

ALTERNATIVE
- NGO - REPORT
ON THE
IMPLEMENTATION
OF THE
UN CRC IN HUNGARY
2006–2012



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The present alternative, non-governmental report is - for the first time - based on the extensive cooperation of professionals and NGOs. There has been no NGO alliance or formalised cooperation in Hungary that could facilitate the dissemination of information about child rights, the implementation of the Convention or its monitoring. This report may also contribute to the creation of such an umbrella organisation in the near future, which could unite and amplify the power of civil society and professionals, based on a common, child rights-based approach. Beyond the Hungarian- and English language versions, a background set of documents published as a book was also developed that informs Hungarian professionals, University- and College students and all interested readers about the status of implementation of the Convention on the Rights of the Child in much more detail and bigger volume.

During and before the writing of the report we have been consulting different groups of children about how they saw child rights and their own opportunities, and what their recommendations were. These opinions have been added to the report partly in writing, partly in the form of drawings, in order to enhance child participation and in order to take their opinion into consideration.

We take this opportunity to thank Open Society Institute (OSI) and the Embassy of the Netherlands for their support, which made the writing of this report possible, as well as its translation, printing, distribution, the creation of the Hungarian-language background document and the participation of children in this work.

Cluster 1 General Measures of Implementation

Article 4 : Implementation Obligations

Since 2006 the following international and Hungarian regulations were enacted concerning children.

1. Ratifications of International Commitments

Law No. 102 of the year 2006 about the announcement of the Protocol created in Palermo December 14, 2000 to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

Law No. 92 of the year 2007 about the announcement of the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Law No. 96 of the year 2009 about committing to and announcing the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Law No. 160 of the year 2009 committing to and announcing the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict.

Law No. 15. of the year 2009 announcing the Convention on the Reduction of Statelessness adopted in New York on August 30 1961.

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention¹) was signed by Hungary on November 29 2010 but was not ratified².

2. Laws

Law No. 80 of the year 2007 on the rights of refugees. If the unaccompanied minor requests it, the migration authority is required to appoint a legal guardian to represent the minor – regardless whether the minor is without capacity or with limited capacity.

Law No. 106 of the year 2009 on public education, modifying the law No. 79 of the year 1993 pronounces that school guards – earlier police officers- assist in keeping order in schools. School guards can – in some instances – use physical force. After the law comes into effect, the regulations regarding the disciplinary process against students also changes, making it possible to ban a student from continuing his/her studies in that particular school year and as a punishment they can also be expelled from school.³ The law enables „immediate action” instead of well-considered steps, in case „the lack of implementation would seriously violate the rights of other students or would lead to other unavoidable damages or threat.”⁴

Law 39 of the year 2010 (February 22 2010.) about the modification of certain social- and labour-related laws due to the implementation of the new Civil Code (CC).

In accordance with the introduction of the requirement of parental cooperation the law makes it possible to initiate a child protection mediation process. Families that have become homeless can be accommodated in the temporary family shelter on request of the homeless parent. Children and their major siblings (until 21 years of age) and their parents can live together, in case the child would otherwise be separated from his/her parents due to a lack of housing.

Law 185 of the year 2010 about media services and mass communication. The law stipulates that media content must not harm the mental, spiritual, moral and physical development of the child. The media content that threatens children’s development can only be made available in a way that ensures that minors cannot access them under general circumstances.

Law 171 of the year 2010 modifying certain social-, child protection, family support, disability and employment laws. According to this, disadvantaged pupils in primary school are eligible for free meals, while the service fee of school meals increases. The law introduces the institution of maternity benefit for adoptive parents, according to which one of the adopting parents is eligible for maternity benefits for up to 6 months for an adopted child younger than 10 years of age, in case they would normally not be eligible – or be eligible for less than 6 months. Parents whose children are placed with substitute parents, foster parents or in institutional care, the law introduces supervised visiting rights in order to assist children returning into their families.

1 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

2 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG>

3 Paragraph 58. § (5) of the law 190 of the year 2011.

4 Law 190 of the year 2011, paragraph 68. § (13)

Based on the recommendation of the Ombudsman the 17§ was modified to include the Labour Authority as part of the referral system to be obliged to report any incidence or suspicion of child labour.

Fundamental Law of Hungary⁵. The Fundamental Law replaces the Constitution and went into effect on January 1st 2012. The new fundamental law affects child rights in the following ways: support is given to parents to have children⁶, it creates 'critical laws on the protection of families⁷, it introduces separate measures to protect children, women, the elderly and people with disabilities⁸. All children have a right to protection and care enabling their appropriate physical, mental, moral development, while parents have the right to choose the child's upbringing and it is their task to ensure the upbringing, which includes the education of the children as well. The same paragraph stipulates that children are responsible for caring for their parents after they reach their age of majority⁹. It prohibits the employment of children except in some instances („with the exception of cases stipulated by law and not threatening the child's physical, mental and moral development") and specifically ensures the safety regulations at work for both youngsters and their families.¹⁰

Law 111 of the year 2011 on the Commissioner of Fundamental Rights (Ombudsman). Paragraph 11 (2) of Law 31 of the year 1997 on the protection of children and guardianship authority was overruled by this law and there is not even a mention of this legal institution anymore. The Commissioner of Fundamental Rights – during his work, but especially in processes initiated by his office – pays special attention to the protection of child rights, in addition to the implementation, protection and monitoring of the Convention on the Rights of People with Disabilities announced in the Law 92 of the year 2007. The Commissioner also performs the national prevention mechanisms stipulated in Section 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Law 190 of the year 2011 on public education. The law makes it compulsory to attend kindergarten from the age of three, while reducing the age of compulsory education from 18 to 16. It makes all day school an option. The main reason for reducing the age of compulsory education is to enable unmotivated students who are not interested in general education to transfer into the job market. As a new element a prerequisite has been introduced for taking the final exam: 50 hours of public service. The state takes a larger role in public education through controlling content, centrally guaranteed salaries of teachers, nomination of all school directors and central monitoring of the work of teachers.

Law 62 of the year 2012 modifies certain laws in order to implement child-friendly justice. The Criminal Law was amended: a person that has committed manslaughter under provocation, violation of one's personal freedom, abduction, trafficking in human beings, crime against sexual morals, or assault - to be punished with imprisonment of more than three years . The victim, or the person prostituting him/herself in a brothel, or the exploiter was under 18 years of age at the time of the crime and the crime would lapse before their 23rd birthday, the term of limitation will be extended up to the person's 23rd birthday or up to the point they would have turned 23.

5 Hungary's Fundamental Law (April 25 2011)

6 L) cikk (2)

7 L) cikk (3)

8 XV. cikk (5)

9 XVI. cikk

10 XVIII. cikk

Law 68 of the year 2012 modifying certain social laws and related laws. Regular child welfare benefits will be provided through a voucher. Family allowances can be suspended if the child does not attend school regularly and there will be no payment in arrears. Suspension of schooling allowance implies taking the child into care. The law stipulates the different benefits for children in care (benefits replacing employment, regular social welfare benefit, and in-kind social benefits). Local governments (and the district local governments in the capital) are required to maintain child welfare services. Data management and reception rules of child welfare services have also changed. A fee can be charged for the nursery – based on the decision of the maintaining authority¹¹.

Law 100 of the year 2012. the Criminal Code. The most important changes pertaining to minors are the following: modification of the age of criminal responsibility (children under 14 can be charged for manslaughter, manslaughter under provocation, bodily harm, robbery and plunder¹², if the child can judge the consequences of his/her actions. Exploitation through child prostitution¹³ (making pornographic film of minors, its acquisition, upkeep, trade, inciting a minor to participate in it are all a criminal act¹⁴), and definition of child labour¹⁵. Furthermore preventing someone from keeping in contact with their child or changing the custody of a minor (i.e. abducting, hiding a child after a court decision to a different effect) is also punishable by law.

Law 192 of the year 2012. on taking some special social and child protection institutions under state authority and on modifying some laws. The following text replaces paragraph 7 of the Child Protection law: „(2) A child has the right – in the form of an adoptive family, or other, family-replacement service – to protection substituting that of parents or other relatives. For children under 12 temporary care should be provided in a host family, except if the child is chronically ill, seriously disabled, or siblings cannot be placed together in a host family, or institutional care is imminent for other reasons. Also, if the parent or legal guardian asks for institutional care and it does not contradict the interests of the child”¹⁶.

3. Regulations

Regulation 16/2008. (April 30.) of the Ministry of Education and Culture modified the regulation 11/1994 (June 8) of the Ministry of Civilisation and Education on the management of educational institutions. Among other things the regulation stipulates that in case the secondary school provides education for a national or ethnic minority, reading competency testing should not use centrally provided, universal, competency-based Hungarian-language test sheets, but locally-developed, competency-based test sheets using the minority language.

During assessing admission applications, students belonging to the relevant national minority – who fulfil the admission criteria – should be admitted with a priority.

11 Erdős Zsuzsanna: Tájékoztató a gyermekvédelmi törvény módosításáról 2012.július. 2012. évi CXVIII törvény egyes szociális tárgyú és egyéb kapcsolódó törvények módosításáról. In: http://www.macsgyoe.hu/downloads/szakmai_anyagok/tajgyvtmod201207.pdf (2012.11.04.)

12 16. §

13 204. §

14 209. §

15 209. §

16 Magyar Közlöny 164. szám – 2012

Regulation 32/2011. (November 18.) of the Ministry of Public Administration and Justice orders the set-up of child-friendly witness hearing rooms in police for the protection of children. According to the regulation police investigative authority can only question a child under 14 in such child-friendly witness hearing rooms, where they can ensure that the process protects the child and maintains the child's best interests. The room needs to be created, furnished and equipped in a way that is in accordance of the child's age and ensures the emotional and physical safety of the child. Budapest Police and each county police need to create at least one such room within their jurisdictions.

Regulation 9/2012. (February 27.) of the Ministry of Public Administration and Justice modifying the above-mentioned regulation (32/2011) on the creation of child-friendly witness hearing rooms. According to the annex of the regulation the room should be big enough to accommodate at least 4 people at one time. Its height should be at least 2.5 meters. It should have a window of at least 1.3 square meters.

National Action Plan

Up to now there has been no national action plan to disseminate and implement child rights, but in 2007, following the recommendations of the UN CRC Committee, the government developed a national strategy „Make it better for children”¹⁷, specifying tasks for the next 25 years for the eradication of child poverty and exclusion, while also ensuring the harmonisation of child rights with the best interests of the child¹⁸. The action plan defines the reduction of ethnic and regional disadvantages as a cross-cutting goal. An Operational plan was developed¹⁹ for the years 2007-2010. Implementation of the program has encountered a host of obstacles. Not enough resources were allocated to it, and coordination among Ministries did not work despite having a separate organisational unit in the Prime Minister's office to ensure it. This was closed in 2010, following the change of government. The new government repealed the government decree²⁰ putting the program within the National Social Advancement Strategy.

The committee monitoring the implementation writes their report yearly. After the 2010 change of government the members of the committee were replaced and several governmental officials and church representatives were given a seat in the committee, leading to a 24-member committee with 12 governmental and 12 non-governmental, church representatives. The president of the Committee is the state secretary responsible for social advancement, which makes it difficult or impossible to have an external evaluation of the program.

The monitoring report published on March 29, 2012²¹ reviews the strategies regarding „child poverty, Roma and disadvantaged regions” with the view of a comprehensive program encompassing the years 2011-2010. There is no mention of child rights or the implementation of the Convention in the 100-page document.

¹⁷ Parliamentary decree No. 47/2007. (May. 31.).

¹⁸ During the Hungarian translation of the Convention the term „best interests” was mis-translated to highest priority interests and has not been corrected ever since, leading to many misunderstandings. .

¹⁹ Government decree No. 1092/2007(November 29)

²⁰ Government decree No. 1430/2011.(December 31)

²¹ www.romagov.kormany.hu

Former employees of the Program Office Against Child Poverty of the Academy of Sciences have created the 'Chances for Children Public Benefit Association' in order to ensure the participation of civil society in monitoring progress and in 2011 they wrote a research 'NGO Report About Child Poverty.' Their main mission of the Association is to „improve the life chances of children, fight the recurrence of child poverty through research, dissemination of information and through services. As part of this mission the Association writes an NGO report about the situation of children and their chances regularly (possibly every two years).”²².

Earmarked support of local governments

The Committee on the Rights of the Child recommended that earmarked funds be available for local governments to ensure the fulfilment of child rights, since the per capita support system did not require targeted spending of funds, so there were no guarantees that the funds provided promoted the welfare and wellbeing of children. This has not happened, while the budgetary support provided to local governments has seriously decreased between 2007 and 2012. Basic social and child welfare services have been decreasing (except for an increase in 2008), including the day-care of children, and funds for child- and youth protection services. Since the change of government in 2010 institutional support provided to social and child protection institutional care and support has decreased one third of the original amount.

