapable of practising his/her electoral rights.

6.2 The legislative change was primarily meant to implement the CRPD Convention, and was also encouraged by the European Court of Human Rights' decision in *Alajos Kiss v. Hungary*. In the State party's view, the regulation in the Fundamental Law reflects a significant change in accordance with the spirit of the Convention, and is in full conformity with the requirements of the *Alajos Kiss* decision.

6.3 In light of the prevailing legislative environment, the State party considers the information provided by the Harvard Law School Project on Disability, in paragraph 26 of their submission, on the estimation of a considerable amount of individuals excluded from the suffrage based on their disability, to be irrelevant. The estimation is in fact an assumption based on the previous regulation, which automatically excluded all persons under guardianship. As such, the data merely shows the number of people under guardianship. However, one cannot establish a direct causality, as the courts will need to make individual decisions regarding the potential exclusion of such persons from suffrage, as prescribed by the new regulation.

6.4 Consequently, the State party maintains its previous position, expressed in its observations on the merits of the communication, and appeals to the Committee to dismiss the authors' request for legal amendment and non-pecuniary compensation.

The authors' comments on the State party's observations

7.1 On 13 August 2012, the authors provided their comments on the State party's observations. They submit that the State party did not contest the fact that their right to vote under article 29 of the Convention was violated because they were removed from the list of voters in the 2010 parliamentary elections. The State party's arguments refer to the

¹² The interveners observe that some States, such as the Netherlands, Sweden, the United Kingdom, Italy, several provinces of Canada and some states of the United States already opted for permitting no restrictions to the right to vote on the basis of disability.

legislative steps that have been taken since then to comply with article 29 of the Convention. According to the authors, the State party has not offered any justification or explanation as to why the authors of the present communication were prevented from participating in the 2010 elections. The mentioned legislative steps have no effect on the harm already suffered in 2010. The authors add that they received no redress, no recognition of the violation of their rights or any other moral satisfaction or compensation. The steps relied upon by the State party could only ensure that their right to vote is not violated in the next parliamentary elections in 2014.

7.2 Secondly, the authors reject the State party's contention that since the submission of the authors' communication, it has taken the necessary legislative steps to address the violation complained about. The authors stress that on 1 January 2012, Hungary's new Fundamental Law came into force, which replaced the previous Constitution of Hungary. According to Article XXIII, Paragraph (6) of the Fundamental Law, the court can limit the right to vote of persons who do not have the necessary capacity to vote. To enforce this provision, the Civil Code, the Code of Civil Procedure and the Act on Elections Procedure were also amended. As a result of these changes, the courts can decide separately on the disenfranchisement of a person under guardianship in proceedings concerning the restriction or restoration of legal capacity. While the laws in force in 2010 automatically excluded all persons under guardianship from the electoral register, courts will now decide on the right to vote independently from placement under guardianship, based on an individualized assessment. Despite these changes, the authors stress that courts can decide on disenfranchisement only in guardianship proceedings, and there is no separate proceeding to limit the right to vote. All persons under guardianship are persons with disabilities. Their disenfranchisement is specifically based upon their intellectual disability, and is therefore discriminatory.

7.3 The authors add that a vote is a subjective choice, linked to personal preferences, and that persons with disabilities are therefore not the only group experiencing difficulty in exercising their suffrage, but are nevertheless singled out by the State party for disenfranchisement. They add that the State party has other means at its disposal to increase the voting competence of citizens, such as improving civic education standards, raising awareness about the electoral process, and providing specific assistance to vulnerable groups, as required by article 29 of the Convention.

7.4 The authors reiterate that the State party's system, which is based on individual assessment, and only targets persons with disabilities, cannot be in compliance with article 29 of the Convention, which does not envisage any exception to the universal right to vote. The enforcement of the disenfranchisement system also raises issues, as according to Transitional Provisions to the Fundamental Law, all persons currently under guardianship will continue to be disenfranchised until their right to vote is restored. This applies to the authors, who remain disenfranchised. As there has been no re-assessment of voting rights announced, or launched by the State party, only persons individually submitting court applications to restore their right to vote will be assessed by courts. Also, no legal, financial or other assistance is contemplated under these proceedings, thereby placing persons under guardianship in an unfair and disadvantageous position, compared to persons without disabilities. The authors contend that instead, the State Party should have declared that all persons currently disenfranchised would regain their right to vote, unless revoked by a court decision.

