



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 44/2017*^{*} **

<i>Communication submitted by:</i>	Magdolna Rékasi (represented by counsel, Hüttl Tivadar)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Hungary
<i>Date of communication:</i>	27 July 2017 (initial submission)
<i>Date of adoption of Views:</i>	6 September 2021
<i>Document references:</i>	Decision taken pursuant to rule 70 of the Committee's rules of procedure, transmitted to the State party on 14 November 2017 (not issued in document form)
<i>Subject matter:</i>	Exercise of legal capacity in financial matters
<i>Procedural issues:</i>	Exhaustion of domestic remedies; insufficient substantiation
<i>Substantive issue:</i>	Exercise of legal capacity
<i>Articles of the Convention:</i>	3 and 12 (3), (4) and (5)
<i>Article of the Optional Protocol:</i>	2 (d) and (e)

1. The author of the communication is Magdolna Rékasi, a national of Hungary born on 20 December 1970. She claims to be a victim of a violation by the State party of her rights under articles 3 and 12 (3), (4) and (5) of the Convention. The Optional Protocol to the Convention entered into force for the State party on 3 May 2008. The author is represented by counsel.

* Adopted by the Committee at its twenty-fifth session (16 August–14 September 2021).

** The following members of the Committee participated in the examination of the communication: Rosa Idalia Aldana Salguero, Danlami Umaru Basharu, Gerel Dondovdorj, Gertrude Oforiwa Fefoame, Vivian Fernández de Torrijos, Odelia Fitoussi, Mara Cristina Gabrilli, Amalia Eva Gamio Ríos, Samuel Njuguna Kabue, Rosemary Kayess, Kim Mi Yeon, Sir Robert Martin, Floyd Morris, Jonas Ruskus, Markus Schefer, Saowalak Thongkuay and Risnawati Utami.



A. Summary of the information and arguments submitted by the parties

Facts as submitted by the author

2.1 The author submits that she has a minor psychosocial disability. On 29 January 2009, the author was first placed under guardianship, in accordance with section 15 (1) of the Civil Code (Act IV) of 1959, by the Municipal Court of Jászberény, after having been diagnosed with schizophrenia. According to the latest psychiatric expert opinion, which is mandatory in the court procedures on guardianship, she has symptoms of delusional disorientation.

2.2 In 2013, the author initiated a process for a review of the guardianship.¹ In a final judgement dated 16 June 2014, the Central District Court of Pest found that owing to her mental state, the author had been unable to conduct her affairs and therefore had to be placed under “general guardianship” in accordance with section 14 (4) of the Civil Code of 1959. In 2015, the author initiated another judicial review of her case. On 17 February 2016, the Central District Court of Pest limited the guardianship to matters related to her health care, in accordance with section 2:19 (2) of the Civil Code (Act V) of 2013.

2.3 The author explains that until 2016, she did not have the legal capacity to exercise her rights over her financial assets, as the guardianship fully limited her legal capacity. As a result of the review process, the author regained her legal capacity in relation to her financial matters. On 20 June 2016, the guardian handed over the final account of the management of the author’s financial matters. The account showed that, on 22 March 2012, the guardian had entered into a contract for life insurance on behalf of the author. The guardianship authority of the city of Újszász had approved the payment of the insurance fee nine days after the conclusion of the contract. The author explains that, as demonstrated by the approval document, she was not informed about the insurance contract, and she did not have the opportunity to express her opinion or personal preference about it as the guardian never sought her opinion. She never received a copy of the contract, a copy of the petition submitted by the guardian or a copy of the approval of the guardianship authority.

2.4 The insurance fee amounted to approximately \$1,500. The only goal of the insurance was to cover the cost and expenses of the author’s funeral in the event of her death. The sole beneficiary was a company providing burial services. While the author is entitled to repurchase the insurance under the contract, she cannot recover the full amount; this represents a significant loss for the author, who only receives a monthly pension of \$203.