From 2013 – according to the modification of the law on public education – the management of schools will be taken over by the state, so 2700 schools will be under central management²³, while 400 schools will remain under the management of local governments. Schools in municipalities of less than 3000 inhabitants will be managed by government institutional centres. Local governments have until September 2012 to decide whether they were willing to undertake the task of maintaining their schools. Local governments will continue to be responsible for maintaining the buildings of schools, while the management of salaries, professional oversight of education and provision of school materials will be centralised. The system of self-governments will be replaced by the system of districts from January 2013²⁴. Public administrative duties will be implemented by central offices under the management of governmental offices (instead of the city clerks and the municipal government)²⁵, and this central authority will make all decisions on local issues, opposing the principle of subsidiarity²⁶.

As in the case of educational institutions, child welfare and social institutions will also go under central management, in the name of financial rationalisation²⁷.

22 Civil jelentés a gyerekesélyekről 1 (Ferge Zsuzsa – Darvas Ágnes szerk.) www.gyere.net/downloads/Civil_jelentes_2011.pdf

23 http://hvg.hu/hvgfriss/2012.28/201228_kozponti_iskolairanyitas

24 Decision of the Government No. 1299/2011. (September 1) about the creation of districts

25 Child protection, guardianship, social affairs, environmental issues, nature protection issues will be managed by them.
Source: www.kormany.hu

26 <http://magyararancs.hu/belpol/megvalosithatatlan-es-cinikus-78448/?orderdir=novekvo>

27 Decision of the Government No. 1299/2011. (September 1) about the creation of districts

Centralisation also pertains to institutions fulfilling child protection specialised services. According to the law of the government²⁸ the duty of local governments to provide such services ceases and these institutions go under the management of the state. The duties of the state are to be implemented by a future Directorate General²⁹ (Directorate General for Social Affairs and Child Protection).

According to the ruling, the Directorate General has a right to annul service agreements related to the tasks it oversees, which not only puts organisations working under such agreements in serious uncertainty but also raises constitutional concerns.

Independent Child Rights Ombudsman

According to the Committee's (and several Council of Europe's) recommendation there is a need for the creation of a separate child rights ombudsman's post. The Hungarian government did not live up to this recommendation during the reporting period. Protection of child rights is fulfilled by the civil rights ombudsman who is the general ombudsman. The general ombudsman has fulfilled his duty in a more emphatic way since 2008, developing thematic projects, during which he has not only started inquiries based on individual complaints but has started proactively raising awareness in the wider public.

The ombudsman's child rights project takes on problems related to the protection of child rights: in 2008 it was raising awareness among children, in 2009 it promoted the fight against child abuse, in 2010 it inquired into the role of family in upholding child rights, in 2011 it looked at the access of children to health services. The ombudsman's office also maintains a child rights website as well as a Facebook page. The pro-active work of the ombudsman is very important, since it is trying to prevent human rights violations.

The Fundamental Law that came into effect in January 2012 created a new law on the ombudsman as well, and it has modified the structure of the Ombudsman's office: the four ombudsmen are replaced by one Commissioner of Fundamental Rights that has more tasks and power. Law 111 of the year 2011 about the fulfilment of fundamental rights stipulates the promotion of child rights as a priority task of the Commissioner (besides minority rights, rights of future generations, and the protection of underprivileged social groups). Unfortunately no funds were allocated for this task.

Disaggregated data on ethnicity

The situation regarding the collection and publication of disaggregated data on ethnicity has not changed since the last report – despite the recommendation of the Committee. Research has pointed out that the lack of data disaggregated to ethnicity makes appropriate social policy-making difficult.

A research compilation was published, which recommended that a so-called „Family Story-book” be made for each child so that the different characteristics of the family is traceable, but the

28 Law 192 of the year 2012. <http://www.parlament.hu/irom39/08889/08889-0062.pdf>

29 http://www.kormany.hu/download/6/8e/a0000/szgyf_jszz-terv.pdf#!DocumentBrowse

child should not be categorised. A pilot program started but its results are not known yet³⁰. Within the framework of this program an accredited training program started with the title „Analysing family history, family photos” in 2011³¹.

The European Roma Rights Centre has conducted several pieces of research and published these on the situation of Hungarian Roma children, their identity, their ethnic-based exclusion, entitled ”Dis-Interest of the Child: Roma Children in the Hungarian Child Protection System”, and „Life Sentence: Romani Children in State Care in Hungary”³².

Recommendations:

- Creation of the office of a separate Ombudsman responsible for the protection of child rights
- Creation and implementation of a Child Rights National Strategy and its implementation for each and every Hungarian child
- Translation of the International Conventions and Recommendations to Hungarian, their publication, dissemination and implementation
- Creation and implementation of a regulation enabling the collection of ethnic data

Article 42. : Making the Provisions of the Convention Widely Known

According to the European Union-wide Eurobarometer poll of 2008 and 2009 children in Hungary are the least aware of their rights (only 38% of respondents), and the least number of children know that children under 18 have special rights (61% in 2008³³ and 60%³⁴ in 2009).

Following the recommendation of the Committee in 1998 the government translated the Convention to Hungarian and to the 13 languages of Hungary’s national and ethnic minorities. Their distribution and promotion however did not happen.

The Child Rights Convention was translated into sign language by UNICEF and SINOSZ (Association of Deaf and Hearing Impaired), and a voice recording was done of it which is available on the internet. UNICEF also made posters in child-friendly language entitled „Child but with Rights” in order to disseminate the Convention among children.

The awareness about the Convention on the Rights of the Child is still very low; NGOs have initiated different programs to improve this situation. One of these is the program „You have Rights“ implemented by the Family, Child and Youth Association³⁵. As part of this program, the Implementation Handbook of the CRC was adapted to Hungarian and distributed in 2000

30 Családtörténet, családi legendárium, NCSSZI, www.ncsszi.hu/download.php?file_id=1095

31 Gyermekjóléti körkép 2011/1 http://zeggyermek.nyuma.hu/feltoltes/dokumentumok/2011_1%20korkep.pdf (10.12.2012)

32 <http://www.errc.org/cms/upload/media/02/8F/m0000028F.pdf> és <http://www.errc.org/cms/upload/file/life-sentence-romani-children-in-state-care-in-hungary-20-june-2011.pdf>

33 The Rights of the Child, 2008

34 The Rights of the Child, 2009

35 In the framework of a project co-funded by the European Union

copies. Further two publications were made³⁶ to raise awareness about the Convention, and to promote its implementation among children, parents and professionals.

The Hungarian translation of „A Compasito – Manual on human rights education for children”³⁷ of the Council of Europe was also published in 2009 by two NGOs, Mobilitás and the Family, Child and Youth Association, with the financial support of the Council of Europe, providing theoretical and methodological support to professionals working with children about human rights.

Legal Knowledge Foundation that provides trainings for lawyers and professionals about child rights has organised a child rights lawyer network and a child rights workshop in 2010³⁸. In the framework of their program „Child Rights House” they provide support and cooperation to lawyers and legal professionals working on child rights.

The Ombudsman started its child rights website in 2008: www.gyermekjogok.ajbh.hu, which has received several hundred questions and complaints since it has gone online.

The 'Speak Up!' project funded by the EU's Fundamental Rights Agency (FRA) studied the awareness about child rights in eight countries, among different groups of children in Hungary led by Family, Child, Youth Association as a partner organisation in the project. In Hungary children between 13-17 years of age, living in children homes and in foster care, as well children studying in a non-traditional school were asked how they saw their rights, how much they knew their rights or could exercise them. The interviews revealed that children living in institutions and with foster parents have never heard about child rights – like the legal prohibition of physical punishment. They only blamed themselves for their bad behaviour, for the violation of their rights or for the non-fulfilment of them³⁹.

In 2012 the Hungarian Committee of UNICEF started a project „Convention on the Rights of the Child through the Eyes of Children” – as member of the civil society coalition for the writing of the alternative report. The goal of the project was to improve child participation in the writing of the report. 2800 children participated in different activities (questionnaire and interactive workshops). According to their experience, children had little information and opinion about their rights, they acknowledged the rights but did not think that they were party to them. The result of the questionnaire was that children generally answered correctly the questions about their rights and legal situation. 90% of participating children knew that under 18's are children (and only 3% thought that the under 1 year-olds are children only). 83% of children felt that their opinion had to be heard in questions whether they wanted to see their separated parent. 91% of respondents knew that their possible school failure would be not only their fault, and that adults had to provide them assistance to improve the situation. The common responsibility for children with disabilities was evident for 87,5% of participating children, while there was the biggest agreement so far about the steps against children in conflict with the law. 94% of responding children thought

36 Kézikönyv a Gyermekjogi Egyezmény Alkalmazásához, Család, Gyermek, Ifjúság Egyesület, 2010, Van jogod! Kézikönyv gyerekeknek, Van jogod! Kézikönyv felnőtteknek a gyermeki jogokról, 2010.

37 A Compasito – Manual on human rights education for children kiadvány magyar nyelvre fordított változata, Mobilitás, Budapest, 2010

38 <http://www.gyermek.jog haz.hu/dokumentumok/Gyermekjogi-Munkakonferencia-meghivo.pdf>

39 'Speak Up!' project of the Family, Child and Youth Public Benefit Association': <http://csagyi.hu/projektek/aktualis/speak-up/dokumentumok/item/415-speak-up-modszertani-keret>

that the right answer for a child that stole toys from a store was to make it possible for the child to take responsibility for his/her actions and to implement reparations.

Child Rights is not part of the National Basic Curriculum. In secondary school it is an optional topic for students between 10th and 12th grade for 1 lesson.

Recommendations:

- Including child rights in the national basic curriculum
- Informing professionals and the public about child rights and opportunities for their implementation
- Campaign to disseminate child rights and their wide-ranging implementation. Raising awareness that the Convention is part of Hungary's domestic law

Article 44. paragraph (6): Reporting Obligation of State Parties.

Disseminating the Convention Through the Education System

The Committee encourages Hungary to make the Convention widely known, through trainings provided to professional groups working with children and through the education system. Informing about child rights and their implementation based on facts and experience has never been a priority for governments. There is no systematic, overarching approach, there is no child rights based approach, and so this knowledge is not part of the training of child protection professionals, and children, parents and the wider public are not informed. The situation is well characterised by the Commissioner for Educational Rights that never even mentions child rights in his reports, there is no child rights based approach in his inquiries and cases, and he never raises his voice for serious violations such as segregation, discrimination, the modification of the education system, or the exclusion of children in the cases he investigates⁴⁰. The inquiries below are not by him but by the general ombudsman.

According to the experience of the child rights project⁴¹ 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. More and more schools provide the opportunity for pupils to express their opinions through representation in school management, but there is no data or information how wide-spread or successful this is.

The last study about the child-rights based approach of school regulations was done in 1997⁴². The study found that the rights of students is included in school regulations in 90% of cases but there are no practical guidelines on how to fulfil these rights. Based on the research, the National Student Rights Council published guidelines on how to develop school regulations that are according to the law, while a Ministry regulation⁴³ ordered the legal oversight of school regulations. The results of this review are not known.

40 <http://www.oktbiztos.hu/ugyek/jelentes2011.html>

41 Child Rights Project 2008 2009 ÁJOB Projektfüzetek 2010/1. 9. old.

42 Bíró:1998

43 Ministry of Education regulation 8/2000 (May 24), 30. paragraph (5) modifying the regulation of the Ministry of Culture and Public Education 11/1994. (June 8.)

One can gauge the status of implementation of the Convention through evaluating the prejudices of children in the education system as an indicator. A 2010 research among 1000 secondary-school students⁴⁴ revealed that the majority of students have prejudices against Roma (33% provided extreme answers, 72% gave negative answers about all questions related to Roma), including the one whether they can imagine having Roma friends or whether they would have a Roma sitting next to them in class. A 2011 international research⁴⁵ including Hungary pointed out that social, cultural and economic disparities, selection among and within schools and social discrimination have an effect on the disparities among the educational conditions for Roma and non-Roma secondary-school students. These disparities have an effect not only on their school performance but on their chances for further education and future life.

Informing Vulnerable, At-Risk Children about the Convention:

The Committee encourages Hungary to support the publication of the Convention among migrants, ethnic and language minorities. Roma, children with disabilities and migrant children are disadvantaged in this regard as well, because there is no training material, child-friendly version that would make the Convention accessible to them, and NGOs have not developed such materials so far. The Alternative Report to the Convention on the Rights of Persons with Disabilities, and the governmental dialogue with the appropriate Committee has raised this issue and a practical advancement is to be expected in the near future.

The Family, Child and Youth Association organised focus-group discussions through games and meals with children with mental disabilities, psychological and/or behavioural problems, in order that they can learn about their rights and that they can express their views about them and that others can learn the views of these children. During each of the 6 meetings 4-12 children living in families or specialised services participated. There was only one boy (delegated by the national student parliament in his children's home) who was able to name two concrete children's rights.

The focus group discussion underlined (beyond proving that children are not aware of their rights) the need that vulnerable youths and the professionals working with them need to be informed about the Convention as a priority.

Below you will find some quotes from the youngsters.

„It's true we are equal, but that is not a right, since we are equals.”

„All children are being hit. One hit is what? Not the end of the world.”

„Q: In your view which is more important? Rights or obligations?

A: Both are, at the same time, because if we do not fulfil our obligations we do not have rights.”

