

RESPONSE

of the Government of Hungary

concerning the inquiry of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

related to the seventh amendment of to the Fundamental Law of Hungary

In response to the letter dated 20 June 2018 of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, (hereinafter: the Special Rapporteur) related to the proposed seventh amendment of to the Fundamental Law of Hungary, the Government of Hungary hereby submits the following observations (hereinafter: Observations) as regards the information contained in the inquiry.

The Government of Hungary requests the Honourable Special Rapporteur to duly consider the Government's position outlined in the present submission in the course of preparation of the forthcoming report to be presented to the Human Rights Council for its consideration.

I.

General Remarks

At the outset, attention must be drawn to the fact that the State ensures the preservation of human dignity as well as conditions required to preserve human dignity by various means.

According to the 42/2000 (IX.8.) AB decision of the Constitutional Court of Hungary, one aspect of the above mentioned obligation of the State is that the State shall establish, maintain and operate a social security system and social security institutions in order to ensure a minimum level of benefits that is required to secure a minimum livelihood. As it is highlighted in the decision of the Constitutional Court, one of the fundamental constitutional criteria for establishing national social security system and institutions is the protection of human life and dignity.

In order to protect the right to human life and dignity the State shall secure the basic preconditions of human existence. Accordingly, in case of homelessness, the State shall be obliged to provide support and shelter for those in need in situations where human life is directly threatened. The obligation of providing shelter does not correspond to guaranteeing the "right to have a place of residence". Thus, the State shall only be responsible for securing a shelter if homelessness directly threatens human life. Therefore, only in case of such an extreme situation is the State obliged to take care of those who themselves cannot provide for the fundamental preconditions of human life.

As held by the Constitutional Court,

"the legislature enjoys relatively great liberty in determining the methods and degrees by which it enforces constitutionally-mandated State goals and social rights. A violation of the Constitution may arise only in borderline cases when the enforcement of a State goal or the

realisation of a protected institution or right are clearly rendered impossible by either interference by the State or, more frequently, by its omission. Apart from this minimum requirement, there are no constitutional criteria – except for the violation of another fundamental right – to determine whether or not legislation serving a State goal or a social right is constitutional.”

In light of the above, the modification of Article XXII of the Fundamental Law of Hungary does not change the concept that Hungary shall strive to ensure decent housing conditions and access to public services for everyone.

The Fourth Amendment of the Fundamental Law extended the scope of Article XXII by stating that in order to ensure decent living conditions, the State and municipal governments shall strive to ensure accommodation for homeless people.

II.

Specific Information

The Seventh Amendment of the Fundamental Law has introduced the following:

“The State and local governments shall also contribute to creating decent housing conditions and to safeguarding the use of public spaces for public purposes by striving to ensure accommodation for all persons without a dwelling.”

This paragraph clarifies that besides ensuring the conditions for adequate housing, the State does not support the improper use of public spaces, such as the use of public spaces for habitual residence. According to the reasoning of the Seventh Amendment, using public spaces as habitual residence infringes the proper use of public spaces. Public spaces according to their functions¹ serve public purposes, while the use of public spaces for habitual residence does not constitute a public purpose. The protection of public spaces guarantees that everyone shall enjoy the use of public spaces according to their function with no interruption in exercising ones fundamental rights (e.g.: right to peaceful assembly). In order to express this legislative aim paragraph (3) of Article XXII of the Seventh Amendment introduced the prohibition of using public spaces for habitual residence. Considering that currently the number of available shelter beds is sufficient to provide accommodation to those in need, a prohibition of habitual residence in public spaces could be realistically adopted. A ban on sleeping rough is not without precedent in Europe. Several other EU member states have already passed certain regulations on the issue. Such behaviour, for example, is sanctioned on a constitutional level in Cyprus and Malta. Furthermore, there are many other countries (Austria, Belgium, Estonia etc.) where the question appears indirectly in the constitution.

The Seventh Amendment will be entering into force as of 15 October 2018.

While Hungary highly appreciates and commends the work of the UN and particularly of Special Rapporteur Leilani Farha, we consider that some of the allegations made by the Special Rapporteur in her communication are not well-founded, and based on the

¹ Article 54 (4) of Act LXXVIII of 1997 on the Formation and Protection of the Built Environment

misunderstanding of the Hungarian law. Hungary has always been open for discussion with the special procedures of the Human Rights Council and with our comments below, we try to shed light on some of the inaccurate allegations of the Special Rapporteur.

The official explanation to the Seventh Amendment of the Fundamental Law declares that Hungary ensures the protection of human dignity with several measures. It has to be emphasised that the Hungarian Government considers that its primary obligation is the protection of life, physical integrity, health and human dignity of persons living without a dwelling.

We consider that the Hungarian law is in compliance with the State's obligations under the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR) and International Covenant on Civil and Political Rights (hereinafter: ICCPR).