2.5 The author claims that she did not have access to an effective domestic remedy, as she was informed about the insurance contract only at a later stage. Had she been informed earlier, she could have complained to the guardianship authority. Once the author became aware of the existence of the contract, she submitted a written complaint to the guardianship authority. However, she did not receive a reply. She notes that had the guardianship authority responded to her complaint, it could not have altered the life insurance contract. Although the author has regained her full legal capacity in financial matters, this does not change the fact that the contract is valid and enforceable.

2.6 The author notes, without providing a specific date, that her father submitted a complaint to the Commissioner for Fundamental Rights, raising, among other issues, the conclusion of the life insurance contract. The Commissioner was informed by the guardianship authority that the purchase of life insurance was in line with a standard procedure followed by guardians on behalf of their clients. The author notes that the name of the insurance company is automatically included in section 3 of the form used for accounts of the management of financial matters by guardians, which proves that such insurance policies are purchased without an evaluation of the specific interests of the person with disabilities. The Commissioner did not find any violation of the author’s fundamental rights. The author explains that, in any case, the Commissioner could have only issued recommendations to the guardianship authority that were non-binding.

¹ For a detailed account of the domestic proceedings, see paragraphs 4.4–4.6 below.

Complaint

3.1 The author claims that the State party has failed to adopt measures that include appropriate and effective safeguards for the exercise of her legal capacity in financial matters, in violation of her rights under articles 3 and 12 (4) and (5) of the Convention. At the time of the conclusion of the life insurance contract, the author was 42 years old and in good health. The goal of the life insurance, which was to provide coverage for her funeral costs in the event of her death, was an unnecessary financial decision made by her guardian and the guardianship authority without consultation with the author. As a result, she had been deprived of any decision-making capacity in her financial affairs. The decision considerably affected her financial situation. She cannot repurchase the contract without suffering a significant financial loss. The contractual structure has clearly not served her best interests, will or preferences.

3.2 The author claims that, in accordance with article 12 (3) of the Convention, States parties have an obligation to provide persons with disabilities with support in their exercise of their legal capacity. States parties must refrain from denying persons with disabilities their legal capacity and must, rather, provide them with access to the necessary support to enable them to make decisions that have legal effect. Support in the exercise of legal capacity must respect the rights, will and preferences of persons with disabilities and should never amount to substitute decision-making.

State party's observations on admissibility

4.1 On 15 January 2018, the State party submitted its observations on the admissibility of the communication. It submits that the communication is inadmissible for failure to exhaust domestic remedies. The State party notes that, under domestic legislation, the author could have pursued any claims that she had against her former guardian in a civil suit, provided she had submitted such a claim within the one-year statute of limitation period.

4.2 The State party explains that, in its judgment of 17 February 2016 allowing the author to manage her assets on her own, the Central District Court of Pest ordered that all of the assets under the management of the guardian be transferred to the author. In the judgment, the Court informed the guardian whose appointment had ended about the rules applying to final accounting. It also informed the author that she could pursue in court any claim she might have against the professional guardian. Furthermore, the Court pointed out that the statute of limitations for such claims was one year, unless the party affected became aware of the reasons underlying his or her claim only at a later point in time. In such cases, the deadline must be counted from that later date, provided that the period of time during which the claim remains enforceable has not lapsed under the statute of limitations. If the life insurance contract was validly concluded, it may be terminated subject to the same conditions that would have been applicable had the author had legal capacity at the time of the conclusion. It is within the powers of a Hungarian court to assess whether the contract was validly concluded. It is also within the powers of a competent court to review whether the guardianship authority acted properly when it authorized the guardian to conclude the life insurance contract.

4.3 The State party submits that the former guardian transmitted her final accounting report to the author on 20 June 2016, and to the guardianship authority on 27 June 2016. According to a statement the former guardian made on 13 December 2017, the author did not file any court action on accounting matters, as provided for by law, therefore she failed to exhaust domestic remedies that were effective and available not only in theory but also in practice. The author only submitted a complaint to the Commissioner for Fundamental Rights for legal protection. However, that legal institution does not comply with the requirements of an effective domestic legal remedy because it cannot adopt legally binding decisions.