„The Right does not depend on anything..”

44 Váradi Luca: Utánpótlás. Felmérés a tizenévesek el ítéletességér 1. In: Magyar Narancs, 2011/35.szám

45 Ferenczi Borbála: Kivel ülünk egy padban? Etnikai különbségek az oktatásban. Educatio Folyóirat 2012/I. szám Magyar kisebbségek az oktatásban

„Q: In your view why did they list the rights of children? Who is it for?

A2: Children.

A3: and for adults as well, since there are child rights and rights of adults.

A: For police as well. If we play they will not tell us and will not report us, because if we shout a bit louder they just reprimand us.”

„A: I put them in order. First „Children with disabilities have a right to special care”

Q: Why is this the most important in your view?

A: They are isolated from the world, so I would first give to them, so that they can feel good as well, and that they are not pre-occupied with what has happened to them. They shouldn't be sad all day; I would give them a bit of happiness through this.”

„Q: All children have a right to express their views freely. Why is this important?

A: This is important not only for children but to all people. We came here, we had the right to speak, and we could ask questions, answer, move around .”

„Q: Is it true for all children that it is imminent that they eat, play, learn, that they are taken to the doctor if they are sick?

A: (several ones): yes, yes, of course!

Q: Is this true for children that are bad?

A (several ones): No!”

„Q: At the same time I need to know what rights I do not have.

A: What do you mean?

A: I think I do not have the right to torture someone, and stuff like this.

Q: There is a child right that says that nobody should be physically abused.

(Looks at the pictogram, is appalled and says „My God! This is murder!”)

A: Abuse through words or deeds?

Q: Think of how you feel when someone says something to you that makes you feel really bad.

A: This looks quite different. Usually it ends up in anger or a fight. There was a girl in school that said I was like this and that, that I am a pussy, and berated me like this. She said I was unable to change and would not. I simply had enough after a while and I said 'fine, this is it I am not going to talk to her anymore'. The girl sensed this and stopped it.

Q: Do you think the girl thought of how bad this makes you feel?

A: I think so, otherwise she would not have done it. Only crazy people do things without thinking it through.”

„Q: Do you get enough information? Do you know what will happen to you or what you are allowed to do?

A: I do get information. We have just been to court to decide where I go after I finish school, and what I wanted to do. Both the judge and the teachers told me what I can expect, they prepared me. They told me to prepare myself.”

Recommendations:

- A research should be made to see the views, attitudes and knowledge of child protection professionals about child rights,
- Child- and human rights should be included in the curriculum of both the basic and advanced training of professionals,
- Child rights should feature in school curricula, they should be implemented and there should be a system of grievances,
- The public should be informed about the Convention and the importance of upholding child rights,
- Disaggregated data should be collected on Roma children. In absence of this integration programs cannot be developed, monitored or evaluated.

Cluster 2: Definition of the Child

The new Fundamental Law that replaced the Constitution in 2011 stipulates that the foetus is eligible for protection from its conception, but it does not mean a change to an earlier law on the protection of the embryo⁴⁶. The Fundamental Law identifies family and not the individual as a unit. The Preamble of the new constitution talks about civil rights and it acknowledges the right to individual dignity („We hold that human existence is based on human dignity”), but it restricts the right to freedom („We hold that individual freedom can only be complete in cooperation with others”), and then it recognizes the family as the smallest unit of society as a framework of cooperation, not the individual („ We hold that the family and the nation constitute the principal framework of our coexistence”)⁴⁷.

Cluster 3: General Principles

Article 2: Non-Discrimination

The Committee made several recommendations in relation to the prohibition of discrimination, like support to disadvantaged children, abolishing discriminatory practices in institutions – with special regards to making children ‘private schoolers’. These issues will be discussed in detail under Articles 23, 26, 27 and 30 below.

Governments have not lived up to the prohibition of discrimination of children with disabilities, children belonging (or thought to belonging) to the Roma minority or migrant, unaccompanied minors. There has been no promotional material, campaign, media program developed to try and change the discriminatory attitudes of the public (adults or children). The economic crisis, impoverishment, existential fears have seriously endangered the fulfilment of the rights of disadvantaged, defenceless children and often even their physical and spiritual security.

⁴⁶ Law No.84 on the protection of the life of the fetus¹ as well as the Fundamental Law, Chapter on Freedom and Responsibility, Article 2

⁴⁷ Fundamental Law of Hungary (April 25, 2011) , Preamble, Chapter on National Avowal

Article 3: Best Interests of the Child

In its 2006 Concluding Observation the Committee on the Rights of the Child states⁴⁸: „While the Committee notes that the consideration of the general principle of the best interests of the child is consistently demanded by laws, it is concerned that this principle is not always respected in practice, in particular with regard to decisions affecting children belonging to vulnerable groups such as refugee and asylum-seeking children and children belonging to ethnic minorities, particularly Roma.”

The new Fundamental Law includes the right of children to protection and care – like in the earlier Constitution – but this time it does not specify those responsible for it (family, state, society)⁴⁹. The former Constitution has incorporated several Articles of the Convention by requiring state tasks „related to situation and protection of families and youth” be included in separate regulations, demanding legal commitment in this regard.

Almost all inquiries of the Ombudsman have pointed out the requirement to uphold the best interests of the child – and if it has not been observed. Information on this can be found later in this report.

Current Hungarian regulations disregard Article 3 of the Convention at several instances: decisions pertaining to children (e.g. in justice – related to detention) often disregard the best interests of the child.

During the approval process of the bill on child-friendly justice there have been several modifications proposed that will include the best interests of the child principle into other regulations (Civil Code, procedural laws, implementation regulations), etc.

Article 6: The Right to Life, Survival and Development

Children born into poor families, especially disadvantaged ones (due to place of residence, single-parent households, teenage mothers, premature and low-birth-weight babies, families with substance abuse challenges) are especially vulnerable, and they are the ones that cannot access appropriate, high-quality support, since they usually live in disadvantaged regions where resources are scarce or non-existent. This seriously hampers the right of the child to development. This is especially true for Roma children living in abject poverty, who suffer multiple discrimination and disadvantages.

In Hungary access to health care is uneven both vertically and horizontally, the quality of services are region-specific, the right of children to development is violated in disadvantaged micro-regions. There are several places where there is no child doctor and the health visitor system also faces many challenges, especially in disadvantaged municipalities.

48 CRC/C/HUN/CO/2

49 Alkotmányos hátraarc , 2011

The rate of 0-6 year-old children requiring special care was highest in the regions of Northern Hungary, Northern-Great Plains, and South-Transdanubia (all disadvantaged).⁵⁰ While the number of families a health visitor was responsible for was highest in the regions of Northern-Great Plains and Northern Hungary, the number of unfilled positions (of health visitors) was also highest in these regions, as compared to the other regions. According to the reports of health visitors, more than 10% of families cared for and registered nationally, live in the most disadvantaged micro-regions, while providing health visitor services is problematic for half of the municipalities.

In 1996 the government introduced the system of incubators (baby boxes) placed in front of hospitals to prevent infanticide and child abandonment, however this severely violates the rights of children. This is discussed in detail under child abuse (Article 19).

Article 12: Respect for the Views of the Child

Respecting the Views of Children During Court Procedures

In 2006 the Committee expressed concerns that the views of the child are insufficiently taken into account in the decision-making process of alternative care placements and custody cases.

Children under 14 are heard only as an exception in any type of cases as witnesses. In most instances the court asks for an expert witness in divorce and child custody cases. In criminal cases child witnesses are not heard in court, but several times during police investigation. Expert witnesses get no special training, professional support, supervision; there are no professional standards or protocols, so it is accidental who becomes an expert witness, and how professionally prepared that person is to fulfil their obligations; whether they are able to answer the questions. This leads to serious anomalies and to processes that are drawn out to years, especially in child abuse and neglect cases. The same is true to child custody and visitation cases. Despite having a legal framework available, mediation has not been used widely, and this hampers the management of family conflicts or the prevention of problems regarding visiting rights.

For the child-friendly witness rooms for children victims there are no professional protocols or a unified set of standards for their operation, only for their physical creation. These child-friendly witness rooms are hardly used, it has to be requested, even though the law on criminal procedure prescribes their use, without an obligation to do so. They are only used by police, court, prosecutors, doctors, psychologists will not hear the child in these rooms. It is also not ensured that girls are heard by women. There is no professional protocol for people questioning children, the testimonies are recorded by hidden cameras, the child does not receive appropriate notification or assistance to understand what is going on. There is no regulation, professional or ethical rule prescribing the court to use the recordings.

⁵⁰ Ferge Zsuzsa, Darvas Ágnes (szerk.): Gyerekesélyek Magyarországon. A „Legyen jobb a gyermekeknek!” Nemzeti Stratégia Értékel Bizottságának 2009. évi jelentése. (MTA Budapest 2010.) 224-242.

Year of Child-Friendly Justice

The Minister of Justice's announcement that the year 2012 was the year of child-friendly justice – in accordance with the EU's Agenda on the Rights of the Child⁵¹ and the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice⁵² can be deemed as a positive development in hearing children's views. In 2012 the Commissioner of Fundamental Rights (Ombudsman) organised his activities around the topic of child-friendly justice – joining the European Network of Ombudpeople for Children.

The Ministry of Justice – together with NGOs (UNICEF, International Child Rescue Service Foundation), experts and the Commissioner – has created a working group on child-friendly justice: as a result of their work certain sections of the Criminal Code were modified, penalising crimes against children more seriously.

The Minister ordered that a child-friendly witness room needs to be set up in every county seat, as stipulated in the regulations and defined by protocols, where children under 14 should be heard considering their best interests and their humane treatment⁵³. Currently there are 22⁵⁴ such rooms, but only two are in accordance with the above-mentioned criteria. Reviews also point out that beyond these rooms there should be professionals that have the necessary knowledge how to hear children, and that the rooms should be used not only for children victims and witnesses of crime but also children in conflict with the law. During the writing of the current report the modification of appropriate procedural regulations is under inter-ministerial consultation.

Cluster 4: Civil Rights and Freedoms

Article 13: Freedom of expression

The Committee's recommendation on the freedom of expression mentions that particular emphasis should be placed on the right of every child to express his or her views freely in all matters affecting him or her. In the spirit of the Child protection law⁵⁵ the protection of child rights is the responsibility of all persons that are concerned for the education, upbringing, caring and managing the issues of children. As part of this, the child rights representative is supposed to protect the rights of children living in specialised care, to assist children in practicing and fulfilling their rights. Since 2004 the independent Patient Rights, Dependents' Rights and Child Rights Public Foundation employed, supervised, organised and monitored the child rights representatives' institution and made sure that children in child protection care and children and adults receiving social services have their rights fulfilled. This child rights institution cooperated with child protection services, promoted the full-fledged protection of children, their representation and solving their problems, while they also developed a national network of legal protection and a toll-free green number to provide care for children. There is no assessment or review of the results of this serv-

51 Communication from the commission to the European Parliament, the council, the European economic and social committee and the committee of the regions An EU Agenda for the Rights of the Child <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0060:hu:NOT>

52 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice igazságszolgáltatásról <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1705197&Site=CM>

53 32/2011. (November 18.) Ministry of Public Administration and Justice decree about the creation of child-friendly witness rooms in police investigative units

54 Áldozatbarát büntető törvénykönyv készül In: <http://gyerekjog.kormany.hu/aldozatbarat-bunteto-torvenykonyv-keszul>

55 Law No. 31 of the year 1997 on child protection and management of guardianship Paragraph 11/A.

ice. There have been too few professionals available and the appropriate training, operation guidelines, monitoring and evaluation were missing.

After the change of government in 2010 the Public Foundation was disbanded, the tasks of child rights representatives were reviewed, their paid hours were reduced. Half of the representatives were laid off and their supervision and employment was transferred to the National Rehabilitation and Social Office in 2011. From September 2012 the National Patient Rights, Dependent Rights, Child Rights and Documentation Centre fulfils these tasks. Child rights representatives (and the others) have no right to talk to the press. All inquiries need to be channelled through the Ministry's press officer.

Children living in specialised care have limited opportunities to make a complaint: guardianship counsellors cannot, or do not want to represent children against their own colleagues, or appropriately investigate the issue. Their room of manoeuvre is thus limited just as it was the case for child rights representatives. According to the modification of the child protection law guardianship counsellors take over the tasks of child protection guardians.

In children's homes it is compulsory to have a sign up with the contact details and office hours of child rights representatives. According to experience children like to turn to the representative when they cannot get help from others. Visits in children's homes during the ombudsman's inquiry No. AJB 797/2011 revealed that in some instances the child rights representative has not made one single visit to the place in years, or could only be reached by phone. This was the case while according to the Child Protection Law paragraph 11/A „the child rights representative pays special attention to the protection of children needing specific or special care.” Among the institutions studied however there were ones where the child rights representatives had office hours every week, every two-weeks regularly. The Child protection law does not require the child rights representative to visit children at their place of care. The number of representatives is rather low, they have to care for many cases of children, their situation is unpredictable. Currently volunteers are sought to fill the unfilled posts in several regions.

