

HUNGARY

Child Rights NGO Coalition: Submission to the UN Universal Periodic Review

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I. Introduction

This alternative, non-governmental UPR report is - for the first time - based on a closer cooperation of child rights and child protection NGOs and individuals. Our NGO alliance, called Child Rights NGO Coalition was formed in February 2015 on the initiative of the UNICEF National Committee for Hungary, as a formalised cooperation in Hungary that could facilitate advocacy on child rights and the implementation of the Convention of the Rights of the Child and/or its monitoring. Besides 25 NGOs and 12 individual experts, the Deputy Commissioner for the Rights of National Minorities, the Office of the Commissioner for Fundamental Rights and UNHCR Hungary, as observers support our work. However this report doesn't contain all member's opinion.

This report was contributed by the following members of the Coalition: UNICEF Hungarian National Committee, SOS Children's Villages Hungary, Mental Disability Advocacy Centre (MDAC), Chances for Children Association (Gyerekesély Egyesület), European Roma Rights Centre (ERRC), Hungarian Association of the Deaf and Hard of Hearing (SINOSZ), Kék Vonal Child Crisis Foundation, Terre des hommes, Association of European Parents in Hungary (ESZME), Hungarian LGBT Alliance, Hope for Children Hungary, Chance for Children Foundation (CFCF), Pressley Ridge Hungary Foundation; Family, Child, Youth Association (CSAGYI).¹

II. Recommendations

Submitting organizations encourage the Human Rights Council to recommend in its concluding observations that Hungary.

1. General issues of concern

a. Lack of a comprehensive child rights strategy

It is an overarching problem, that a comprehensive policy covering all areas of children's rights under the UN Convention on the Rights of the Child (UN CRC) is missing, which is repeatedly criticized by various UN treaty-bodies (latest the UN Committee on the Rights of the Child)² and also NGOs, moreover there is no effective systems for monitoring and evaluation existing. Raising the awareness of all professionals working for and with children, children themselves, parents, and the public at large, about the provisions

¹ See the list of the member organizations with a brief introduction in Annex 1.

² UN CRC Committee's Concluding observations on the combined third, fourth and fifth periodic reports of Hungary.
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&TreatyID=10&TreatyID=11&DocTypeID=5

of the CRC and its optional protocols, with a view to ensuring that such efforts result in a positive shift in the attitudes of those involved, is still missing.

Recommendation:

- *Develop a comprehensive children’s rights policy and action plan, which includes also monitoring and evaluation.*

b. Children’s rights education

Human rights are mentioned only among the rights and obligations of students, parents and teachers in law. In the National Curriculum, human rights are discussed under the subject called “Education on society, democracy and business”, within the part ‘Individual and the society’ as well as in the “Knowledge of citizenship”, beside quite different topics such as socialization processes, definition of law or the EU. In practice it means very few classes focusing on this topic.³

According to a recent Eurobarometer survey, Hungarian responding young people were less likely to be aware of children’s rights.⁴

According to the experience of reports of the Ombudsman (in 2008⁵ and in a follow-up investigation in 2015), school curricula and regulations generally do not include child rights, or if they are mentioned, there is no provision to inform children about them, or for their implementation.

In the autumn of 2014, UNICEF Hungary made a non-representative research⁶, asking 1191 pupils aged between 10 and 19 about children’s rights. The results reveal that only 1 out of 3 children knows that they have special rights. However, 88 percent of children think that it would be important to learn their rights.

Recommendations:

- *Include human rights (especially children’s rights) in the public education system, ensure proper training for professionals who are dealing with children and re-introduce meaningful child participation to ensure learning by doing.*

³ Human rights (and children’s rights) education is not integrated into the Hungarian education system because “education through human rights” is not a principle, “education about human rights” is not comprehensive at all and – as a consequence of the previous ones – “education for human rights” is not achievable.

⁴ They were also the least informed (38%) among 27 EU member states. Hungary was also the only country where a majority of respondents were unaware of the specific rights of people under 18 (61%). http://ec.europa.eu/public_opinion/flash/fl_235_en.pdf (The Rights of the Child – Analytical Report., Flash Eurobarometer 235. (2008).

⁵ Child Rights Project 2009. ÁJOB Projektfüzetek 2010/1.p 9.