4.4 By a decision dated 29 January 2009, which became legally binding on 7 March 2009, the Municipal Court of Jászberény had placed the author under guardianship, fully restricting her capacity to act, and had simultaneously provided that the latest date for mandatory review of her placement under guardianship would be three years from the date on which when the judgment became binding. The court based its decision on the expert opinion of the forensic psychiatrist, who had stated that the paranoid schizophrenia that the author had been living

with for several years had resulted in the severe destruction of her personality, as she was unable to exercise critical judgment. Her emotional expressions were incongruent, she was disengaged from the problems of daily life, and she was unfit for independent living.

4.5 In January 2012, before the deadline for the mandatory review of her placement under guardianship, the author requested that her guardianship be terminated. Following court proceedings, in a decision dated 31 May 2013 the Central District Court of Pest terminated the guardianship that had fully restricted her capacity to act and ordered another kind of guardianship, which restricted her capacity to act with a general scope, given that her capacity of understanding necessary for managing her affairs had decreased persistently and severely. According to the expert opinion of the forensic psychiatrist, the author continued to suffer from paranoid schizophrenia disorder. No acute pathological content could be identified in her cognition, but the distorting characteristics of her underlying disorder could be observed in her personality. Her disease resulted in severe impairment of her critical judgment functions. She could not meaningfully mobilize her practical skills, and formulated unrealistic plans for the future. She could not live an independent life; the capacity of understanding necessary for managing her daily affairs had been impaired persistently and substantially. The date for the next review of her placement under capacity-restricting guardianship was set for five years from the date of the Court's decision.

4.6 In 2015, the author initiated the termination of her placement under guardianship. In its decision of 17 February 2016, which became legally binding on 22 March 2016, the Central District Court of Pest revised the author's placement under guardianship restricting her capacity to act with a general scope, and limited the scope of restriction to matters related to the exercise of rights concerning health care. In all other matters she regained her full capacity. The court stipulated that the next review of her placement under guardianship was to be held in two years. According to the expert opinion of the forensic psychiatrist assigned to the case, the author suffered from a psychiatric disorder characterized by pathological references and pathological thoughts – that is, delusional disorder. However, her critical thinking and judgment skills were preserved, she had not been characterized by acute psychiatric symptoms for some time, and her capacity to consent, necessary for managing her daily affairs, could be observed to have been persistently and severely impaired only in a very narrow area, namely, in health care.

4.7 The State party states that the guardianship contributed to the improvement in the author's condition. Due to a lack of care from her relatives, owing to family relationships that had deteriorated or were full of conflict, her guardian arranged for her placement in a residential care institution. As a result of the adequate and professional care, the author, who previously had not been aware she had a disorder, was able to regain her capacity of understanding. The State party explains that under domestic legislation, only adults who, due to their psychological state or mental impairment, persistently and entirely lack the capacity of understanding necessary for managing their daily affairs can be placed under guardianship. It is mandatory to review such placements. The State party submits that this legislative safeguard has been fully applied to the author.

4.8 The State party explains that the Civil Code of 1959 provided for three options for the judicial restriction of capacity: guardianship fully restricting the capacity to act, guardianship restricting the capacity to act with a general scope, and guardianship restricting capacity to act in certain matters. The State party submits that, since the author was under the guardianship that fully restricted her capacity to act, her guardian was allowed to proceed with the conclusion of the life insurance contract on her behalf. It informs the Committee that the guardian was also required to obtain the approval of the guardianship authority for the conclusion of the contract, which she did. As the former Civil Code did, the current Civil Code provides that before making a decision, a guardian is to hear the wishes and requests of the person under guardianship if he or she is capable of expressing an opinion, and take them into account whenever possible. Another important safeguard is that the asset management by the guardian is to support the well-being of the person under guardianship. The guardian is to take into consideration the personal wishes of the person under guardianship and fulfil legitimate needs to the extent possible where the state of the assets permits.