The guardian counsellors of specialised services are responsible (among others) to visit children and guardians regularly, and children can make a complaint with them as well.

In children's homes there are advocacy fora and child self-governments operating – with varying effectiveness.

Article 14.: Freedom of Thought, Conscience and Religion

It is worrisome that the new Public Education Law⁵⁶ makes it compulsory for students to attend either theology or moral education classes. This violates their freedom of religion or conscience, since it becomes quite evident who follows what religion or if someone does not wish to participate in religious education. It is also discriminatory that in the growing number of church-run schools – even where there is no other school to be attended- employees are expected (pro-

⁵⁶ Law 190 of the year 2011 on National Public Education, Paragraph 35. (1)

nounced or not) that they belong to the given church and that they practice. These schools often have discriminative policies and pick and choose among potential students. On the other hand there are communities⁵⁷ that lost their status of church organisations and with that they have also lost state subsidies. The chances of disadvantaged children attending the schools run by these organisations have seriously dampened.

Article 15: Freedom of Association and Peaceful Assembly

In 2011 the regulations of the association law changed. In accordance with the new regulation⁵⁸ children under 14 cannot hold management or membership positions in associations (children's organisations) created by themselves. This restricts children from practicing their right to assembly and thus hampers the practical realisation of democratic self-governance in case of children's organisations. Most probably the reason for this is that both the Civil Code and both the Law No. 175 of the year 2011 on non-governmental organisations, when defining associations do not include a reference on their „democratic” nature.

Article 17: Child's Access to Information

The Committee recommends that the State party creates media content with regard to the protection of minors. According to a 2008 research among children, television is still the leading medium, followed by the internet.

The new Media law⁵⁹ covers the protection of children in a separate sub-chapter. The regulation stipulates that media content cannot harm the intellectual, emotional, moral and physical development of children. Media content that may harm children can only be accessible in a way that ensures that children cannot access them under general circumstances. Beyond protection however it would be very important to ensure that children really access information that is accordance with their age. The National Media and Info-Communications Authority (NMIA) launched a five-week campaign in 2008 following the Christmas holidays to raise awareness among parents of their responsibilities. In the framework of the project they broadcast dramatic spots on TV and online, in order to shake the public up. There is no data on the results of the more than one-month-long campaign.

As a guarantee to screen harmful effects, the classification system was modified and categories were defined to protect children and young people, introducing a new category for „not recommended for children under 6”. One year after the law came into effect, NMIA conducted a survey⁶⁰, which revealed that although TV stations have qualified their programs according to the new system, they have not been using the child-friendly pictogram – since its use was not compulsory.

The ombudsman conducted a comprehensive inquiry into the responsibility of media in protecting child rights. His report number 2057/ 2008 pointed out that it is not enough to broadcast

57 e.g. the buddhist school 'Ambedkar', the Hungarian Evangelical Brotherhood

58 Law No.4 of the year 1959. on Civil Code Paragraph 62. (para 5)

59 Law No.185 of the year 2010 on media outlets and on mass communication

60 <http://nmhh.hu/> <http://csaladi.hirnok.hu/cikkek/18-egyeb-cikkek-erdekessegek/371-gyermekbarat-jelzes-a-televizioban>

„non-harmful” content during the time period for children. It should provide programs that enhance their development and their knowledge.

NMIA was the first to make steps towards making the internet more secure, by operating an Internet Hotline service. Through its website it is possible for anyone to report illegal or harmful content. NGOs (Association of Hungarian Content Providers, Once Upon a Time – Public Foundation for Hungarian Child Culture, Council of Internet Providers) maintain the so-called „Safe Children’s Pages and Online Content” qualification system, that points to websites that are safe for children to browse. There is a special pictogram accompanying this, which provides guarantees for children, parents and teachers that children will not be confronted by adult content.

Kek Vonal - Blue Line - Child Crisis Foundation and the International Child Rescue Service Foundation have been operating a safer internet⁶¹ program with the co-funding of the European Union. The International Child Rescue Service – as the Hungarian coordinator of the European Union’s Safer Internet program has invited the ombudsman into the program as well.

Ban on Corporal Punishment and its Implementation (37(a), 28(2))

The Committee – in its last concluding observations – welcomed the legislation on banning physical punishment within the family, yet expressed its concerns about the use of corporal punishment in schools and recommended that special campaigns be initiated to raise awareness about it.

Even though the law stipulates the total ban of corporal punishment in any form, there has been no progress since its coming into effect in 2005 to promote or implement it. Neither parents, nor children or professionals know about it, and there has been no campaign, awareness raising or training on alternative techniques. Physical punishment within families is often not considered a crime by judges, since it is included in the child protection act and not in the criminal code. The new Criminal code now includes emotional abuse as a form of endangering minors.

The Law on Public Education - Currently

The current law on public education stipulates three levels of school discipline. Pedagogical tools, disciplinary action and disciplinary punishment. An institution has the possibility to use alternative, behaviour-influencing processes and tools. Pedagogical tools and disciplinary actions are left to the decision of the institution, although the law prescribes that children/pupils cannot suffer physical punishment, torture, inhuman or degrading treatment. This restricts disciplinary action – since physical punishment and degrading punishment are prohibited.

The regulations regarding school discipline are seemingly in line with the Convention and do not violate the dignity of students, reviewing it however more deeply it is revealed that hearing the child is missing from disciplinary processes and the participation of parents is also not clarified.

According to a research about school violence, about 25% of pupils are physically abused by teachers as a way of disciplining them⁶². The same research also revealed that the biggest prob-

61 <http://www.saferinternet.hu/>

62 Földes-Lannert:2009

lem faced by schools are the „usual” behaviour of students (communication among each other, management of conflicts), and the burnout of teachers. Another research on school aggression pointed out that factors within the schools (e.g. informality of the school atmosphere, teachers’ tools, types of schools) correlate with certain aggressive behaviour (the more progressive a school is, the less the aggressive behaviour))⁶³.

New Public Education Law

The new law on public education has been in force since September 2012, according to which school guards – earlier police – help maintain discipline. School guards can – in some instances – use physical force, which goes against the recommendations of the Committee and current Hungarian regulations. Disciplinary processes against students have also changed with the law, making it possible to ban a pupil from attending school that school year and as a punishment he/she can be expelled from school⁶⁴. The law allows for „immediate implementation” instead of well thought-through steps, in case „non-implementation of the measures would seriously violate the rights of other pupils or lead to other, unavoidable damage or threat”⁶⁵.

The ombudsman has addressed the Constitutional court in October 2012 (AJB 6980/2012).to review the provisions about school guards in the law on public education.

The Commissioner for Educational Rights has covered the issue of school violence in his reports every year since 2003. He mentions in several instances⁶⁶ that teachers have no means to deal with violence, they do not want to admit that they fail, they are unable to ask for help if they get stuck in their work with the students. In some cases which were widely covered in the media, parents abused the teachers for injustice that may or may not have been done to their child. In these cases the parent was charged for violence against a person performing public duties. There was no real investigation, assessment or alternative forms of managing the issue, which would help stakeholders to cooperate and prevent further violence.

In a 2010 conference⁶⁷ Jogismeret Alapítvány - the Legal Knowledge Foundation – has proposed that a referral system be included into school regulations as a way of managing aggression in schools. In their view crimes by children, young people and school based aggression were not followed by the appropriate legal consequences and cases of petty offences were not properly referred⁶⁸.

The Commissioner of Educational Rights covered the issue of school violence in his 2010 report. He mentioned that most of the directors of schools condemned corporal punishment in schools⁶⁹. In schools however corporal punishment by teachers was not uncommon, as the following quote from the report revealed: „A parent approached our office claiming that one of the

63 Földes-Lannert: 2010 (Földes Petra –Lannert Judit: Er szak az iskolában Romló közérzet: ok vagy következmény? Esély 2010/3

64 Law 190 of the year 2011. Paragraph 58.para (5)

65 Law No. 190 of the year 2011.Paragraph 68.para (13)

66 Report on School Aggression, 2009-2010 Reports of the Commissioner of Education Rights

67 Házirend módosítással az iskolai agresszió ellen, Paks, 2010.

68 Tévedés, hogy fokozódik az er szak? Eduline. 2010.12.23.In: http://eduline.hu/kozoktatas/2010/12/23/20101222_iskolai_eroszak_hazirend

69 Report OBJ 2010

teachers of his child's school hit the child in such a way that the child suffered injuries recovered within 8 days. In his statement the head of the institution informed me that he learnt about the event from the teacher in question, who told him that the student had been banging on the toilet door with all his might. The same day the student also reported to the director that the teacher had hit him. The director made inquiries and since the student could not explain his action, he was given a disciplinary notice." There are no statistics available on the rate of physical abuse in schools.

Recommendations

- Legislator should clearly define the social benefits, allowances that can be revoked, and an exact definition should be included about disciplinary action and differentiate it from disciplinary punishment.
- Legislator should repeal its regulation allowing the use of violence in schools.
- Introduction of a referral system for legal infringement

Article 39: Rehabilitation of Victims of Violence

„The Committee also encourages the State party to provide adequate reparations, rehabilitation and recovery programs for victims of such abuses.”

Other comments cover the issues related to the neglect, exploitation, torture and rehabilitation of children. One can summarise however that the system of care for child victims does not provide any practical assistance, trauma are not appropriately dealt with, professionals and the protection services lack knowledge and the attitude to appropriately identify and manage trauma. In Hungary victim assistance means only the financial remuneration of adults, there is no attention paid to children victims, this issue is hardly ever mentioned.

The ombudsman raised the attention of legislators that access should be ensured to victim assistance services and that legal regulations should be prepared to enable child victims to receive assistance (AJB 2617/2012).

Regional victim assistance services are part of the child protection referral system and they have been given a methodological guidance in 2011 to help their work. Despite this only a small number of children come into contact with them. One reason for this may be that only few people know about the existence of such a service. Due to budgetary problems one or two officers cover cases coming from a whole county and these officers have a legal background⁷⁰. There would be a great need to have colleagues with a psychology background but this is only true for Budapest – and more recently in the Northern-Hungary region (Priority project „TÁMOP 5.6.2.”).

Several NGOs participate in providing assistance to victims but there is no quality control. There is a formal oversight provided by the Prosecutor's office, (just like in the case of any NGO) but there is no other support- or supervising organisation.

⁷⁰ Justice Service of the Ministry of Public Administration and Justice: Activities of the victim support services 2010. http://www.kimisz.gov.hu/data/cms30169/2010_beszamolo_Aldozatsegito_Szolgalat.pdf

Cluster 5. Family Environment and Alternative Care

Article 5.: Parental Guidance and Child's Evolving Capacities

There is no support provided to parents through training or services. The public takes it as a given that everybody should know what the tasks of parents were. This is true despite the fact that for several decades there were popular media programs and publications, and in theory, health visitors also provided assistance to parents in acquiring knowledge about child care and upbringing. Child welfare service – this universal local support service should – in theory – also provide preventive assistance, but it suffers from serious lack of resources and there is no opportunity for effective prevention. There is hardly any civil society action in this field and financial resources are difficult to come by for this purpose.

The three-year paid child-care benefit masks the fact that many parents cannot provide appropriate care and upbringing for their children, while early-childhood support services – like baby-mum clubs, play groups - are practically non-existent. The Hungarian adaptation of the program 'Sure Start' was created to fill this gap. This program was tested only in disadvantaged micro-regions, according to the pre-conditions set forth by the European Union's support and it only reaches a restricted number of affected families.

The 2010 inquiry of the ombudsman about day care services for children stated that the current system cannot provide equal (and equal quality) access. There are nurseries in 230 municipalities out of the 3145. Kindergartens operate on full steam. A solution would be the creation of – for example – family day care centres, but it would be problematic in the current environment over- and under-regulation. See more details under Article 18.

Day Care Services

9% of children between 0-3 attend nurseries that belong to the social sector. Most of the deprived children do not have access to any type of services, since their mothers are at home, and there are no day care services for under age 3 years old, available in most municipalities. The system of family day care is being developed with great difficulties, and it focuses on a different age-group, while the training of employees in these centres is rather low, most are not prepared to welcome disadvantaged children and parents.

„The public education law to take effect on September 1, 2012 does not include any provisions about the organisation of day-care services or activities. Only paragraph 27 (2) – coming into effect on September 1, 2013 makes it compulsory for primary schools to organise education in a way to provide activities for children until 4 p.m. As a consequence there is no regulation that would require schools to provide afternoon activities for children between September 2012 and September 2013, providing day-care services for children is a child welfare basic task.” (AJB-1140/2012)

Kindergarten

In Hungary children were required to attend kindergarten for at least one year before going to school. According to the new law on public education attending kindergarten for at least four hours per day will be compulsory from age 3 after January 1st 2013.

Extra-Curricular Programs

It is a serious problem that access to extra-curricular, after-school or vacation-time programs is very limited, and there are no such programs available for most of the disadvantaged children, or rather parents cannot pay for them, or children are excluded from them (e.g. in Gyöngyöspata they are excluded from the swimming pool⁷¹).

Article 9.: Separation from Parents

The Committee recommends that the State party undertake further preventive efforts to address root causes of poverty and to avoid that poor socio-economic conditions result in the separation of children from their parents. There has been no change in this regard, since the last report, in fact conditions have worsened.