⁶ <http://unicef.hu/a-gyerekek-kozel-fele-szerint-egy-pofon-belefer/>

- *Strengthen its efforts in raising the awareness of all professionals working for and with children, children themselves, parents, and the public at large, about human rights generally, and especially provisions of the UN CRC and its optional protocols.*

c. International obligations

- *Sign and ratify the Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure,*
- *Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,*
- *Sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence;*
- *Ratify the European Convention on the Exercise of Children's Rights.*
- *Ratify the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.*

d. Education

The new Public Education Act (PEA) reduced the compulsory school age (CSA) from 18 to 16 years, without any preliminary public or professional – NGO discussion. National Association of Large Families (NALF) found it's also essential that the compulsory education should be assessed in its entirety and not only with regard to the age limit, but the acquired knowledge and qualifications. A minor should not be dismissed from school based on his/her age until he/she successfully finishes a vocational training course (and a certificate of the course).

The new PEA also reintroduced “failing” from first grade which affects mainly disadvantaged and Roma children while school year repetition is one of the main reasons for early drop out.⁷

Academic research shows already that the reduction of CSA not only sends a negative message to stakeholders and society, and as a result, early school leaving has increased in affected cohorts.⁸ It has negative effect on the number of students acquiring higher education certificates. These tendencies have had negative effect on students with undereducated parents and multiple disadvantages, a group to which the majority of Roma people belong.⁹ Furthermore NGO activists have reported that schools have

7 See Art. 45 (6) of the Act CXCV of 2011 on National Public Education on compulsory school age entered into force on 1 January 2013.

8 Mártonfi, György (2014): A korai iskolaelhagyás és néhány kapcsolódó mutató összefüggése. [Correlation of early school leaving and some relevant indicators] *Iskolakultúra*, 2014/5. p. 77-90.

http://www.ofi.hu/sites/default/files/attachments/hany_eves_korig_tartson.pdf (Accessed 11 September, 2015)

9 Hermann, Zoltán (2014): A tankötelezettségi korhatár változásainak leírása [Description of changes in CSA] Hungarian Academy of Sciences, 2014. <http://econ.core.hu/file/download/Szirak2014/Hermann.pdf> (Accessed 11 September, 2015)

used this opportunity to get rid of overage students. An especially pronounced form of exclusion was reported to the Chance for the Children Foundation (CFCF) in a town in North East Hungary.¹⁰

The freedom of thought and religion issue in schools is especially serious since the Government has been encouraging churches to take schools over, in many cases causing a situation where no religiously unbiased education is available without an extreme burden of travel for children in many places in the countryside.

Recommendations:

- *Measures should be taken to ensure the implementation of the UNCRC in church schools in Hungary with special focus on ensuring the freedom of thought and religion and the use of corporal punishment.*
- *Enact all legislative amendments necessary to raise the age of compulsory school attendance to 18 years.*
- *Maintain the secondary school capacities and promote access to these schools and successful completion of secondary level education for socially disadvantaged children.*

b. School segregation of Roma children and children with disabilities

School segregation of Roma children is increasing in Hungary. Approximately 45% of Roma children attend schools or classes in Hungary, where all or the majority of their classmates are also Roma.¹¹ In 2014 381 primary and secondary schools have been officially reported to have 50% or more Roma among their students.¹² Despite protests of NGOs and professionals,¹³ a modification of the Public Education Act was passed by the Parliament in December 2014 that authorized the government to determine (in a decree) the waivers which could be applied to permit segregated education.¹⁴

Since 2011 the Hungarian Supreme Court (Curia) adjudged in 5 Roma education cases that Romani children were unlawfully segregated and two municipalities have been convicted by the Equal Treatment Authority for segregation.¹⁵ Nevertheless, Hungarian courts have not yet ordered the desegregation of any of the schools, effective remedy against systematic discrimination of Roma children is not provided.¹⁶

10 According to complaints of Roma parents in Gyöngyöspata some Roma children who were registered and educated as special needs students in mainstream schools for 8 years were re-examined by the expert committee just before their 16th birthday and found to be “normal” students. As soon as they lost the special needs status, the schools persuaded them to leave, even if they had not finished 8 grades.

¹¹ European Union Agency for Fundamental Rights (FRA): Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States. 2014. p. 44–45.

¹² The data of the Educational Authority (EA) provided upon request of the Chance for Children Foundation (CFCF) in 2014 reported 381 primary and secondary schools to have 50% or more Roma among their students (although the EA warned that there is high latency in the provided data).