4.9 The State party indicates that, when the author was under the guardianship fully restricting her capacity to act, the guardianship authority appointed a number of professional guardians for her, in succession. With each change in professional guardian, the authority also assessed whether the author herself could identify any person who could be appointed as her guardian, and whether any of her relatives were suitable for the position and would agree to act as her guardian. No relative agreed to act as a guardian, and the person identified by the author, her life partner, was deemed not suitable for the task, as determined through the process that was conducted. The author received a regular income as a result of the intervention of the guardian. Furthermore, she accumulated a significant sum in cash owing to the retroactive payment of benefits, which was placed in a deposit account of the guardianship authority with conditional access. In the management of the income, the guardian acted with due diligence. She always transferred the income of the author to the deposit account registered under the author's name, having deducted the costs related to her care and expected costs of living. The financial institution was authorized to perform transactions at the request of the guardian and with the consent of the guardianship authority.

4.10 The State party submits that, in a resolution dated 22 March 2012, which became legally binding that same day, the guardianship authority authorized the disbursement of approximately \$1,500 from the author to an insurance company for a one-time payment for life insurance that would cover the costs of a proper burial upon the death of the author.

4.11 The State party explains that, during the procedure, the condition of the author made it impossible for her guardian and the guardianship authority to obtain her opinion. If it had been possible to seek the opinion of the author, the guardianship authority would have been obligated to have taken it into account, in accordance with the rules of the procedure.

4.12 In 2014, the author filed a complaint with the Office of the Commissioner of Fundamental Rights concerning her life insurance. In a letter dated 18 September 2014, the Commissioner notified the social and guardianship office of the government office of Jász-Nagykún-Szolnok County that during the examination of the complaint he had found that the appointed professional guardian had maintained regular contact with the author under her care, and that she was personally available every Monday in the residential social institution where the author was staying. Owing to complicated family matters, the relatives of the author had not agreed to organize a proper burial for her in case of her death. In such cases, entering into a life insurance agreement in order to cover the funeral expenses of the person with disabilities was a well-established practice. Given that the family life of the author was full of conflict, and that her family situation had deteriorated and had resulted in physical abuse and police action, both the guardian and the guardianship authority had considered that such an insurance would serve the interests of the author. Consequently, the Commissioner for Fundamental Rights concluded that, based on the available documents, no violation of fundamental rights had occurred with regard to the action taken by the guardian. The Commissioner had thus terminated the proceedings.

4.13 The State party concludes that, in managing her assets, the assigned guardian fully took into account the interests of the author. Regardless of that conclusion, the author did not exhaust the remedies that were available to her and effective, thus her complaint should be rejected.

Author's comments on the State party's observations on admissibility

5.1 On 14 March 2018, the author submitted her comments on the State party's observations. The author does not dispute that under section 2:37 of the Civil Code of 2013 there is a procedure according to which a former guardian can be sued if the financial account submitted by the guardian is incorrect. The author submits that this is not an effective remedy in her case as that procedure is aimed at addressing irregularities or omissions in the submission of an account by the guardian or financial damage emerging from an unlawful act by the guardian.

5.2 She notes that in the present case she does not claim that the account was fraudulent, nor does she contest the lawfulness of the insurance contract. She argues that, as the insurance contract was lawful under contractual law, it would have been pointless to launch legal action against the guardian. She argues that the domestic remedy indicated by the State party is

ineffective, as it could not remedy the fact that she was not consulted in the decision-making process that took place in 2012, especially as she was not informed about the existence of the contract until 2016.

5.3 The author contests, as the central point of her complaint, the procedure under which the insurance contract was concluded, as her will and preferences were completely neglected, in violation of article 12 (4) of the Convention, and as a consequence she was unable to control, or at least have any say in handling, her financial affairs, in violation of article 12 (5) of the Convention. The procedure of the guardian and the guardianship authority were not in line with the approach set out in the Convention, in particular article 12 (3), according to which the State party is to provide access by persons with disabilities to support in exercising their legal capacity. Her involvement in the decision-making process should have been obligatory under article 12 of the Convention, and this duty arises even if her legal capacity is restricted under domestic law. The law under which her legal capacity was restricted is clearly contrary to article 12.