The law states that parents have a joint responsibility for the upbringing and development of their children, for their upbringing in a family, and that children should not be taken out of their family simply because of endangerment due to financial reasons, but conditions to ensure this is less and less available. In absence of appropriate professional standards, protocols, documentation, or evaluation and review of actions taken, or accountability of professionals and service providers, it is still incidental whether a child is identified as 'at risk' and is taken into protective care.

In 2011 the number of children taken into care due to environmental reasons increased to 10,455 (in 2010 6,548 children were registered)⁷². Associations providing legal representation for homeless people have indicated to this tendency. In their experience more and more children are taken away from homeless families. Increased unemployment, the lack of social housing, lack of space in the temporary homes for families and the aversion from official processes of families fighting to make ends meet all remain unresolved problems.

40,8% of children are born out of wedlock⁷³ which may pose a problem according to the new Fundamental Law that prioritises heterosexual marriage over any other form of family. This may lead to the discrimination of children (born out of wedlock) including discrimination when it

71 Nincs béke Gyöngyöspatán – A roma gyerekeknek nem jár az uszoda 2011.11.30. <http://www.stop.hu/belfold/nincs-beke-gyongyospatan-a-roma-gyerekeknek-nem-jar-uszoda/968857/> (10.11.2011)

72 data of the Central Statistical Office

73 Births and Fertility in the European Union 2011.06.14. Statistical Mirror Year No. 5 No. 38. <http://www.ksh.hu/docs/hun/xftp/stattukor/szultermeu.pdf> (2012.10.12.)

comes to financial subsidies⁷⁴. 60% of divorce cases involved families in 2008 that were bringing up children.⁷⁵

Problems related to visitation rights after the divorce of parents is quite common, although there is no statistical data collection about it, one can rely on the reports of organisations providing legal representation. According to them, the number of „forced visitations” is high, the parent having custody can be punished if he/she obstructs visitation, while suspending or cancelling the visitation rights of an abusive parent is not possible. Issues like the restriction of visitation rights or visitation with parents and other relatives is not well regulated, so the child can easily become an asset for the fight between the parents. Legal disputes could be solved out of court according to the law⁷⁶ using mediation. Despite the high number of divorce cases and the long-lasting legal battles for the custody of children, mediation is still not practiced widely. Most parents like to rely on the authorities despite the fact that these interventions are not effective or efficient. The legal framework of mediation and the Child Protection Law makes it possible to solve disagreements in a peaceful way, to come to agreement, but there are no funds available to hire professionals, to disseminate the information or for campaigns. There are no appropriate professional regulations, financing is not resolved and professionals, institutions are not interested in or accountable for the lack of results. This is true for any type of family conflict or crisis.

Mothers in prison can stay with their babies if the baby was born in prison. Since 2001, babies can stay until they are 6 months old, from 2012 – based on the recommendations of the ombudsman - they can stay until their 1st birthday at a designated, special prison created for mothers for maximum 12 mothers at a time. (in Kecskemét). Preparation of the mothers is partial and not appropriate, the fate of the child is unresolved after he/she gets out of prison, and there is no law to allow diversion for expecting mothers instead of a prison sentence – or to get postponement of the sentence. The placement of older children is also problematic, as well as visitation of parents in prison, especially since neither professionals nor the public understand the effect and importance of parental relationship, bonding (or rather the lack of) has on the development of the child and on the potential rehabilitation of the parents⁷⁷.

Article 10: Family Reunification

In accordance with the guidance on family reunification two regulations were made in the reporting period. On July 1st 2007⁷⁸ two regulations came into force according to which refugees cannot be denied family reunification only because there are no documents to prove family ties.

In Hungary there is no possibility to reunite the family based on fairness. According to the law,⁷⁹ common law marriage is not relevant in regards to family reunification.

⁷⁴ Hungary 2009 (2010): Central Statistical Office, Budapest.
<http://portal.ksh.hu/pls/ksh/docs/hun/xftp/idoszaki/mo/mo2009.pdf>

⁷⁵ Demográfiai portré 2009 Jelentés a magyar népesség helyzetéről 1 KSH Népeségtudományi Kutató Intézet, Budapest, 2009

⁷⁶ Law 55 of the year 2002. about mediation

⁷⁷ Maradhasson elítélt anyjával a csecsemő – jogszabály-módosítás az ombudsman közbenjárására
http://www.obh.hu/allam/aktualis/htm/kozlemeny20120718_2.htm (2012.10.12.)

⁷⁸ Law No. 1 of the year 2007. about the inbound travel and residence of persons enjoying freedom of movement and Law No. 2 of the year 2007 of the inbound travel and residence of third-country nationals

⁷⁹ Law No. 2 of the year 2007 of the inbound travel and residence of third-country nationals

The Committee expressed concerns in 2006 „about the obstacles hindering family re-unification among refugees.”

The Hungarian Helsinki Committee finds it alarming that in the five years following the adoption of the Law No. 2 of the year 2007 on the process of family reunification, there has been not a single case of an unaccompanied minor - recognised as refugee or being under subsidiary protection - whose family members received residence permits with the aim of family reunification. This is a serious problem denying the right of several unaccompanied minors from exercising their right to live in their families, which would also assist in their integration in Hungary.

Article 11.: Illicit Transfer of Children and Non-Return

Kek Vonal - Blue Line - Child Crisis Foundation and the Belgian Child Focus, Centre for Missing and Sexually Exploited Children have implemented a project jointly with the co-funding of the European Commission, entitled „Prevention of Child Abduction” between January 2009 and June 2010. The program studied cases of abductions and their administration in the two countries. It developed a handbook for professionals who come into contact with affected families to help prevention and resolution, while also making recommendations how abduction could be prevented and solved more effectively. The handbook was distributed among 1000 child welfare services. There is no data whether professionals have been handling these cases more effectively as a result. Abduction characteristically affects young children, 54% were under 6 years old, while 28% within this group were under 3. In the vast majority of cases child abduction happens in families where parents are of different citizenship. A high-risk element is that in 50% of the affected families parents have divorced 1-3 years earlier. Typically abduction happens in families with one single child. Motivation for abduction can be poor living conditions, homesickness, a job offer abroad, relationship breakdown, communications difficulties or a new partner for one of the parents.

Gaps in Legal Procedure

The Hungarian regulation of parental custody generates some of the abduction cases by asking for parental consent in case the other parent goes abroad for more than a year, even if that parent has sole custody of the child. In absence of this consent the case is considered child abduction.

A critical aspect of abduction cases is the implementation of decisions. Legally binding decisions made in-time through extraordinary processes need to be executed by the court at the place of residence of the liable person. The parent can however hide the child, which – over time – can itself become abusive, through the regular inquiries, process, regular changing of residence, changing of school, the fear created in the child. There would be a need for follow-up and accountability of professionals. This statement is supported by the report of the Commissioner of Fundamental Rights (ombudsman) which inquired into an abduction case of a French-Irish-Hungarian couple. The ombudsman was inquiring into the processes of the Hungarian authorities in the case of the French-Irish father and the Hungarian mother. The ombudsman found that regulations stipulating the executing cooperation of police and courts are not appropriate and in this case the child protection referral system also failed.

Based on the above and Article 11 paragraph (3) of Brussels II. the regulations regarding the execution of decisions on the return of children should be modified. The visitation rights of the requesting parent (due to the delays in executing the legally binding decision) is not ensured for a long time, and no authority is willing to take a step in absence of competences.

Recommendations

- Programs should be introduced to strengthen the skills and competencies of parents, especially among expecting parents and parents with small children ,
- Community programs are needed for parents receiving child care benefits, with the active participation of the parents.
- There is a need for the wide promotion and use of alternative dispute resolution methodologies in case of family conflicts, crises, questions of child custody and visitation.
- Based on international experience and best practices we recommend the introduction and use of mediation in international cases as well, with special regards to children abducted.
- Professionals and the public should be sensitised about the importance of visitation rights for parents in prison as well as the possibility of mothers to stay with their babies in prison and these possibilities should be available more widely.
- In some well-founded cases courts should order the home detention of parents, ban on crossing borders or requiring the child's passport to be put in deposit.
- Regulations on the execution of legally binding decisions on the return of the child should be modified.

Article 19. : Protection from All Forms of Violence

Child Abuse

A special form of child abandonment

In 1996 the baby box program was introduced to curb the numbers of infanticide cases in the country.

According to current family law the consent of the parent is not needed for adoption if he/she has placed the child in a designated baby box of a hospital without identifying him-/herself, unless they have come back to take the child within six weeks. The regulation does not mention the child's age, so in theory an older child could also be left there, but this has not happened so far. Children get made-up names (e.g. Rose Friday)⁸⁰.

When a mother leaves a baby in the baby box, it serves as a legal statement of the mother and the new-born baby can be offered up for adoption (after six weeks)⁸¹. Information about the baby box program is only available through informal channels or the media. Family protection services inform mothers about them if they are applying for an abortion, instead of offering them appropriate assistance.

There are no official statistics about the number of babies left in baby boxes, but between 1996 and 2011 there could be about 40 babies left in the 26⁸² baby boxes operating in larger city hospitals (Herczog 2012). Hospitals do not record the number of babies left in baby boxes or abandoned at their obstetrical wards. The popularity of the baby box program is unwavering, there is a popular belief that this is an appropriate measure to prevent infanticide and no rational or legal reasoning helps to change this thinking.

80 Law No. 4 of the year 1952. about marriage, family and guardianship, Article 48 and 53

81 Law No. 4 of the year 1952. about marriage, family and guardianship, Article 48 para (5)/C.

82 http://www.tegyesz.hu/file/Szakmai_informaciok/Babamento_inkubatorok_cimlistaja_2011.pdf

Other Forms of Child Abuse

Child abuse in general, is condemned by the public, but the views on emotional and physical abuse are not evident. In Hungary there is no clear definition of domestic violence, there is a long-lasting disagreement between legislators, NGOs and experts whether there is a need for the legal definition of gender-based violence or whether there should be more general domestic violence law, or whether current legislation is sufficient to deal with the problem. The main problem is the lack of prevention and awareness raising, the insufficient training of professionals, the lack of services for the support of victims and the total absence of services for the rehabilitation of perpetrators.

According to Hungarian research on child abuse⁸³ the rate of abused children is highest among the age-group 7-14, where every fourth child is affected. In most cases the parent or the carer abuses the child. There are no data about maltreatment, partly because of high latency due to family secrets, but also due to the lack of services and rehabilitation programs, the lack of training of professionals, the randomness of the legal system, and the lack of accountability of professionals.

The ombudsman started an inquiry in 2008⁸⁴ about a 13-month old baby that died of malnutrition in a small village, since the child's right to life and protection has been violated. The inquiry found that child welfare services did not effectively work, the members of the child protection referral system failed to refer the case, there was a total lack of cooperation among members. The right of the child declared in the Constitution paragraph 67 (1) for exceptional protection from the state and society has been violated. Furthermore, the health services made a critical error by not referring the case which violated the child's right to life.

The ombudsman made a recommendation to the Minister of Social Affairs and Labour to modify the law on child protection, defining the consequences for the failure of the members of the referral system to refer cases in a consequent manner.

Another inquiry of the ombudsman⁸⁵ looked into maltreatment and neglect, analysing how these cases were handled by the child protection referral system – whether child abuse happened within the family or within an institution. According to his findings there were no appropriate conditions, institutional or organisational framework that would enable and support the members of the referral system to properly do their job. Making the referral was only the first step. After that the child protection system did not work quickly, precisely and in an effective way. There was no evaluation or follow-up of the cases, there was no accountability built in, intervention was dependent upon the personal attitude and commitment of the individual professionals – which was totally accidental.

Domestic violence is still considered a private matter in Hungary, the abuse often happens with the knowledge of the environment, without anyone contacting the authorities or professionals, and even if they do, intervention or assistance is often missing.

Physical abuse and neglect affect children of both sexes at about the same rate⁸⁶. Sexual abuse affects girls in 79% of the cases.

83 Based on the research of the National Criminology Institute

84 OBH 1024/2008

85 Report AJB-2227/2010

86 51% of victims are boys, 42% are girls in the sample

Abuse and neglect affects children under 10 to a larger degree, while sexual abuse affects mostly children above 10. In 71% of cases the parents abuse their own children, while parents become sexual abusers in 39% of the sexual abuse cases. In 2011 the ombudsman inquired about a sexual abuse case in an institution.⁸⁷ The director and the maintaining authority (the Budapest local government) both downplayed the case, the perpetrator got off unpunished and the girl victims did not receive any assistance. There have been several such, known cases which were not followed-up and drew no consequences.

The law on restraining orders⁸⁸, which can be issued to manage domestic violence, was not accompanied by the allocation of appropriate training for professionals or services. This makes its implementation arbitrary and is not appropriately used or implemented. In absence of appropriate information and sensitisation, the opinion of the professionals and of the public is varied.

In Autumn 2012 there was a discussion in Parliament about the legislation of domestic violence, however, according to legislators the term „in-family” violence is not going to be included since the term family can only be used in a positive textual context. It is uncertain how and with what content spousal (or other family-member like children, elderly, sick) abuse will be legislated as domestic violence⁸⁹.