7.5 Referring to the State party's assertion that courts would rely on expert opinions by forensic psychiatrists for disenfranchisement, the authors submit that such psychiatrists are trained to diagnose and to treat mental illnesses, but not to administer Intellectual Quotient tests, to evaluate social skills, or otherwise assess individual abilities of persons with intellectual disabilities. The authors further stress that there is currently no psychiatric

protocol in the State party to assess the “voting capacity”. As a consequence, the psychiatric assessment contemplated by the State party can only be arbitrary, replicating the practice of guardianship proceedings, where the existence of a disability itself is the only determinant of the psychiatric assessment, and thus of the court decision.

7.6 Further referring to the State party's contention, that the Hungarian legal system is in compliance with the European Court of Human Rights' decision *Alajos Kiss v. Hungary*, the authors recall that the European Court's standards are different from the Committee's, and that the State Party's compliance with the European Convention on Human Rights is thus not decisive for the Committee. The authors add that in the *Alajos Kiss* decision, the European Court did not hold that an individual assessment, such as the one currently in force in the State party, complies with the European Convention, but rather held that a system based on automatic exclusion, without an individual assessment, would not be compliant with the Convention, leaving open the question whether the system of individual assessment currently in place would be acceptable.

7.7 Finally, the authors conclude by saying that the State party failed to submit arguments which would justify the disenfranchisement of persons with disabilities, or demonstrate that such system is in compliance with the Convention. The authors therefore renew their call for the Committee (i) to hold that the State party's current system of individual assessment is in violation of Article 29 of the Convention; (ii) to request the State party to amend its legislation, so as to ban disenfranchisement on the basis of disability, be it automatic or based on an individual assessment of voting capacity; (iii) to acknowledge the violation suffered by the authors, and to provide them with compensation for the non-pecuniary damage suffered.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claims contained in a communication, the Committee on the Rights of Persons with Disabilities must, in accordance with article 2 of the Optional Protocol and rule 65 of the Committee's rules of procedure, decide whether or not it is admissible under the Optional Protocol.

8.2 The Committee notes that the State party does not challenge the admissibility of the present communication. However, it is appropriate for the Committee to examine the admissibility of the present communication. The Committee has ascertained, as required under article 2(c) of the Optional Protocol, that the same matter has not already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. The Committee notes further that no objection has been raised by the State party in connection with the exhaustion of domestic remedies, nor has the State party identified any specific remedy which would have been available to the authors. The Committee thus considers that the requirements of article 2(d) of the Optional Protocol have been met. Accordingly, the Committee considers that it is not precluded by article 2 of the Optional Protocol from examining the communication.

8.3 The Committee considers that the authors have sufficiently substantiated, for purposes of admissibility, their claims under articles 12 and 29 of the Convention. In the absence of other impediments to the admissibility of the communication, the Committee declares these claims admissible and proceeds to their examination on the merits.

Consideration of the merits

9.1 The Committee on the Rights of Persons with Disabilities has considered this communication in the light of all the information received, in accordance with article 5, of the Optional Protocol and rule 73, paragraph 1, of the Committee's rules of procedure.

9.2 The Committee notes the authors' claim that the automatic deletion of their names from the electoral registers, by operation of article 70(5) of the Constitution, in force at the time of submission of their communication, breached article 29, read alone and in conjunction with article 12 of the Convention. The authors claimed, more specifically, that their automatic disenfranchisement regardless of the nature of their disability and their individual abilities was discriminatory and unjustified. The Committee also takes note of the State party's arguments, whereby since the adoption of the Fundamental Law, pursuant to which article 70(5) of the Constitution was repealed, and the adoption of the article 26, paragraph 2 of the Transitional Provisions to the Fundamental Law, which provides for an individualized assessment of a person's right to vote, based on his/her legal capacity, its laws are now in conformity with article 29 of the Convention.

9.3 The Committee observes that the State party has merely described, in abstracto, the new legislation applicable to persons under guardianship, stating that it has brought it in conformity with article 29 of the Convention, without showing how this regime specifically affects the authors, and the extent to which it respects their rights under article 29 of the Convention. The State party has not responded to the authors' contention that they were prevented from voting in the 2010 parliamentary elections, and remain disenfranchised pursuant to their placement under guardianship, despite the legislative changes introduced.