5.4 Regarding the State party's argument that the mere existence of guardianship made it impossible for her guardian and the guardianship authority to obtain her opinion and that the conclusion of the insurance contract was reasonable because the family life of the author was full of conflict, the author points out that the guardianship authority's approval of the conclusion of the insurance contract does not make reference to either of those claims. She also highlights that the State party does not contest the fact that the obligation to involve her was completely neglected. It should have been the duty of the authorities to take proactive steps to secure the author's involvement, and to ensure that she was informed and involved in the decision-making procedure.

5.5 The author refers to paragraph 17 of general comment No. 1 (2014), in which the Committee states that support to persons with disabilities in the exercise of their legal capacity might include measures relating to universal design and accessibility in order to enable persons with disabilities to perform the legal acts required to open a bank account, conclude contracts or conduct other social transactions. Such support was never provided to her.

5.6 The author also refers to the concluding observations on the initial periodic report of the State party, in which the Committee recommended that the State party effectively use the current review process of its Civil Code and related laws to take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respected the person's autonomy, will and preferences and was in full conformity with article 12 of the Convention, including with respect to the individual's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work and to choose a place of residence.² The author submits that these steps to move away from substitute decision-making towards supported decision-making have not yet been taken by the State party. In her case, her "self-determination" was completely substituted by the decision of her guardian and the supervisory authority.

5.7 Lastly, the author refers to the list of issues prior to the submission of the combined second and third periodic reports of the State party, where the Committee asked the State party to specify the steps taken to abolish all guardianship regimes and substituted decision-making and fully replace them with supported decision-making that was in line with the Convention and general comment No. 1, and to inform the Committee about ways in which the individual's choice, will and preferences were respected when providing that individual with support in decision-making.³

State party's observations on the merits

6.1 On 12 September 2018, the State party submitted its comments on the merits of the communication. It submits that it maintains its position as detailed in its previous observations.

² CRPD/C/HUN/CO/1, para. 26.

³ CRPD/C/HUN/QPR/2-3, para. 16.

6.2 The State party considers that the author has not challenged the adequacy of the relevant legal regulation in the State party but rather the lack of information provided to the author in this particular case. It thus also presented the Committee with a declaration by the guardian, dated 11 September 2018, to substantiate its position that the guardian had proceeded with reasonable diligence throughout her mandate. It requests the Committee to take into consideration that statement, in which the guardian submitted that every Monday afternoon she held office hours in the facility in which the author resided. During those office hours, the author never voluntarily visited her. The guardian visited the author several times. However, obtaining her opinion on financial matters had seemed impossible, as the author had “reacted repulsively towards her and refused to leave her bed”. The guardian indicated that she had regularly consulted and maintained close contact with the medical staff. She maintained that the need for the life insurance was adequately reasoned, as the relatives of the author had not agreed to organize a proper burial for her, that the author’s file contained reports of domestic violence that had ended in police measures, and that the author had admitted that her family situation had made her health condition worse. The guardian concluded that, at the time the life insurance contract was signed, the author was not able to express her opinion due to her condition, and that her family members had never requested any information about the author’s matters.

Author’s comments on the State party’s observations on the merits

7.1 On 8 May 2019, the author submitted her comments on the State party’s observations on the merits. She pointed out that the State party did not contest the admissibility of the complaint again.

7.2 The author reiterates that the State party has failed to take all appropriate and effective measures to ensure that her interests were taken into consideration with respect to her financial affairs, in violation of articles 3 and 12 (4) and (5) of the Convention.