Cases of abuse in institutions are hardly ever reported, their latency is even higher than that of domestic abuse. The penalisation of perpetrators is often lacking even in cases when the abuse has been proven⁹⁰.

Recommendations

- The child protection referral system should work according to well-defined protocols and professional regulations in a documented way after a referral is made. Participating professionals should be accountable for failing to intervene after a referral, or for failing to identify and refer a case.
- The joint training of professionals in order to better identify child abuse and neglect cases should be strengthened. There should be electronic research and documentation, to improve transparency, monitoring and evaluation.
- Information should be better disseminated in the public, among parents and children and the range of available professional assistance should be increased.

Article 20.: Children Deprived of their Family Environment

In theory all children in Hungary have a right to the protection of their family, the state and society, which is appropriate for their physical, intellectual, moral development. They should receive the necessary protection and care primarily from their family, which can be supplemented

87 Report of the Ombudsman AJB 316/2011

88 Law 72 of the year 2009. about the restraining order that can be issued in case of domestic abuse

89 According to the Christian Democratic People's Party, there is no domestic violence. Nepszabadsag, 09.17. 2012.

90 Report of the Ombudsman AJB 3540/2011. <http://www.ajbh.hu/allam/aktualis/hum/kozlemany20111103.htm> (10.12.2012.)

- or in some well-defined cases- substituted (to a diminishing degree) by the state's institutional protection. The right to a family to receive support and assistance is less and less acknowledged. The implementation of the 1997 Child Protection Law has seriously slowed down, and required steps for prevention and for after-care of children have not happened, or in fact the situation has deteriorated.

Children Placed with Foster Parents

Based on the recommendations of the Committee on substitute protection, the ombudsman reviewed the regulation of suitability of foster parents and found that the laws to be contradictory and incomplete. While the child protection law sets objective criteria about the applicant's personality, health and living conditions, in practice there is a lack of thorough selection, training, supervision or assistance given to foster parents, which raises serious concerns. This is exasperated by the fact that there are no consequences of the failing professional support, the lack of services and the lack of quality control. Numerous abuse and neglect cases remain hidden. There are no well-prepared, and pre-assessed foster parents for emergency and crisis situations or for children with special needs.

Although there has been no survey about the attitudes and opinions about foster parenting in Hungary, the general experience is that there is little accurate information about children living in state care or with foster parents, however there are a lot of prejudices. The profession of foster parents has no prestige, it is difficult to find new foster parents, so often service providers cannot follow-through if they find quality problems with certain foster parents.

The lack of foster parents accommodating children with special needs is a big problem. The fact that foster parents get no training on how to welcome and care for children in temporary protection, how to prepare children for adoption, or how to handle children with complex behavioural problems (prostitution, criminalisation, serious problems of self-assessment, trauma) violates children's right to quality care. The double duty of foster-care counsellor – whose main task is to support foster parents in their work but also to supervise them – poses serious problems.

The government made plans to extend the system of foster care including regulations that children under 12 should not be institutionalised, that a standard definition and mode of employment be created for foster parents, a standby fee to be introduced for foster parents, and the institution of a child protection guardian to be introduced. In 2012 the Ministry started a six-month campaign to promote foster parenting and increase interest for joining the system. Parts of this campaign were repeatedly implemented by the same church-based organisation,⁹¹ which raises some concerns. The number of children that can be placed in one family is still high and in some cases more children are placed with one family than is stipulated by the law. It is especially problematic that due to insufficient financing, the placement of 0-3 year-olds with foster parents is not possible in larger cities, so they are institutionalised, despite the EU and UN guidance and professional standards.

As a result of the economic crisis a large number of professional foster parents were laid off in certain counties and were qualified back as volunteers, which meant a much-lower salary and loss of their employment status. Several counties have transferred the management of foster- and institutional care to the church, because church organisations receive a much higher per capita sub-

⁹¹ <http://szentagota.hu/wp/2012/12/28/neveloszuloket-keresunk/>, <http://fn.hir24.hu/itthon/2012/12/27/szegeny-gyerek-kolcsonbe/>

side from the state based on an agreement with the Vatican. This meant that many children were taken out of their foster families – without any reasoning or consequence.

Children's Homes

It is the least traumatised children, in better psychological state that are placed into foster care. Children with behavioural problems mostly remain in children's homes.

The report AJB 849/2010 of the ombudsman⁹² revealed that children cannot go home for weekends and holidays in all children's homes – some house rules do not allow it.

„Among children living in public care –according to data for 2011- the rate of children with disabilities is quite high, 21%, and another 7% suffers chronic diseases, while 4% have special needs. All in all every third child needs some special care”.⁹³ These needs cannot be met in absence of appropriate training, specialisation, individualised care plans and a governmental will – and these have been lacking for more than a decade. The momentum created by Law 31 of the year 1997 on Child protection has died out and for several years there has been no progress made, the situation has deteriorated in absence of appropriate resources and attention.

There is no governmental program for de-institutionalisation, despite the available funds of the EU. Decision makers are not planning to develop family-like or community placement of affected children. In the Child protection law the deadline for replacing institutions have been modified several times. First it was 2002 as the deadline of de-institutionalisation, then this was delayed several times, then the deadline was taken out of the law⁹⁴. The change is estimated to take several years, through the implementation of projects within the 'Social Infrastructure Operative Program.

Currently there are EU projects funds available⁹⁵ for the creation of new capacities and for the replacement of children's homes. New capacities can be temporary shelters, special children's homes and after-care homes. Big, out-dated institutions can be replaced. There is no officially announced program to replace institutions with family-like or community-based accommodation, rather the government supports the refurbishment and maintenance of current institutions, despite its „family-friendly policy”. There is no acceptable rationale given for this.

Specialised Home

Children with varying backgrounds are placed in specialised homes where the staff do not have appropriate background information or skills to provide individualised care. „Specialised homes or the specialised units of children's homes provide development and rehabilitation, socialisation and re-socialisation for children in temporary and long-term care, for chronically ill and for children with disabilities or children with socialisation, behavioural or educational problems, children with substance abuse problems or children in need of specialised care due to their age”.

92 Inquiry on children living in institutional care No. AJB-849/2010

93 Központi Statisztikai Hivatal (2012): Állami gondoskodástól a mai gyermekvédelemig, 4. oldal
<http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/allamigondoskodas.pdf>

94 Law 79 of the year 2009 Paragraph 52. (1) d)

95 TIOP 3.4.1. Component„B”

The specialised homes managed by the Ministry of Human Resources are closed institutions where children deemed by experts as highly problematic and older than 12 (or in special cases 10) years of age can be placed for not more than 2 years. In practice there are children who spend longer time in these institutions and return to the “normal” residential facilities without being provided with therapeutic care or programs.

Article 21.: Adoption

The Committee – in its concluding observations to the last report - was concerned over the short period of time after birth provided for mothers who may withdraw their consent. According to the law on marriage, family and guardianship, the parent can revoke its statement giving up the child for adoption up to the baby’s sixth week, and she should be made aware of this possibility. The same applies to fathers. The Bill of the new Civil Code also includes this deadline; according to paragraph 4:134 the parent can revoke her statement within six weeks after having giving her consent. After the modification of 2002 the deadline was reduced from 2 months to six weeks and after this there has been no modification, disregarding the recommendation of the Committee. According to the research on child abandonment, new-borns are left at the hospital most often, and children following hospitalization are also sometimes abandoned.

Adoption procedure

There is a waiting period for adoptions by perspective parents of 3-4 years, except in the cases of older or Roma children or children with disabilities or chronic diseases. For healthy new-borns there is an even longer waiting period because the number of people wanting to adopt is much higher than children that age available for adoption. The long waiting period is partially due to drawn-out processes. There is no special attention to ensure that while providing appropriate help, the adoption process be started if there is no hope that the child can be placed back to her/his birth family. In Hungary almost exclusively only infertile couples adopt, or single persons, and nothing is done to promote the adoption of older children or children with disabilities or chronic diseases. Among children that can be adopted, 4-7% are younger than 3. Every third child waiting for adoption has some type of disability⁹⁶.

In 2011 „8% of children in specialised care were younger than 3 years old”⁹⁷.

Roma children

According to the Committee’s recommendation the adoption of Roma children should be encouraged. Roma children continue to be over-represented in the Hungarian child protection system, according to the 2007 and 2010 survey of the European Roma Rights Centre. Their high rate in child protection specialised services is due mostly to the indirect discrimination of Roma; the implementation of the Child protection law and the operation of the child protection system touches on the Roma in a disproportionately large degree. Although the Child Protection Law prohibits that children be taken out of their family only due to financial/welfare reasons, Roma children are taken away more often than their non-Roma peers, and all in about one-third of the cases of „endangerment” of Roma children are for welfare reasons and in these cases the recom-

96 Központi Statisztikai Hivatal (2012): Állami gondoskodástól a mai gyermekvédelemig, 9. oldal
<http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/allamigondoskodas.pdf>

97 Központi Statisztikai Hivatal (2012): Állami gondoskodástól a mai gyermekvédelemig, 4. oldal
<http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/allamigondoskodas.pdf>

mentation is to take them out of the family⁹⁸. In the care homes visited by ERRC, 40% of the children in the sample were Roma, 18% were half-Roma, altogether 58%.

According to the 2010 study of the European Roma Rights Centre „ethnic background plays a role in the placement of Roma children: Roma children are more likely to get into family/type homes or children’s homes rather than to foster parents”⁹⁹.

According to child protection professionals the majority of adoptive parents are not Roma and are unwilling to adopt Roma children for several reasons (racism, not being prepared to care for a Roma child, pressure from the environment of the adoptive parents, fear that they would be incompetent in caring for a Roma child)¹⁰⁰.

Beyond this, most potential adoptive parents are unwilling to adopt a child living with disability. Since Roma children are more likely to be assessed as mentally disabled or with special needs than their non-Roma peers, Roma children suffer double disadvantage in finding an appropriate adoptive family. Based on the above, the Committee’s recommendation - that the right of the child to know his/her background - backfires. A Roma child learns about his/her background not because he/she has the right, but because he/she is constantly confronted with it.

Children with Disabilities

Some disabled or chronically ill children and children with special needs have been cared for in complex public education institutions (earlier: primary school, dormitory and child care home). They attend the school of the child care home so they have no chance for an integrated education¹⁰¹. In the Strategy 2011-2041 „De-Institutionalising social institutions for disabled persons” does not mention children or children’s homes. Disabled children are only mentioned when it comes to covering visitation rights and the introduction of integrated public education in the de/institutionalisation strategy of the social sector. Caring for disabled children poses serious challenges for specialised services, there are too few homes providing quality services to these children.

Article 25.: Periodic Review of Placement and Treatment

Periodic reviews are rather formal processes, 95% of children continue to remain where they have been cared for, and while it is compulsory to use the ‘Looking After Children’ assessment and documentation system, this is often bypassed. In most cases decisions are made based on documents, neither the parents nor the child or professionals are heard.

Article 27.: Right to Adequate Standard of Living

The government introduced several measures that restrict how families can spend family allowance or other welfare payments (e.g. social card¹⁰²). While the amount of family support payments have not increased since 2008, and the amount of welfare has decreased, a public works

98 Dis-Interest of the Child: Romani Children in the Hungarian Child Protection System, ERRC 2007.

99 European Roma Rights Centre (2011): Life Sentence: Romani Children in Institutional Care, page 7

100 European Roma Rights Centre (2011): Life Sentence: Romani Children in Institutional Care, page 7

101 Report of the Ombudsman, case AJB 797/2011.

102 Szociális kártya: a tárca nem kifogásolja, az ombudsman látni akarja. 2009.október 2T.

http://hvg.hu/itthon/20091020_szocialis_kartya_ombudsman

program has been introduced to decrease unemployment (available for a restricted amount of time and for low payment) and the system of „Elisabeth card” has been introduced. This latter is basically providing social welfare on a device replacing cash. The rationale is partly to force families to spend social benefits on their intended purpose, i.e. food in designated shops, instead of luxury products, while partly to curb usury.

This measure however is not going to reach its intended purpose but instead restricts deprived families from freely spending their welfare payments, while it may lead them to sell the cards at lower rates. It also fails to prevent abuse of the system (e.g. usury). The program’s goal is clearly political, signalling to the public that the government is forcing parents to properly care and educate their children, but it fails to disseminate and implement positive, constructive techniques that would contribute to the fulfilment of children’s rights.

Article 39.: Rehabilitation of Child Victims

The rehabilitation and assistance of child victims of neglect, abuse, exploitation is not resolved. Even in bigger cities there are limited numbers of professionals, and help is incidental, reaching only a few, and there are hardly any professionally developed programs. Since the assistance to family members – the non-abusive parent, sibling, and the perpetrator- is not resolved either, the trauma affects children even more. Usually it is the victim or witness child that is taken out of the family, restraining orders do not work in the absence of appropriate services and incidental measures, long-term separation from the perpetrator is rarely a possibility.