¹³ See: Commitment related to Bill No. T/2085. <http://cfcf.hu/images/Allasfoglalas.pdf> (Accessed 11 September, 2015)

¹⁴ The Commissioner for Fundamental Rights drew attention to the potential risks of the new legislation in his report of AJB 6010/2014

¹⁵ See <http://cfcf.hu/jogi-%C3%BCgyek/jogi-dokumentum%C3%A1r> (Accessed 11 September, 2015) for the Supreme Court (Curia) judgements or CFCF website for a description of cases: www.cfcf.hu

¹⁶ In the extensively debated recent Nyíregyháza resegregation case¹⁶ the Curia has justified segregation of Roma children based on religious education. This interpretation casts a shadow over compliance of the current legislation and wording of

Testing procedures in use to assess the cognitive ability of children are contributing to segregation as culturally biased testing results in misdiagnosis of Roma children as having disabilities.¹⁷ This has been affirmed in 2013 by the European Court of Human Rights (ECtHR) in the Horváth and Kiss v. Hungary case.¹⁸ CFCF has evidence submitted to an on-going litigation in the Court of Eger that culturally biased diagnostic protocols (the Budapest-Binet test) leading to the misdiagnosis of Romani children are still in use nationwide despite of governmental efforts because of the lack of supervision and monitoring over expert panels.

The current testing system is further flawed in that it allows for educational segregation on the basis of the presence of an actual or perceived disability, in direct contradiction to the right to inclusive education for all children, as guaranteed by Article 24 of the UN Convention on the Rights of the People with Disabilities. It also fails to identify the individualised forms of support which would enable children to access reasonable accommodations that are necessary for them to receive a quality education in the general education system.

Recommendations:

- *Map school segregation and elaborate a comprehensive policy for school desegregation that builds on existing Hungarian good practices (involving all the schools that receive financial support from the state irrespective of their maintaining institutions e.g. church) to provide effective remedy for unlawful discrimination of Roma children and children with disabilities.*
- *Amend the Equal Treatment Act in order to clarify justification defenses in school segregation and ensure their compliance with EU and international law. The amendment must prohibit the justification of racial or ethnic origin based school segregation for purposes other than minority education. It must also prohibit the educational segregation of children with actual or perceived disabilities, including children with intellectual, developmental, cognitive and/or psycho-social (mental health) disabilities, and irrespective of the level of impairment, in line with Article 24 of the UN CRPD..*
- *Create a legal framework for collecting data in education disaggregated by, inter alia, ethnicity, impairment-type, gender and age, and use this for mapping segregation and for the evaluation of the impact of government policies on Roma, children with disabilities and other marginalised sections of society.*
- *Provide adequate professional and financial support to inclusive schools, with mixed student composition, and disseminate effective pedagogical methodologies (learning contents, training methods which have been developed in the previously implemented large volume programmes (e.g. HRDOP 2.1. and SROP 3.3.2.) with EU support.*
- *Abolish educational assessments which result in educational segregation for children on the basis of race, culture, impairment or other relevant status, in line with international law. Instead,*

the Equal Treatment Act (ETA) with relevant provisions of international and EU law pertaining to the prohibition of discrimination.

17 FRA: Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States. 2014. p. 44.

¹⁸ Horvath and Kiss v. Hungary, application no. 11146/11. The Court noted that Romani children had overall been overrepresented in the past in remedial schools in Hungary due to the systematic misdiagnosis of mental disability. The Committee of Ministers have called Hungary to provide data on the impact of new diagnostic procedures on Romani students. No data has been provided yet.

develop models of assessment which identify individualised supports for children who need them in order to access a fully inclusive education within the general education system.

- *Ensure effective control and monitoring over expert panels in charge of undertaking such educational assessments to avoid arbitrariness and all forms of discrimination (as requested by the ECtHR).*

c. Rights of deaf children

According to the Hungarian Association of the Deaf and Hard of Hearing (SINOSZ), the deaf children have the fundamental right to education in sign language. Therefore, the Hungarian sign language should be used at an early stage of development in order to develop the linguistic competence of deaf children in an appropriate way. SINOSZ believes that the deaf children should receive bilingual education. The auditory-verbal method is the only method used in the education of the deaf children. This method only helps learning the sounding (Hungarian) language, improving the speech training rather than transferring and utilizing the curriculum appropriately. The only way out of this tragic situation is the introduction and application of the bilingual education in Hungary.¹⁹

Recommendations:

- *Support to apply the bilingual education anywhere, not just in special schools for children with learning difficulties.*
- *Amend the current legal provisions concerning the education of deaf children in order to achieve that not only special education teachers could teach until the sixth grade at schools. These should also be ensured for children with cochlear implant. Equal rights shall be ensured to deaf children who receive cochlear implants.*

4. Protection

a. Child abuse

In the UNICEF Hungary's non-representative survey in 2014 found, that 44 percent of respondents, thinks that a slap in the face does not count as violence. Two of three children do not ask for help when their rights are violated.

¹⁹ The provisions of the law¹⁹ will enter into force in September 2017, according to which a "deaf child may take part in early development and care using, upon the decision of his/her parent (guardian), either the bilingual or the auditive-verbal method, and the special needs educational institution is required to provide kindergarten" (Subsection (1) of Section 14) and the "special needs educational institution is required to provide kindergarten and school-based education and training also with the bilingual method for deaf and deafblind children, whose parents (guardians) request so in writing" (Subsection (3) of Section 14).