7.3 The author contests the statement of the guardian. She denies that the guardian tried to seek her opinion for the signature of the insurance contract. This is confirmed by the fact that neither the guardian nor the guardianship authority gave her a copy of the insurance bond and contract before the termination of the guardianship. She also contests the claim that she was unable to express her opinion due to her condition. At the time of the conclusion of the life insurance contract, the author was 42 years old and was, and still is, in a good state of health. She states that the goal of the insurance – to provide coverage for her burial – was an irresponsible financial decision that was contrary to her interests. The author submits that it is common sense that those who might be regarded as requiring arrangements for their burial would be older persons without relatives or persons with serious or fatal physical conditions. In the author’s view, the State party has failed to show that the contract was a reasonable decision in the context of the individual circumstances of the author. The irrational and unnecessary nature of the serious financial burden undertaken by the guardian amounts to abuse of power, which the State party failed to prevent.

7.4 The author submits that, if one were to assume – but not concede – that she had not been able to express her opinion on serious financial decisions concerning the overwhelming majority of her savings, the guardian and the guardianship authority should have waited for her condition to improve. The State party has failed to provide satisfactory arguments to demonstrate that it took all appropriate and effective measures to ensure the author’s control over her financial matters.

State party’s additional observations

8.1 On 29 July 2019, the State party submitted additional observations. It reiterates that the author has not exhausted all domestic remedies. If the life insurance contract was validly concluded, it may be terminated subject to the conditions that would apply had the author had been of legal capacity upon its conclusion. The State party reiterates that it is within the powers of a competent court to review whether the guardianship authority acted properly when it authorized the guardian to conclude the life insurance contract.

8.2 The State party also reiterates that the guardian contributed to the improvement of the condition of the author, as she had placed her in a residential care institution with proper and professional care where she could regain her capacity of understanding.

8.3 The State party further reiterates that, during the procedure to conclude the life insurance contract, it was not possible for the guardian to obtain the author's opinion as she had been placed under a guardianship fully restricting her capacity to act.

8.4 The State party concludes that the complaint should be rejected for lack of exhaustion of domestic remedies, and that, in any case, the assigned guardian fully took into account the interests of the author when managing her assets.

Author's comments on the State party's additional observations

9.1 On 18 November 2019, the author submitted her comments on the State party's additional observations. She reiterates that domestic remedies were exhausted, as the procedure under section 2:37 (4) and (5) of the Civil Code mentioned by the State party is not an effective remedy, as it only involves claims arising from irregularities or omissions in the submission of accounts, which was not her case. There were no domestic remedies available to contest that her will and preferences had been completely neglected and that, as a consequence, she had been unable to control, or at least have any say in handling, her financial affairs.

9.2 Regarding the State party's argument that the life insurance to cover her burial service contributed to her improvement, the author contests that this claim is manifestly ill-founded. The author claims that a direct link between the recovery from her weakened mental status (psychiatric disorder) and the existence of a life insurance contract cannot be established. Besides the "general rationality", she submits that the impossibility of such a link is demonstrated by the fact that the author was not even aware of the contract until the final account by her guardian on her finances was submitted.

9.3 The author does not contest the State party's argument that the activity of the guardian generally contributed to the well-being of the author. However, she submits that her claim is not based on the overall evaluation of the guardianship, but on the lack of consultation with her on the life insurance contract. She reiterates that the money spent on the life insurance amounted to a significant part of her savings.

9.4 Regarding the State party's argument that she was not consulted due to her medical condition, the author claims that this is not supported by any medical report. The mere fact that she was placed under guardianship is not sufficient to support that claim. The author submits that her medical condition was satisfactory, owing to the treatment she had received. Her right to be consulted in major financial decisions should not depend on her medical well-being, as no such condition is stipulated in the Convention or in the Civil Code.

9.5 The author does not contest the State party's statement that the purchase of the life insurance was in line with a well-established, standard procedure followed by the guardianship authority to ensure coverage of funeral expenses for persons with disabilities. However, in her view, this does not mean that she should not have been consulted. She reiterates that she was only 42 years old at the time of the conclusion of the contract and that the guardianship was under judicial review in 2012. She doubts that many people at that age, with similar financial means, have such insurance. She also highlights that guardianship is limited in time, therefore the basic assumption should have been that she would regain her full capacity. She claims that the necessity of a life insurance covering burial fees cannot be seen as well-reasoned and serving the interest of a person with disabilities unless that person is terminally ill and/or old.