Cluster 6. Basic Health and Welfare

Article 6.: Right to Life, Survival and Development

In Hungary access to health care is uneven both vertically and horizontally, the quality of services is region-specific, the right of children to development is violated in disadvantaged micro-regions. There are several places where there is no child doctor and the health visitor system also faces many challenges, especially in disadvantaged municipalities.

Programs in schools to teach about reproductive health, self-awareness, body-awareness are incidental, and quality varies, and they are often formal if they happen at all. These types of programs are almost completely absent from mass communication, there are no campaigns or awareness raising activities. The number of teenage pregnancies¹⁰³, as well as abortions¹⁰⁴ is still high, which can be traced back to the lack of sexual education, the low quality of information and education, unequal access to teenager birth control emergency services and its inadequacy, and the high cost of birth control.

The rate of suicide attempts and suicides among children and young people is high both in terms of all suicides and also as compared to European Union average. Child- and youth psychiatric services are seriously underdeveloped and there is no service for child addicts. Child suicide

103 The number of teenage pregnancies has dropped to half in the past 20 years, in 1990 39,5% of women having live births were between 15 and 19. In 2008 this rate was reduced to 20,1% which is still a high rate (Szikra, 2010)

104 In 2012 12,3% of all abortions were performed on under 19-year-olds. Among under-14s there were 171 abortions performed. In 2008 17,3% of abortions were performed on women between 15 and 19 year-olds. Source: Kamarás Ferenc KSH adatok elemzése, <http://csaladhalo.hu/cikk/hatter/abortusz-szamokban-dobbenetes-adatok>

has been very high continuously; from 2000 a child has committed suicide every week¹⁰⁵. There are no programs to prevent suicides and to work with affected children.

The National Institute for Food and Nutrition Science raised the problem of child obesity; in their 2011 report they point out that obesity is an increasing problem, the number of overweight children increases, especially among children in 4th to 10th grade (10 to 16 year-olds)¹⁰⁶.

In 2011 the ombudsman – based on complaints – inquired into the quality of kindergarten and school meals (AJB 56/2011), and also questions of providing for children with special nutritional needs, the questions of access and quality control and recommended that the question be regulated a universal, high-level regulation.

Child Psychiatry

The 2008 and 2011 inquiries of the ombudsman found that the number of child psychiatrists is inadequate, and the specialists work in a very uneven regional distribution. Child- and youth psychiatric care is seriously under-developed, access to child psychiatric hospital care and emergency services are rather scarce¹⁰⁷.

The ombudsman's inquiry revealed that the right of children to health and proper development is violated by the lack of access to health visitor services¹⁰⁸.

Crisis Pregnancies

The lack of a comprehensive program to deal with crisis pregnancies poses a serious problem. Infanticide cases have decreased considerably since 2001 at least as far as the known cases are concerned (in 2001 and in the previous 10 years the number registered in statistics was between 10 and 29, after 2011 it was between 1 and 13, in 2011 for example there were 3 baby deaths¹⁰⁹). A 2003 research (Virág: 2005) on domestic violence and in particular infanticide found that the murders were usually committed by women who already had children, or had children at a later stage. They have become murderers most probably because they had no other means to solve their crisis situation, which proves how inadequate care and identification was. From the studied cases of 129 cases of domestic violence in 2002, 11 included the charge of infanticide.

The number of teenage pregnancies, as well as abortions is still high, which can be traced back to the lack of sexual education, the low quality of information and education, unequal access to teenager birth control emergency services and its inadequacy, and the high cost of birth control.

105 Magyar Statisztikai Évkönyv, 2010. Központi Statisztikai Hivatal

106 Összefoglaló jelentés a 2010/2011. tanévben végzett iskola-egészségügyi munkáról

http://www.ogyei.hu/upload/files/2010_2011_%C3%A9vi_iskolaeg%C3%A9szs%C3%A9g%C3%BCgyi_jelent%C3%A9s.pdf (2012.10.12.)

107 Kevés a drogambulancia és a gyermekpszichiáter – senki nem tör dik a segítségre szoruló diákokkal? Nov. 25, 2011. http://eduline.hu/kozoktatas/2011/11/25/Sulyosan_serul_a_magyar_gyerekek_egeszsege_DIVVCN

108 Report of the ombudsman No. AJB-3809/2010.

109 Source: ERÜBS database

Recommendations

- Ensuring access and the quality of basic and specialised services,
- Considerable improvement of child psychiatric care, establishing accessible child psychiatric institutional care, with mental hygienic programs as a priority,
- Improving the self-awareness and body-awareness of children and youth, comprehensive and high-quality reproductive-health training in schools.
- Dissemination of information about birth control techniques and making them accessible,
- Integrated training of professionals working with children and young people about the identification and treatment of mental and psychological problems,
- Creation of multi-disciplinary child- and youth emergency centres to prevent and treat psychiatric and mental illness among children.

Article 18.: Parental Responsibility and State's Support

According to the law on child protection, the placement (supervision, care and education) of children living in families, during the day should be ensured in the framework of day care. This service can be nursery, family day care, baby-sitting in a family setting, alternative day-care. Day care is a compulsory responsibility of local governments but there isn't an official institution in each municipality for the supervision of children. The quality of children's day care depends on the type of settlement, its financial situation and the child's ethnic background, so the best situation is found for non-Roma children in the capital. The number of places in nurseries has increased in the past few years; this is especially true for those maintained by local governments and by non-profits.¹¹⁰ Occupancy of nurseries has been high, often beyond 120%. The service is not available in the most disadvantaged settlements and in their vicinity. Attending kindergarten was compulsory from the age of five, but in line with the new public education law, all children older than three have to attend kindergarten for at least four hours per day from January 1, 2013. The law includes a vague reference to the possibility that the city clerk or the maintaining organisation of the school (if the school is managed by the church or a private entity) can provide absolution from this, in case the „conditions of the family or their special situation” justify it. One consequence of this will be that kindergarten that lack available places will write requests to keep Roma children away, which leads to possible segregation.¹¹¹ On the other hand, high-status families or those where the mother is at home with smaller children may get absolution. It is not clear what the purpose of this measure, but according to surveys there are not enough places in kindergartens, the equipment of kindergarten are not appropriate, the kindergarten teachers are overburdened and their remuneration and recognition are low. They do not get training on how to integrate disadvantaged children, children with special needs and children with disabilities, and they do not get assistance in how to deal with these children, which often leads to the heightened vulnerability and exclusion of these group of children.

Family day-care is not popular due to professional opposition and lack of traditions. The training of care workers in family based day care is very short and its quality is varied, they get no professional support. Due to their lower financing need they may replace nurseries and kindergarten in those settlements where there would be the biggest need for highly qualified professionals.

110 Központi Statisztikai Hivatal (KSH, 2011): Szociális Statisztikai Évkönyv, 2010, 33. oldal

111 Opinion of the Ombudsman for Minorities on the public education bill <http://www.kisebbsegiombudsman.hu/hir-704-kisebbsegi-ombudsman-velemenye.html> (05-04-2012)

The „Sure Start”¹¹² Program – based on the British model has been operating playhouse service in the most disadvantaged micro-regions since 2009 for parents (mostly mothers) that are at home with their young (under 5 year-old) children. The program provides joint activities for mothers and children. The goal of the program was to develop the parental skills and for the parents to get to know each other, while at the same time prepare children for kindergarten and prevent the development of disadvantages. Following the change of government in 2010 the management and philosophy of the program has changed and its activities and the future plans are not known yet.

Recommendation

- Policies and action plans should develop a complex approach that includes the right to family life and housing together with programs that assist people to adequate work and wages, family housing and family assistance networks.

Article 23.: Rights of Disabled Children

The social security of children with disabilities is ensured in theory by several laws, regulations, financial and in-kind support. These support measures however often do not provide for an appropriate standard of living and social protection. For children with disabilities and severe disabilities living in several regions and small settlements, getting to-, and benefiting from special care is problematic since these are in county seats or in the capital with limited spaces. Institutions with quality care are in larger cities, and for people living in villages these specialised services are inaccessible. Exclusion is related to the financial means of the family but also to the child’s minority background (Roma).

The UN Committee on the Rights of Persons with Disabilities assessed Hungary for the first time on September 20-21 2012. Although Hungary was among the first in Europe to ratify the Convention on the Rights of People with Disabilities in 2007¹¹³, the Committee has criticised the Hungarian government on several points related to children living with disabilities. In relation to general commitments the Committee recommended that the State party take effective measures to consult with and actively involve children with disabilities through their representative organizations, in the planning, execution and monitoring of public decision-making processes at all levels and in particular in the matters affecting them, giving them reasonable and realistic timelines for providing their views, and providing them with adequate funding in order to enable them to fulfil their role.¹¹⁴

The Committee was concerned about the large number of children living in institutional settings and about the fact that many children with disabilities received institutional rather than home care. It stressed the importance of allocating sufficient resources to enable children with disabilities to continue living with their families in their own communities.¹¹⁵

112 www.biztoskezdnet.hu

113 Law 92 of the year 2007. on Announcing the Convention on the Rights of People with Disabilities and the Optional Protocol related to it

114 UN Committee on the Rights of People with Disabilities, Concluding Observations, Hungary, CRPD/C/HUN/CO/1, 29 September 2012, para 14.

115 Ibid, para 21.

The Committee called upon the State party to undertake greater efforts to make available the necessary professional and financial resources, especially at the local level, to promote and expand community-based rehabilitation and other services in their respective local communities to children with disabilities and their families, in order to enable children with disabilities to live with their families, as recommended by the Committee on the Rights of the Child (CRC/C/HUN/CO/2).¹¹⁶

Regarding the right to education the Committee regretted that many students with disabilities continue to attend special educational institutions. It furthermore noted with concern that the State party has not taken sufficient steps to provide reasonable accommodation to all students with disabilities in mainstream educational facilities.¹¹⁷ and to develop and promote an inclusive education system as defined by the Convention.¹¹⁸ The Committee has once more stated that denial of reasonable accommodation constitutes discrimination and recommended that the State party significantly increase its efforts to: provide reasonable accommodation to children with disabilities based on the student's individual requirements; provide students with disabilities with the required support within the general education system; and to continue training teachers and all other educational staff to enable them to work in inclusive educational settings¹¹⁹.

The Committee paid special attention to the situation of Roma children living with disabilities and urged the State party to develop programmes to ensure that Roma children with disabilities are included in mainstream education programmes, without disregarding the provision of reasonable accommodation that might be needed to obtain the desired outcome¹²⁰ The Committee was concerned about the lack of information regarding Roma children with disabilities. It recommended that the State party develop an appropriate data-collection system to understand the nature and characteristics of Roma persons with disabilities in general and children in particular¹²¹.

The basic life conditions of children with disabilities living in families were also far worse than that of their peers. The employment rate of their parents was less than the average of families with children; one third of children (34%) lived in families where there was no one working, which is mainly due to the difficulty in finding day-care for children with disabilities. (The same rate among families with non-disabled children is 21%). In absence of work wages, the poverty rate of these families is rather high (47%), their indebtedness often endangers the basic life conditions of the family¹²².

The 2009 Child Rights project of the Ombudsman¹²³ stated that the education and upbringing of children with mild and medium disabilities in primary schools, dormitories and children's homes is slower than that of institutions with healthy children. He recommended that children placed in specialised children's homes and special groups of children's homes receive increased protection.

116 Ibid, para 22.

117 Measures that promote equal treatment which enable appropriate conditions for the daily life and work of persons with disabilities

118 Ibid, para 39.

119 Ibid, para 41.

120 Ibid, para 40, 42.

121 Ibid, para 49, 50.

122 „Gyerekmónitor 2009” – representative sample of 1000 households with children. („Better Life for Children!” Evaluation Committee of the National Strategy, Program Against Child Poverty, Academy of Sciences, 2009.)

123 Child Rights project of the Commissioner for Fundamental Rights. edited by. Dr. Kovács Orsolya Ágota. OBH Projektfüzetek. 2009/3

Children living with disabilities have difficulties accessing equipment that would assist them living an independent life. Health regulations discriminate all disabled groups by asking a very high co-financing of medical aids.

Access to support is still low, conditions needed for the development of the children (nutrition, development, education, integration, etc.) remain unfulfilled.

Exclusion of Certain Disabled Groups

Among children with disabilities the situation of children with mental disabilities and children with severe and complex disabilities¹²⁴ is deteriorating. According to a 2007 survey, 82% of families with a mentally disabled child have suffered harm in health care and 30% have experienced that the doctor denied treatment to their mentally disabled child¹²⁵. There was a case in the first half of 2012 when a disabled child was denied dental treatment because his disability did not allow for intervention while awake. As turned out there were only two places in the whole country where they do dental treatment under anaesthesia¹²⁶ and due to oversubscription, the first appointment could be given a month later while the first date for the operation could be scheduled for six months later¹²⁷.

Families with a child with visual impairment are in a very difficult situation. They have a right to early development programs but that is only available in Budapest, which often means tiring travel and high cost for families. While children used to be eligible for personal benefits for blind people, today this is only available for people over 18. Families can only buy medical aids with the assistance of Foundations or project funding on an ad hoc basis.