In regard with Article 11.1 of the ICESCR we would like to underline that Article XXII of the Fundamental Law ensures that “[...] Hungary shall endeavour to ensure appropriate and decent housing conditions and access to public services for everyone.” In this context, we would also like to draw the Special Rapporteur's attention to Article XV of the Fundamental Law which stipulates that

“(1) Everyone shall be equal before the law. Every person shall have legal capacity.

(2) Hungary shall guarantee the fundamental rights to everyone without discrimination based on any ground such as race, colour, sex, disability, language, religion, political or any other opinion, ethnic or social origin, wealth, birth or any other circumstance whatsoever.

(3) Women and men shall have equal rights.

(4) Hungary shall promote equal opportunities and social convergence by means of introducing special measures.

(5) Hungary shall introduce specific measures to protect families, children, women, the elderly and the disabled.”

III.

Concluding Observations

The debated legal norms do not contain any discriminative regulations when penalize a behavior against the public order and public health. These rules are regulated by law and contain restrictions only for legitimate purposes in a necessary and proportionate way.

The elements of the legal regulations are not against the findings of the UN Committee on Economic, Social and Cultural Rights. A significant number of individuals are not deprived of the fundamental rights, namely basic shelter and housing. The aims are to make sure that homeless people do not stay in unsatisfactory circumstances.

The legal regulations are not contrary to Article 9 of ICCPR, either. If the authorities penalize one's behaviour, no arbitrary arrest and detention can be applied.

The legal norms are also in harmony with Article 12 of ICCPR, because the right to free movement is not restricted at all. Restrictions on freedom of residence are within the framework of the Article 12 (3) of ICCPR.

Furthermore, it is important to note that the principal purposes of the legal regulations are in accordance with Agenda 2030 for Sustainable Development when they try to eliminate homelessness.

IV.

Additional Remarks

Hungary also wishes to draw the attention to the fact that the Government established the Human Rights Working Group in its decision adopted in February 2012 by Government Resolution 1039/2012 (II.22) with the main purpose of monitoring the implementation of human rights in Hungary, conducting consultations with civil society organisations, representative associations and other professional and constitutional bodies as well as of promoting professional communication on the implementation of human rights in Hungary.

The Working Group also monitors the implementation of the fully or partially accepted recommendations in relation to Hungary of the United Nations Human Rights Council Universal Periodic Review (UPR) Working Group. It makes recommendations to the Government and the other central administration bodies involved in legislation and application of the law to provide regulations that allow for a wider representation of human rights and oversees the implementation of these regulations.

During its constitutive meeting held in 2012, the Working Group decided to establish the Human Rights Roundtable, which currently operates with 68 civil organisation members and further 49 organisations take part in the activities of the thematic working groups based on invitation. The Human Rights Roundtable holds its meetings in 11 thematic working groups; one is responsible for homeless affairs. The Roundtable is the forum for dialogue between civil society and the government.

The chair of Thematic Working Group Responsible for Homeless Affairs (hereinafter: Thematic Working Group) is the State Secretary Responsible for Social Issues and Social Inclusion. Members of the Thematic Working Group are the following organisations:

- Baptista Szeretetszolgálat - Utcafront Menedék Hajléktalan Személyek és Szenvedélybetegek Integrált Intézménye
- ÉFOÉSZ Komárom-Esztergom Megyei Értelmi Sérültek és Segítőik Egyesülete
- Hajléktalanokért Közalapítvány
- Magyar Vöröskereszt
- Századvég Politikai Iskola Alapítvány
- Oxyológia – Sürgősségi Orvostan, Toxikológia, Honvéd és Katasztrófa Orvostan Tagozat.

The above-mentioned organisations represent the religious community, the social and medical sectors, as well. Thus, human rights issues related to homelessness can be discussed from several professional aspects and comprehensive measures can be taken after the meetings.

According to its rules of procedure, the Thematic Working Group holds two meetings annually. The Thematic Working Group is responsible for:

- a) monitoring the enforcement of fundamental human rights of persons without a dwelling in Hungary;
- b) disclosing and identifying any dysfunction that impedes the enforcement of rights;

- c) making proposals for the more effective application of the means of legal protection;
- d) holding consultations with civil organisations and professional bodies representing the interests of homeless people.

Since 2013, the Thematic Working Group has held 8 meetings and more than 15 agenda items have been discussed.

The system of homeless care covers persons who are distrustful of the social care system, habitually residing in public spaces, or in other places not suitable for the purpose of habitation for humans, and for those using the care system on a regular or occasional basis. Street social work services have an invaluable role in attending homeless people not trusting the care system. In the framework of their programme, these social workers contact clients in order to strengthen their trust in the care system, whilst they provide life protection services for those in need. Such service provisions are supported by the so-called dispatcher services, and – during special periods, such as crisis or „red code” – by the special street care services that are designed to complement street social work services, as well as by the crisis car service for homeless people. Besides operating the dispatcher service, the latter’s task is to assess the changes in the client’s state which might endanger the life of the individual, and to perform adequate supportive interventions that serve the protection of life.