Even though the law stipulates the total ban of corporal punishment, there has been no progress since its coming into effect in 2005 to promote/implement it.²⁰ Neither parents, nor children or professionals know about it, and there has been no campaign or training on alternative techniques.

There is low level of reporting of cases of sexual and other forms of abuse and violence in the family and care institutions. The child protection system can't prevent timely and give effective assistance and protection to children suffering from abuse and neglect. There is also lack of prevention mechanisms, including awareness-raising among children, parents and professionals working with and for children. Hungary also lacks services to rehabilitate and assist child victims of neglect, abuse and exploitation.

Recommendations:

- *Adopt measures, including disciplinary measures, in order to raise the awareness of professionals of the education system, in particular teachers, on their obligation of abstaining from resorting to corporal punishment and in order to promote positive, non-violent and participatory forms of child rearing and discipline.*
- *Introduce the necessary support and training systems to support parenting as a prevention tool.*
- *Take measures to establish effective complaints mechanisms within care institutions.*
- *Take measures to strengthen the child protection system by providing it with a sufficient number of well-qualified staff and technical and financial resources, establishing effective collaboration with all stakeholders and requiring follow-up reports on each individual case so that signs of sexual or physical abuse or neglect can be detected and the system can provide timely and effective protection to the child.*
- *Take measures to provide child victims of abuse with all necessary services for their effective rehabilitation.*

b. Child protection

The Hungarian child protection system went through significant changes²¹ in the last years.

²⁰ The UN Committee on the Rights of the Child recommends recently that Hungary has to encourage children and their representatives to report cases of abuse and violence in the family and care institutions to the respective authorities by raising the awareness of children of their rights and establishing complaints mechanisms within care institutions. It also recommends that the State party further strengthen its child protection system by providing it with a sufficient number of well-qualified staff and technical and financial resources, establishing effective collaboration with all stakeholders.

²¹ The system was centralized starting from January, 2013. As a result of it, the roles and responsibilities of local and governmental authorities changed. A year later, in January 2014 a second „phase” of De-I was introduced by the modification of the Children’s Act (Act No. XXXI of 1997 on the protection of children and the administration of guardianship affairs) stating that no children under 12 years old can be placed in institutional care. In order to generate enough foster family places, the Ministry together with a church run foster care organization started a national campaign in 2013. In parallel, the legal status and the training of foster parents was also modified. All foster parents received the status of employee, and are obliged to take part in a 500 hour long training. In addition, the system of child protection

All these changes have positive intentions: increased emphasis of family based care, introduction of an independent advocate for children in alternative care, and more stability for the foster parents.

However, the implementation of these changes was not planned carefully enough and therefore has negative consequences: the amendment of the Child Protection Act is discriminatory as it doesn't cover children with disabilities, chronically ill children and multiple siblings; the national campaign run by the Ministry generated some new foster care places, but not enough for the need created by the legislative reform and therefore often the principle of „empty place“ prevails when finding a place for a child in care and not his/her best interest; a high number of changes²² in care placements took place in 2014 which can be the result of bad matching, overloaded foster parents, lack of special support or badly trained new foster parents.

Beside recent changes and their consequences, it is also important to mention that the gatekeeping function – the removing any child from his/her family should be a measure of last resort and care option chosen has to be tailored to the individual needs of the child – of the child welfare and child protection system is weak. The quality of assessment of children at risk of entering care and the assessment that takes place once entering the care system is of very different level and therefore the quality and the quantity of information that professionals have on children is incidental. The lack of quality assessment can lead to groundless removals, ad hoc interventions, information loss and also to delayed interventions.

Recommendations:

- *Take measures to ensure that all children entering care or in children's homes, including Roma children, children with disabilities, chronically ill children and multiple siblings are provided with family- and community-based care and that placement in institutional care is used only as a last resort.*
- *Take measures to ensure the development of a differentiated foster care system in which enough number of quality care places are available.*
- *Take measures to ensure that children with disabilities have full protection against abuse in national legislation, and abolish provisions which allow discrimination on the basis of an actual or perceived impairment, in line with international law.*
- *Ensure a flexible training and employment system for foster parents.*
- *Ensure that the resources and other type of financial or non-financial support create an environment that do not deter potential foster carers from entering into the scheme.*
- *Take measures to find out the reasons of high number of changes in care placements in 2014.*
- *Take measures to ensure a quality assessment of children at risk of entering care and those already in alternative care.*
- *Take measures to ensure a better cooperation between preventive services and alternative care system.*
- *Take measure to ensure the monitoring of the newly introduced system of child protection guardians.*

guardian was also introduced meaning that foster parents and leaders of group homes can't be anymore the legal representatives of children in alternative care, but state employed child protection guardians fulfill this role