9.6 The author concludes that the State party does not contest the core claim of her petition, namely, the lack of consultation. She reiterates that both the Convention (arts. 12 (4) and (5)), and the Civil Code oblige the authorities to initiate consultations in order to prevent abuse with respect to the financial interests of persons with disabilities. The decision was taken irrespective of her will and preferences and the life insurance did not support her well-being.

B. Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the case is admissible under the Optional Protocol.

10.2 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, and that it has not been, nor is it being, examined under another procedure of international investigation or settlement.

10.3 The Committee notes the State party's argument that the author did not exhaust all available domestic remedies, as it was for a competent court of the State party to review whether the guardian authority acted properly in the conclusion of the life insurance contract when it authorized the author's guardian to conclude the contract on the author's behalf. It notes the State party's argument that the author could have brought any claim against her former guardian in a civil suit, within the one-year statute of limitation period, which she failed to do. However, the Committee also notes the author's uncontested arguments that: (a) in accordance with domestic law, guardians can be sued only in cases of irregularities or omissions in the submission of accounts by guardians or in cases of financial damage resulting from an unlawful act of the guardian; (b) in her case this remedy was not effective, as she does not claim that the actions of the guardian were fraudulent nor does she contest the lawfulness of the insurance contract; and (c) there were no domestic remedies available to address her claim that she was not consulted and that her will and preferences were not taken into consideration in relation to the conclusion of the life insurance contract. The Committee further observes that the State party has failed to specify which domestic remedy the author could have used to address her claims before the Committee. In view thereof, the Committee considers that no effective remedies were available to the author and that her claims under articles 12 (3), (4) and (5) of the Convention are admissible under article 2 (d) of the Optional Protocol.

10.4 As regards the author's allegations under article 3 of the Convention, the Committee recalls that, in view of its general character, this article does not in principle give rise to free-standing claims and can only be invoked in conjunction with other substantive rights guaranteed under the Convention.⁴ In the present case, the Committee observes that the author has failed to substantiate her allegations under article 3 of the Convention and declares this part of the communication inadmissible under article 2 (e) of the Optional Protocol.

10.5 Accordingly, and there being no other obstacles to admissibility, the Committee declares the communication admissible with regard to the author's claims under article 12 (3), (4) and (5) of the Convention and proceeds with its consideration of the merits.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of its rules of procedure.

11.2 In the present case, the question that the Committee is called to determine is whether the decision of the guardianship authority allowing the author's guardian to conclude a life insurance contract on her behalf amounts to a violation of her rights under article 12 (3), (4) and (5) of the Convention. The Committee notes the author's allegations that she was not consulted prior to the conclusion of the life insurance contract and that her will and preferences were not taken into consideration.

11.3 The Committee observes the State party's explanation that due to the existence of the guardianship fully restricting the author's capacity to act and her condition at the time of the conclusion of the contract, the author's opinion could not be sought. It also notes the State

⁴ See *Bacher v. Austria* (CRPD/C/19/D/26/2014), para. 8.11; and *Beasley v. Australia* (CRPD/C/15/D/11/2013), para. 7.5.

party's argument that the reasons behind the need to conclude the life insurance contract on the author's behalf was the conflictual family situation of the author and the fact that her relatives did not agree to organize a proper burial for her. However, the Committee also notes the author's argument that the document approving the conclusion of the contract by the guardian authority does not include those reasons.