Users of the institutional care system have the opportunity to avail of the forms of basic care, such as night shelter and daytime warming room, where they have the access to sanitation to maintain their personal hygiene, to wash their clothes, and to consume their food in more sophisticated circumstances, as well as to get support in managing their official matters. The services mentioned above are free of charge.

The next level of care consists of the so-called temporary homes. These homes offer an alternative for accommodation for homeless persons capable of continuing a self-sufficient life by utilizing other services of social work. In order to strengthen their opportunities to continue an independent life, temporary homes provide their clients with assistance given in the form of social work. On this basis, as from 2017 there is a possibility to establish so-called „external beds” (apartments) within the framework of temporary homes.

The care system has further alternatives for clients in need of residential care, too. The services of the so-called rehabilitation institutes are available for homeless persons whose psychological and/or social impairments are still reversible, who are of an active age, and who are willing to participate in the rehabilitation programmes of the institute on a voluntary basis. Additionally, nursing and care homes provide the elderly of irreversible state of health with full board.

Rehabilitation institutes for the homeless and nursing and care homes are subject to payment.

Further measures include:

Calls for proposal:

Calls for proposal, announced every year by the Ministry of Human Capacities, give applicant institutes that are ready to extend their scope of services, an opportunity to include the services of psychotherapists, addictologists, or mental health professionals into their field of activity.

Red Code (2018):

Regulated by Paragraph 65/E of Act III of 1993 on Social Administration and Social Welfare Services the so-called „Red Code” measure has been introduced in 2018. With the purpose of protecting lives, during „red code” period all social service providers – irrespectively of the scope, capacity and territory of their registered service – in cooperation with street social work services and regional dispatcher services are open to homeless people. Due to the rules of „Red Code”, amid the most difficult conditions – such as extreme cold or heat, heavy rainfall, extreme weather conditions – these institutions must be prepared to receive people living on the streets. Sheltering of homeless people in times of Red Code, measures are primarily performed by the homeless care system. Nevertheless, in case of lack of capacities, other residential institutions of the care system also have to take part in the reception of the homeless.

Human Resources Development Operational Programme – Housing first (EFOP-1.1.4-16):

The implementation of the programme Human Resources Development Operational Programme – Housing first (EFOP-1.1.4-16) has been launched in the framework of the Human Resources Development Operational Programme, building on the experience gained in Hungary so far. The aim of the programme is to enhance the opportunities of homeless people to gain access to housing on their own, with a multidisciplinary team supporting their rehabilitation. Primary goal of the project is to help the target group in finding the way out of their crisis situation.

Social Care Rights Advocate:

In order to give effect to the rights of children, patients and clients – as citizens’ rights, and in an integrated way –, under the name of Integrated Service of Legal Protection, an independent administrative unit has been set up within the Ministry of Human Capacities which is responsible for social affairs, health-care, pension policy, child and youth protection. Clients of the institutions of homeless care have the possibility to contact the social care rights advocate initiating the investigation of the actual or suspected breaches of their rights or for the purpose of enforcing their rights to treatment. The task of the social care rights advocate is to fully secure client’s rights.

Project Funded Judicial Assistance:

In the course of the last three years the Ministry of Human Capacities granted financial resources for the legal protection of homeless people in the framework of Project Funded Judicial Assistance. Ultimate goal of the service that may be granted by means of applications is to enhance legal awareness and legal protection of clients. Consequently, the service has been made available and is free of charge for the beneficiaries.

Operational Programme for Supporting Socially Disadvantaged Persons (Rászoruló Személyeket Támogató Operatív Program: RSZTOP) - RSZTOP-3.1.1-16-2016-00001 – Benefits in kind for people living in public spaces:

As part of the project “Operational Programme for Supporting Socially Disadvantaged Persons (Rászoruló Személyeket Támogató Operatív Program: RSZTOP) - RSZTOP-3.1.1-16-2016-00001 – Benefits in kind for people living in public spaces”, apart from the services of Social Canteen and Soup-Kitchen, from January 2017 until the end of 2020, the RSZTOP Programme allocates financial resources in order to provide hot meal at least once a weekday

for people who are habitually residing on the streets. Accompanying measures will also be implemented in 2018 and 2019. The target group of these measures will be amongst homeless persons struggling with psychiatric diseases, addictions and mental disorders. In the course of the implementation of the measures described above, psychiatrists and addictologists will provide members of the target group with tailored services.

Family and Child Welfare Centres – Legal Assistance:

Family and Child Welfare Centres, operated by municipalities of the settlements serving as county centers provide the population of the whole county with services as a core task, encompassing special services, too. One of these special services is the so-called legal assistance, which is available and free of charge for all residents. Legal assistance grants beneficiaries legal information in all legal subjects, including the description of relating regulations and other legal services, such as the compilation of legal documents, applications, with the exception of legal representation.

Should the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context has further questions related to the above information, the Government of Hungary remains at her disposal.

Budapest, '...' August 2018