²² According to data collected by the Social and Child Protection Directorate (SZGYF) in 2014 there were 2598 changes in care placements. In 1081 cases (41,6%) changes were initiated by the foster carer and in 690 cases children were transferred to another foster carer. The remaining numbers were placed in institutional type of care.

c. Child-trafficking

Hungary is a country of origin, transit and destination in relation to trafficking in human beings which is most often committed with the purpose of sexual exploitation. Children in state care are one of the most vulnerable group.²³

According to recent research conducted by the Central European University in 2014²⁴ children from impoverished families and neighbourhoods are in the highest risk of victimization to trafficking. Previous research of the ERRC²⁵ also showed that Roma are highly vulnerable to become victims of trafficking as Roma women and youth were perceived to represent between 40 and 80% of victims of Trafficking in Human Beings (THB) in Hungary.

When children are at risk of being trafficked or have been already victims of trafficking, they should be treated by the child protection system. However, the local child welfare institutions have no appropriate means to prevent the risk of trafficking and to assist the children at risk, and endangered children are most likely to be re-victimized while in the child care institutions since their needs are not addressed efficiently during and after the placement procedures.

Recommendations:

- *Establish special assistance system for children at risk of trafficking and child victims of trafficking to prevent the victimization and re-victimization of children.*
- *Ensure that adequate capacity of professional staff is available in state care institutions who are trained to provide professional care for traumatised, victimised and abused children.*
- *Stop criminalization of victims of child trafficking by police and train the police to treat them as child victims, and fight negligence to prosecute the adult criminals for exploitation of children in poor and segregated neighbourhoods.*
- *Raise awareness, train and support community workers and civil society organisations to engage in counter-trafficking activities in segregated neighbourhoods.*
- *Implement information campaigns and prevention programs to address the complexity of child abuse and exploitation with the involvement of schools, child welfare institutions, youth organisations and community activists.*

d. Child poverty and social protection for children

Between 2007 and 2013 increase of poverty within the total population was 14 %, and 20% among children respectively.²⁶ The 2014 report of the Chances for Children Association (GYERE) highlighted that formal statements and strategic goals set by the Government to reduce child poverty lack

²³ As they are removed from their family, they have less tight family relations, feel like the decisions of the authorities are forced upon them and might already suffered of some kind of violence. Minor victims of trafficking are mainly placed in child care institutions, unlike the adult victims who could opt to be placed in secret shelters. These children could be easily identified, located and taken again by the perpetrators. Not to mention that staff in these institutions are not prepared or trained to provide tailor-made support for victims of trafficking.

²⁴ Vidra, Zsuzsanna, Baracsi, Kitti, Sebhelyi, Viktória (2015): Child Trafficking in Hungary: Sexual Exploitation, Forced Begging and Pickpocketing. Center for Policy Studies, Central European University. The 2014 research also revealed that the Hungarian police and the judicial system are not able to address child trafficking properly.

GRETA also highlighted in its 2015 report on Hungary that the number of identified child victims is low and urged the authorities to increase their efforts to identify child victims and to set up child-specific identification procedures.

²⁵ European Roma Rights Center (ERRC): Breaking the Silence: Trafficking in Romani Communities. 2011

<http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>

²⁶ GYERE Civil Report (2013) p. 48. http://www.gyere.net/downloads/Civil_jelentes_2012-2013.pdf

implementation by efficient policies that addressed income and regional inequalities and could prevent the reproduction of poverty.²⁷ Counterproductive mainstream social policies included significant cuts in the social allowances (reduction of welfare expenditures was the highest in the region²⁸), the shrinking of eligibility for several government subsidies and the termination of important welfare provisions (e.g. support for kindergarten attendance for multiple disadvantaged children, debt management and housing maintenance subsidy), which have contributed to worrisome increase of child poverty since 2010.²⁹

The Government has made no systemic efforts to develop the capacities of the child protection system either, although the National Social Inclusion Strategy (NSIS II) underlined again in 2014, that child welfare and child protection services should be made accessible in the most deprived small localities and that interventions are needed in several settlements to create any service for children and youth beside mandatory education.³⁰ The task of introducing social work in schools (integrated into the system of basic child welfare services) was also identified in the Government's 2012-2014 Action Plan, this measure has been abolished without providing any explanation. As noted by a 2015 report of GYERE and ERRC³¹ after the measure had been abolished from the NSIS Action Plan, the updated government strategy (NSIS II) in 2014 again acknowledged the need for the employment of full-time professionals in schools to provide social work and socio-pedagogical services to prevent drop-out and the risk of victimization of vulnerable children.³²