11.4 The Committee also notes that the author was only 42 years old at the time of the conclusion of the contract, in a good state of health, and with no immediate risk of death at that moment. It further notes that the condition of the author largely improved due to the treatment received. The Committee further notes the author's statement that the conclusion of the insurance contract, the sole goal of which was to provide coverage for her burial, was, in her opinion, an irresponsible financial decision that was contrary to her interests. It also observes that, while the author is entitled to repurchase the insurance under the contract, she cannot recover the full amount, which represents a significant loss for the author, who only receives a monthly pension of \$203. In that regard, it observes that the State party has not explained the urgency or the need to conclude the life insurance contract on behalf of the author, considering all these circumstances.

11.5 The Committee recalls that, under article 12 of the Convention, States parties are obliged to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Under article 12 (4) of the Convention, States parties are obliged to ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards must ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The Committee also recalls that in accordance with article 12 (5) of the Convention, States parties are also obliged to take all appropriate and effective measures to ensure the equal right of persons with disabilities to control their own financial affairs.

11.6 The Committee further recalls that, in accordance with paragraph 21 of its general comment No. 1, where, after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace the "best interests" determinations. This respects the rights, will and preferences of the individual, in accordance with article 12 (4). The "best interests" principle is not a safeguard which complies with article 12 in relation to adults. The "will and preferences" paradigm must replace the "best interests" paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others. In that connection, the Committee observes that the State party has failed to demonstrate that it has taken any significant effort to determine the will and preferences of the author, or the best interpretation of her will and preferences.

11.7 The Committee also notes the author's argument that the procedure of the guardianship authority and her guardian also disregarded article 12 (3) of the Convention, under which the State party is obliged to provide access by persons with disabilities to the support they may require in exercising their legal capacity. The Committee is of the opinion that, while States parties have some leeway to determine what procedural arrangements could enable persons with disabilities to exercise their legal capacity,⁵ they must respect procedural safeguards and the person's rights. In that regard, the Committee recalls that in its concluding observations on the initial periodic report of the State party, it recommended that the State party effectively use the current review process of its Civil Code and related laws to take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respected the person's autonomy, will and preferences and was in full conformity with article 12 of the Convention, including with respect to the individual's right, in his or her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of

⁵ See *Medina Vela v. Mexico* (CRPD/C/22/D/32/2015), para. 10.6; and *Jungelin v. Sweden* (CRPD/C/12/D/5/2011), para. 10.5.

residence.⁶ In the author's case, the Committee notes that given that her capacity to act was fully restricted at the time of the conclusion of the contract, she was not given any opportunity, or provided with the support or necessary accommodations, to exercise her rights with regard to her financial matters.

11.8 In the light of the above, the Committee considers that the decision of the guardianship authority to authorize the author's guardian to conclude a life insurance contract on behalf of the author, without having made significant efforts to determine her will or preferences, or the "best interpretation" of her will and preferences, amounted to a violation of her rights under article 12 (3), (4) and (5) of the Convention.

C. Conclusion and recommendations

12. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State party has failed to fulfil its obligations under article 12 (3), (4) and (5) of the Convention. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning the author, the State party is under an obligation:
 - (i) To provide her with an effective remedy, including support in the repurchase of the life insurance contract if requested, and indemnify her against financial loss to ensure full restoration of her funds, including the legal costs incurred in filing the communication, and compensation for the violation of her rights under the Convention;
 - (ii) To publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.
- (b) In general, the State party is under an obligation to take measures to prevent similar violations in the future, including by:
 - (i) Taking immediate steps to derogate guardianship, including by repealing relevant provisions in the Civil Code, in order to move from substitute decision-making to supported decision-making that respects the person's autonomy, will and preferences, in full conformity with article 12 of the Convention, including with respect to the right of individuals, in their own capacity, to have control over their financial matters;
 - (ii) Ensuring that appropriate and regular training is provided, in consultation and cooperation with persons with disabilities and their representative organizations, at the national, regional and local levels for all actors, including civil servants, judges, and social workers, on the recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.⁷

13. In accordance with article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the State party should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee.

⁶ CRPD/C/HUN/CO/1, para. 26. See also CRPD/C/HUN/IR/1, para. 110.

⁷ CRPD/C/HUN/CO/1, para. 26.