9.4 The Committee recalls that article 29 of the Convention requires States parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived, or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention. The Committee refers to its Concluding Observations on Tunisia,¹³ in which it recommended that the State party adopt urgent legislative measures to ensure that persons with disabilities, *including persons who are currently under guardianship or trusteeship*, can exercise their right to vote and participate in public life, on an equal basis with others [emphasis added]. The Committee further refers to its Concluding Observations on Spain,¹⁴ in which it expressed similar concern over the fact that the right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity, or has been placed in an institution. The Committee considers that the same principles apply to the present case. Accordingly, the Committee concludes that article XXIII, paragraph 6 of the Fundamental Law, which allows courts to deprive persons with intellectual disability of their right to vote and to be elected, is in breach of article 29 of the Convention, as is article 26, paragraph 2 of the Transitional Provisions to the Fundamental Law.

9.5 The Committee further recalls that under article 12, paragraph 2 of the Convention, States parties must recognize, and uphold the legal capacity of persons with disabilities "on an equal basis with others in all aspects of their lives", including political life, which

¹³ CRPD/C/TUN/CO/1 (13 May 2011), para. 35.

¹⁴ CRPD/C/ESP/CO/1 (19 October 2011), para. 48.

encompasses the right to vote. Under article 12, paragraph 3 of the Convention, States parties further have a positive duty to take the necessary measures to guarantee to persons with disabilities the actual exercise of their legal capacity. Accordingly, the Committee is of the view that by depriving the authors of their right to vote, based on a perceived or actual intellectual disability, the State party has failed to comply with its obligations under article 29 of the Convention, read alone and in conjunction with article 12 of the Convention, in their regard.

9.6 Having found the assessment of individuals' capacity to be discriminatory in nature, the Committee holds that this measure cannot be purported to be legitimate. Nor is it proportional to the objective to preserve the integrity of the State party's political system. The Committee recalls that, under article 29 of the Convention, the State party is required to adapt its voting procedures, by ensuring that they are "appropriate, accessible, and easy to understand and use", and allowing, where necessary, assistance in voting upon request of the person with disability. It is by so doing that the State party will ensure that persons with intellectual disability cast a competent vote, on an equal basis with others, while guaranteeing the secrecy of the vote.

9.7 The Committee finds accordingly that the State party has failed to comply with its obligations under article 29, read alone and in conjunction with article 12 of the Convention.

10. The Committee on the Rights of Persons with Disabilities, acting under article 5 of the Optional Protocol to the Convention, is of the view that the State party has failed to fulfil its obligations under article 29, read alone and in conjunction with article 12 of the Convention. The Committee therefore makes the following recommendations to the State party:

1. Concerning the authors: the State party is under an obligation to remedy the deletion of the authors' names from the electoral registers, including by providing them with adequate compensation for moral damages incurred as a result of being deprived for their right to vote for the 2010 parliamentary elections, as well as for the legal costs incurred in filing this communication;

2. General: the State party is under an obligation to take measures to prevent similar violations in the future, including by:

- (a) Consider repealing article XXIII, paragraph 6 of the Fundamental Law, and article 26, paragraph 2 of the Transitional Provisions to the Fundamental Law (31 December 2011) because these laws are contrary to articles 12 and 29 of the Convention;

- (b) Enacting laws that recognize, without any "capacity assessment" the right to vote for all persons with disabilities, including those with more need of support, and provide for adequate assistance and reasonable accommodation in order for them to be able to exercise their political rights.

- (c) Upholding, and guaranteeing in practice the right to vote to persons with disabilities, on an equal basis with others, as required by article 29 of the Convention, by ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use, and where necessary, at their request, allowing assistance in voting by a person of their choice.

11. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party shall submit to the Committee, within six months, a written response, including any information on any action taken in the light of the Views and recommendations of the Committee. The State party is also requested to publish the Committee's Views, to have them translated into the official language of the State party,

and circulate them widely, in accessible formats, in order to reach all sectors of the population.

[Adopted in Arabic, English, French and Spanish, the English text being the original version. Subsequently to be issued also in Chinese and Russian as part of the Committee's biannual report to the General Assembly.]