The age composition of the Roma population is significantly younger than the non-Roma population, the proportion of children aged 0–14 is 34 percent.³³ In Hungary today approximately 3 million individuals live under the poverty line, 1.2 million of them in extreme poverty³⁴, which particularly affect children and those living in disadvantaged regions. Roma also suffer from discrimination, while Roma women and girls affected by multiple discrimination. The NSIS targets several vulnerable groups, explicitly but not exclusively targeting the Roma communities and children. The NSIS's analysis on Roma communities is a well-elaborated, but implementation and the monitoring should be amplified. On other hand the paper main goal is to fight with social exclusion, but it misses out a vital element: combating prejudice and discrimination. Furthermore, it happens several times that the legislation and the mainstream policies are not harmonized with the aims of the Strategy.

Recommendations:

²⁷ GYERE (2014) p.362 -263.

²⁸ Public social spending in per cent of GDP increased in all OECD countries with the exception of Hungary from 2007-08 to 2012-13 and cut of social spending after the economic crisis was the highest in the region.

See: http://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2014_soc_glance-2014-en

²⁹http://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2014_soc_glance-2014-en

³⁰ NSIS II (2014) p. 78.

http://www.kormany.hu/download/1/9c/20000/Magyar%20NTFS%20II%20_2%20mell%20_NTFS%20II.pdf

³¹ DARE-net: Pilot report for monitoring the implementation of education policy measures within the Roma Inclusion Strategy in Hungary, 2015. <http://www.dare-net.eu/cms/upload/file/shadow-report-on-roma-segregation-in-education-hungary-english.pdf> (Accessed 11 September, 2015)

³² NSIS II (2014) p. 76.

http://www.kormany.hu/download/1/9c/20000/Magyar%20NTFS%20II%20_2%20mell%20_NTFS%20II.pdf (Accessed 11 September, 2015)

³³ While this proportion is a mere 16 percent within the non-Roma population.

³⁴ Most of the Roma, some 500,000 to 600,000 of them (based on estimates) belong to that group (data provided in the NSIS)

- *Implement efficient policies to address child poverty. Reconsider the social and family allowance system with the aim to reduce inequalities and to prevent the reproduction of poverty. Ensure meaningful consultation with social policy experts and civil society before any amendment to the social protection and welfare schemes.*
- *Enhance access to welfare service and child protection services for the families in need; Address the capacity shortage and development needs of basic child protection and family support services in the economically disadvantaged regions by targeted interventions.*
- *Introduce social work in schools and targeted programmes addressing Roma girls (as already promised in the NSIS), to prevent the early drop-out of socially disadvantaged children from the educational system and to support children in risk of victimization.*

6. Vulnerable groups

a. Children with disabilities

There is a lack of available support services for families with children with intellectual and psycho-social disabilities in Hungary, and financial support provided to these families is also insufficient. Without being provided with appropriate support, families raising children with mental disabilities face numerous barriers which increase the risk of social exclusion, impoverishment and often result in the institutionalisation of the child.

Amendments to the Child Protection Act of January 2014 prohibit the placement of children below the age of 12 in care institutions. This provision, however, does not apply to children with mental disabilities, children with long-term illness and multiple siblings. The number of special foster parents – who are trained to care for children with psycho-social disabilities and children using psychoactive drugs – and specific foster parents – who are trained to care for children with disabilities and children under the age of 3 – are very low, due to the lack of appropriate and regular training. Therefore, children with intellectual and psycho-social disabilities who are abandoned or who have been taken out from their family rarely have the opportunity to be placed in a family- and community-based environment. Thus they continue to be automatically institutionalised, which goes against the letter and spirit of the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child.

Recommendations:

- *Ensure that children with intellectual and psycho-social disabilities enjoy their right to live in a family and community environment on an equal basis with other children by providing appropriate support to their families.*
- *Amend section 7(2) of the Child Protection Act that allows for the placement of children with severe and multiple disabilities under the age of 12 in institutions when being taken into care provided by the child protection system. Broaden the network of special and specific foster parents*

with whom children with psycho-social and intellectual disabilities can be placed when being taken into child protection care, by ensuring appropriate and regular training for foster parents.

- *Adopt a comprehensive national programme to achieve the de-institutionalisation of all children with disabilities within a reasonable timeframe, in particular through the reallocation of national budgetary support away from institutions and towards the development of community and family support services.*

b. Children with special needs

Children with special educational needs, including those with intellectual or psycho-social disabilities rarely can participate in the mainstream education system, since mainstream schools are not obliged to admit children with special educational needs. The majority of children with mental disabilities are educated in special classes or special schools separated from their peers without disabilities, which do not meet the criteria of inclusive education promoted by required Article 24 of the CRPD. Children with severe or multiple disabilities are in an even worse situation: they either are educated at home separated from the community or in a residential institution where they are not only separated from their community but also from their loved ones.

Recommendation:

- *End the educational segregation of children with intellectual or psycho-social disabilities in separate special schools and classes and provide inclusive education, the enrolment of children with special needs in mainstream schools, by ensuring appropriate and effective individualised support for them and providing training for teachers.*

c. Children associated with LGBTQI people and the rights of LGBTQI children

The Government accepted a recommendation by the UK to ensure that the cardinal laws resulting from the new Fundamental Law do not contain provisions that discriminate against – among others – LGBTQI³⁵ people (Rec. 94.12). As opposed to this commitment, a cardinal law, the Act on the Protection of Families³⁶ was adopted in December 2012 that contained several discriminatory provisions against same-sex couples and their children. First, the law contained a definition of family – to be used consistently throughout the Hungarian legal system – that defined “family” solely with reference to marriage and parent-child relationship (Art. 7), and secondly limiting inheritance rights of non-married couples (Art. 8). The Ombudsman claimed both provisions to be discriminatory based on sexual orientation,³⁷ and turned to the Constitutional Court. In December 2013, the Court found both provisions to be unconstitutional.³⁸ However, rather than respecting the decision of the Court, the Parliament adopted an amendment to the

³⁵ Lesbian, gay, bisexual, transsexual, queer, intersex (hereinafter LGBTQI) people

³⁶ Act No. CCXI on the protection of families (2011. évi CCXI. törvény a családok védelméről).

³⁷ Report Nr. AJB-2834/2012.

³⁸ Constitutional Court decision no. 43/2012 (XII. 20.)

Fundamental Law³⁹ containing the same definition of family found to be too restrictive, thus avoiding any future judicial review.⁴⁰

The growing number of children living with same-sex parents thus still face legal uncertainty and several forms of *de jure* discrimination: they cannot inherit from their non-biological parent without a will, and if there is a will their inheritance tax is significantly higher; in case the parents' relationship deteriorates they are not entitled to receive child maintenance from their non-biological parents; and the non-biological parent cannot make even the most urgent medical decisions on their behalf.⁴¹ LGBTQI children face severe forms of discrimination and other human rights violations. So called "normalizing surgeries" are routinely performed on intersex minors without their full consent to make their bodies better fit social expectations.⁴²

Children whose behavior diverges from expected gender norms are often abused and bullied by their mates: a study in 2010 with 1991 LGBTQI respondents⁴³ found that 19% have suffered disadvantage due to their sexual orientation or gender identity in schools, in every third of those cases the harassment or assault came from their teachers.

A report by Ombudsman⁴⁴ strongly criticized the lack of any state measures to promote tolerance towards sexual minorities in educational settings.

Recommendations:

- *Remove de jure discrimination against children raised by same-sex parents by providing legal recognition to same-sex parents.*
- *Prohibit medically unnecessary procedures on intersex children.*
- *Take appropriate measures to make schools and health services more accommodating to the needs of LGBTQI children.*
- *Include objective information on LGBTQI people in school curricula, and support public education campaigns to counter homophobic and transphobic attitudes.*

d. Asylumseeker, migrant and unaccompanied minors

Thousands of children are on the move heading to Europe or already arrived there in need of international protection recently, but especially this year. Hungary faced serious challenge, as transit

³⁹ Fourth Amendment to the Fundamental Law of Hungary (Magyarország Alaptörvényének negyedik módosítása).

⁴⁰ The new constitutional principle did not remain an abstract one: it was used in Parliament to abolish planned reforms to extend the rights cohabiting partners. While the version of the new Civil Code adopted by the Parliament in 2009 would have allowed cohabiting partners to adopt their partners' child (second parent adoption), the new version of the law adopted in 2013 that entered into force in March 2014 did away with this important reform disregarding the opinion of UNICEF (http://www.unicef.org/videoaudio/PDFs/Current_Issues_Paper-_Sexual_Identification_Gender_Identity.pdf)

⁴¹ For an overview of the legal and social situation of children raised in same sex families, see: Háttér Society-Inter Alia Foundation: *The Situation of LGBT Families in Hungary* (September, 2010) The restrictive notion of family was strongly criticized by the UN CEDAW Committee, and the Committee on the Rights of the Child specifically called on the Hungarian Government to take steps against discrimination faced by children raised by same-sex parents.

⁴² A single medical team at a pediatric hospital in Hungary reported conducting 92 feminizing and 35 masculinizing surgeries performed on minor sin the period 1984-2008. See: Jenővári et al. "Eredményeink az interszexualitás sebészki kezelésében." In: *Gyermekgyógyászat* 2008/6.

⁴³ The social exclusion of LGBT people in Hungary, 2010. <http://en.hatter.hu/what-we-do/research/lgbt-survey-2010>

⁴⁴ Report Nr. AJB-1199/2013. <http://www.ajbh.hu/documents/10180/111959/201301199.doc>

country of this migrant crisis and seems to fail to comply with its international obligations not only because it has built physical barriers (fence at the Southern border) to keep asylum seekers outside of the country. On 15 September 2015 Hungary proclaimed the “state of crisis caused by mass migration” which is actually a state of emergency providing opportunity to take measures derogating from their human rights obligations. The legislation recently accepted in order to handle “the state of crisis” introduced several derogations from the human rights of asylum seekers and asylum-seeking minors which are not limited to the extent strictly required by the exigencies of the situation.

The right to care and protection as well as to well-being and health of the refugee and migrant children are at risk, when children – even few days old babies – sleep and stay in the streets, in the underground or next to the highway. According to the new law, the irregular cross of the border with or without trying to breach the razor-wire fence on the border is a crime and in case of families the children are taken away from their parents during the criminal procedure (and detention) and placed in child-care institutions, while the most often used sanction of this crime is expulsion up to two years (which is effective in the whole territory of the EU).⁴⁵ The special provisions of the Criminal Code on juveniles - minor between the age of 14 and 18 according to the Hungarian law - does not apply, therefore they are treated and prosecuted as adult offenders.⁴⁶

Recommendations:

- *Ensure all children, be they seeking asylum or not, in families, unaccompanied or separated, are not detained under any circumstance.*
- *Age assessment tests shall take into account all aspects, including the psychological and environmental aspects, of the person under assessment.*
- *Ensure that all children can effectively access and exercise their rights in criminal proceedings. Take the necessary steps to ensure that in the case of foreign children access to a qualified lawyer, interpreter and (in case of unaccompanied or separated children) appointment of a guardian ad litem is a mandatory prerequisite to ensure respect of the right to a fair trial to foreign children.*

7. Juvenile justice

In Hungary there is no independent law on juvenile offenders, neither is there a separate statutory definition for young adults. Provisions differing from the general are regulated in separate chapters within the Criminal Code and the Criminal Procedural Law. The country’s petty offences law includes a concept that is in opposition with the European framework decision. For criminal acts under the value of a misdemeanour, the punishment can be 30, in aggravated cases 45 days of detention for juveniles.

⁴⁵ Act of C of 2012 on Criminal Code, Art.352.A-B-C.

⁴⁶ Act of XIX of 1998 on the Criminal Procedure 542/L.§

As a result of recent amendments of the Act on Petty Crime, during the short period of detention for petty offences – which was also strongly criticized by the Ombudsman⁴⁷, who turned also to the Constitutional Court - the education or vocational education of the juvenile cannot be continued, which leads these youngsters to build – and deepen – relations in prison, with criminal elements instead.

During the inquiries of monitoring NGOs (Hungarian Helsinki Committee) and the ombudsman many times have found serious shortcomings regarding the detention of juveniles. The ombudsman found the physical conditions unacceptable (e.g. in the facility of Tököl), two out of four juveniles reported violent activities in the detention facility.⁴⁸

With the reorganisation of the organisational structure of judges, the exclusive jurisdiction of courts that used to be the fora for juveniles was terminated, instead all judges can rule in juvenile cases, if appointed by the National Judicial Council, instead of judges that have specialised training for juvenile cases. The minimum age of criminal responsibility for some crimes (manslaughter, assault, robbery and despoilment) has been reduced to 12 years from the earlier 14, despite the fact that according to professionals this is not substantiated by the number and characteristics of crimes committed by children, which was criticized by the ombudsman and among other child rights NGOs.

Recommendations:

- *Reinstate the juvenile courts with judges who have undergone special training;*
- *Take measures to raise the age of criminal responsibility from 12 years back up to 14 years, even for the most serious crimes.*

⁴⁷ See more: Child-friendly justice in Hungary. <http://www.ajbh.hu/documents/14315/131278/Child-friendly+justice+from+the+Hungarian+Ombudsman's+perspective/53bc5136-3d2a-40d2-b576-2ea6a5b2f979;jsessionid=7B4B101C32C12C5E1F0B846344B3C7FD?version=1.0>

⁴⁸ Report Nr. AJB-2323/2012; OPCAT report AJB-1423/2015. and media: http://index.hu/belfold/2015/07/08/embertelen_a_tokoli_borton/