Blind children can attend special primary schools in Budapest, Debrecen and Pecs, so children are forced to separate from their families at the age of six to live in dorms to be able to attend these schools. This seriously violates the right to live in one's family and it seriously hampers the child's family- and social relations and attachment.

Beyond Budapest (that has one special school for deaf and hearing impaired children) there are seven other cities that are attended by deaf and hearing impaired children from that city and its surroundings.

Children with Autism

The 2010 inquiry of the ombudsman stated that children with autism cannot access appropriate educational institutions. It revealed that several educational institutions denied admission of children with autism, saying that their founding document did not include children with autism. This may be one of the reasons why there could have been 7000 places for children with autism in the public education system in the school year 2007/2008, yet only 1300 were in fact registered as attending¹²⁸.

124 cerebrials paresis, traumatic brain injury, rare genetic conditions, etc.

125 Bass, László, 2008.

126 In Budapest and Szeged. At the latter only residents of the county are accommodated. Source: Ön kibírná fogfájással fél évig? 2012.08.02. Népszava

127 "Amit tehetek, hogy együtt sírok a gyermekemmel" 2012.08.02.

http://www.medicalonline.hu/gyogytas/cikk/_amit_tehetek_hogy_egyutt_sirok_a_gyermekemmel

128 Right of education of persons with autism (AJB 1438/2009)

Early Childhood Intervention

Children with birth defects, children with delayed development or development disruption receive care and support services in the early childhood intervention system.

The institutional system for early development and rehabilitation is extremely heterogeneous, non-transparent, there is no regulated 'child path' or protocol that would connect the different institutions that are under the supervision of different ministries; neither professionals nor parents know where to turn. The impractical and non-harmonised regulation and under-financing hamper the access of children and their families from accessing the system and appropriate services. There are large regional discrepancies in terms of access to services; one third of the institutions are in the capital, and the rest of quality services are in other large cities, special services are practically not available in small settlements and villages. There are about 8000 children in the system of early childhood intervention. According to estimates more than one third of children do not get the care/services they need.¹²⁹

Access is especially difficult in disadvantaged regions; the physical proximity of services is not ensured, their financial affordability is not solved, due to the lack of professionals inter-disciplinary team-work is difficult to execute. 68% of poor children with disabilities, while 40% of non-poor do not get early development. There are similar differences between Roma and non-Roma children: two third of Roma (66%), while 46% of non-Roma cannot access the service¹³⁰.

Inclusive Education?

Within the system of primary and secondary school education the basis of development is defined by law as inclusive education, which in practice gets adapted very slowly.

Reasons for this are the following:

- teachers do not have even the most basic knowledge of how to develop children with disabilities, so they rather deny admitting such children;
- most educational institutions still do not have the physical- and info-communication pre-conditions to be able to ensure access of children with disabilities. According to public education statistics 30,186 children with disabilities were educated in segregated classes in the school year 2011/2012 from kindergarten to secondary school. At the same time 50,947 children participated in integrated education¹³¹.
- There is strong prejudice among parents and often among professionals as well.

129 Kereki Judit (írta és szerk.) (2011): Regionális helyzetértékelés a kora gyermekkori intézményrendszer hálózatos fejlesztésének megalapozásához. Kutatási zárójelentés. Educatio Társadalmi Szolgáltató Nonprofit Kft., Budapest. http://www.educatio.hu/download/eselyegyenloseg/regionalis_helyzetertekeles_kezirat.pdf

130 „Gyerekmónitor 2009” data collection of the Program Office Against Child Poverty of the Academy of Sciences

131 Central Statistical Office, 2011 National Statistical Data Collection Program

Special Residential Centres

In absence of appropriate, high quality basic services, and since parents are unable to care for their children with severe disabilities, or due to financial constraints, there are many children currently living in large care homes. There are no governmental programs that would – in the near future – offer alternatives to institutional care.

Recommendations

- The 2012 recommendation of the Committee on the Rights of Persons with Disabilities to promote and expand community-based rehabilitation of children living with disabilities and to make available appropriate financial resources for their realisation¹³²
- In order to promote the primacy of family protection for children living with disabilities, the participation of these families in community life needs to be ensured through services, and support as well as a family support that provides for appropriate living standards and quality of life.
- The State should appropriately support families with children living with disabilities in order to prevent children from having to grow up in institutional care.
- „In the framework of substitute protection, priority should be given to foster care. Institutional care should be considered as a last resort, considering the best interests of the child.¹³³
- Research is needed to assess the social situation of children with disabilities and that of their families, to assess what percentage live in poverty or abject poverty, and reveal the relationship between social welfare benefits and services and standard of living.
- Integrated early childhood school programs to prevent and fight segregation and discrimination.
- Prevention of 'pseudo disability' for Roma and disadvantaged children and their families through programs that prevent the development of disadvantages and which promote participation in integrated education

Article 24.: Child's Right to Health and Health Services

56% of paediatricians working in basic care are over 55 years old and their replacement is not ensured.¹³⁴ In 2009 on average 1186 children belonged to one paediatrician, while this number jumped to 2248 in the 33 most disadvantaged micro-regions. In intensive centres there are 20% less doctors than would be needed and regarding neonatologists there is a 40% gap. There are 40% less professionals than would be needed in institutions.¹³⁵

132 http://www.ohchr.org/Documents/HRBodies/CRPD/8thSession/CRPD-C-HUN-CO-1_en.doc

133 Disability Rights or Disabled Rights? CPRD Alternative Report, 2010, page 207.

134 Kádár F., Kálmán M., Paksy A., Paksy L.: Comparison the clinical practice of primary care paediatricians and general practitioners in Hungary – 1st Baltic Paediatric – ECPC Congress 19-21 May, 2011 Vilnius

135 Kereki, Judit (Editor.), Regionális helyzetértékelés a kora gyermekkori intézményrendszer hálózatos fejlesztésének megvalósításához. (Educatio Társadalmi Szolgáltató Nonprofit Kft., Budapest, 2011) http://www.educatio.hu/download/eselyegyenloseg/regionalis_helyzetertekeles_kezirat.pdf

The service is free of charge, but access, travel, medication, medical aid can be a burden on families to varying degrees. According to results of research¹³⁶ close to one tenth (8%) of families with small children experienced having no money for medical care in 2009. This obstacle made it impossible for children to get medical attention in 21% of families living in poverty and 26% of Roma families.

Births, Giving Birth

The new Fundamental Law that replaced the Constitution in 2011 stipulates that the foetus is eligible for protection from its conception, but it does not mean a change to an earlier law on the protection of the embryo although there are several indications that there would be a will for such a change.

In recent years the issue of allowing giving birth at home and gentle births have taken centre stage. Several charges were made against Ágnes Geréb for assisting home births as a doctor and as midwife, due to some cases of infant death and birth complications, while doctors working in hospitals facing the same problems have never been tried or sentenced even in very severe mal-practice cases. The ombudsman published a statement urging the appropriate legal regulation of home births. As a result, a governmental decree was put in place – in effect from April 1st, 2011 – on the rules, conditions and exclusion factors of giving birth outside an institution.

The two above statements, that seemingly are not related to children – have a relation to child rights: in the first case the government was not planning to extend support to families in order to increase birth rate, but appealed to the patriotic commitments, to conscience and to responsibility for the community and this did not promote the fulfilment of child rights. In the second case the conditions of birth, the welfare, the preparedness, consciousness of the mother and the mother-child bond created in the sensitive period after birth, have a direct effect on the development of the child, his/her ability to bond and on his/her welfare. To make this happen one does not need to regulate home birth but to ensure these conditions no matter where the mother is giving birth.

Access to Basic Services

In the area of access to paediatric basic care, equity is not ensured, despite the fact that this was a previously successful sector. Access is mainly dependent upon the regional availability of professionals and institutions. In disadvantaged regions there are few paediatricians, general family doctors do not have paediatric knowledge but treat children. In many places health visitors are missing, or they cover too many families, while their transport is not ensured. In these regions more children are hospitalised – and when they are, they are in worse conditions; they are less likely to receive up-to-date care, based on professional standards. They are less likely to receive formula or the not compulsory injections. They receive unnecessary antibiotics treatment and miss screenings more often, and do not access developmental treatment they would need – or get it with gaps.

136 „Gyerekmonitor 2009” az MTA GYEP adatfelvétele

Baby deaths

Overall baby death is decreasing¹³⁷, but there are large regional differences. The quality of care provided to expecting mothers is varied, the number of baby-friendly hospitals is still low, 80% of obstetric wards do not offer rooming in. This leads to low rate of breast-feeding, professionals and staff is not prepared to provide appropriate information and assistance in case of premature births, babies born with small weight or birth of a disabled child. The social cost of damages due to inappropriate in- or inter-hospital transport reach billions in a year, not to mention the psychological trauma of parents. In Hungary the rate of babies born prematurely – before the 32nd week – is higher than the European average. Medical solutions are sought to apparently socio-economic and multi-factor problems. Weight of new-borns is one of the most important determinants of baby deaths. The rate of babies born with less than 2500 grams has not decreased, remains at 8,4%. From the institutions with early childhood intervention the perinatal (neonatal) centres are most wide-spread, but their operation is hampered by the lack of professionals.

The state only finances two thirds of the neonatal emergency system. The remaining one third is being raised through the active fundraising of NGOs,¹³⁸ which is unsustainable in the future.

Supply of Drinking Water, Food

There is a visible increase of malnutrition; the lack of vitamins and minerals contributes to physical and mental under-development. There is a growing number of children who only eat at school, they get no food in the evening or during the weekends, or they only receive low quality food.

80% of Hungary's territory lacks iodine, but despite the repeated calls of WHO and UNICEF, iodine replacement¹³⁹ has not been solved.

Assessments in nurseries, kindergarten and schools have shown that age-specific menu, special meals and diets are often not ensured, the defined daily standard does not allow for modern, healthy, nutritious meals. A 2011 inquiry of the ombudsman¹⁴⁰ stated that in absence of a comprehensive regulation of public meals, quality service cannot be ensured¹⁴¹.

Article 26.cikk Right to Social Security

Subsidies, Tax Benefits

1. In 2008 the indexing of social benefits stopped. Earlier there was a governmental decision that required that family allowance should be increased at least once a year. This requirement

137 http://ksh.hu/docs/hun/xstadat/xstadat_eves/i_int007.html

138 Zsolt, Somogyvári, (Peter Cerny Alapítványi Ment szolgálat: Közép-európai alapítványi koraszülött ment szolgálat a Közép-Magyarország régióban.) Transport Medicine International – Hungary: A non-governmental organization for neonatal transport in Central Europe in the central region of Hungary Section on transport medicine newsletter (Transport Dispatch) of American Academy of Pediatrics 2007(Winter):6-10.

139 Farkas, I, Sajgo (2001): A lakosság 80%-naka jódeállapottsága elégtelen, Van lehetőség a jóde pótlásra, Táplálkozás – Allergia-Diéta, 6(3-4), 34-42.old., Budapest, 2001

140 AJB-560/2011 Speciális étkezési igény gyermekek étkeztetése <http://www.obh.hu/allam/jelentes/201100560.rtf>

141 In the opinion of the ombudsman there is a need for a comprehensive regulation on public meals that covers all areas of this issue. This includes the following: definition of public meals, institutions providing it, resources, costs, definition of service fees, definition of quality and quantity requirements, ensuring the needs of children with special nutritional needs, food and beverage offer of school cafeterias, abolition of double-monitoring of different authorities, use of healthy drinking water, strengthening school health in this area, human resource- and equipment need of quality cooking and eating.

was abolished from September 2009.¹⁴² The lack of indexing is a bigger loss for poor people, because social benefits take up more of their income, but also because they buy food and energy in higher percentage (and the price of these items have increased the most in recent years)¹⁴³:

2. The law kept the differentiation based on the number of children, for single parent, for families with a child with disabilities, but deprived groups gained less than the average so the differentiation was diminished. This was partially corrected in the Social law of 2007¹⁴⁴, which provided a bit higher raise of benefits for disadvantaged groups. From 2008 the amount remained unchanged.

3. From 2009 there has been the possibility of providing family benefits in-kind as a „child protection tool” for children on the child protection register. According to this, up to 50% of the family benefit payments can be made in-kind¹⁴⁵. From August 2010 the law¹⁴⁶ made a distinction in family benefits: for children beyond the age of compulsory education it is now called „up-bringing support” while for children of school age it is called „schooling support”.

Schooling support is conditional: if the child misses school for more than 50 hours (without substantiated reason) the child should be included into the child protection register and schooling support can be taken away, or (with the appointment of a case guardian) can be provided in-kind¹⁴⁷. In the school year 2010/2011 the schooling support of 7427 pupils were removed by local guardianship offices. More than 70% of these children had received regular child protection benefits due to their social situation. In only 10% of the cases did they reverse the removal with the reasoning that the truancy of the child stopped¹⁴⁸. Between August 2010 and February 2012 schooling support was removed for 11,200 children.¹⁴⁹

5. The 2010 modification of the taxation system¹⁵⁰ increased inequalities of families with children in several ways.

From the Autumn of 2012¹⁵¹ family benefits can be removed if the child plays truant for more than 50 hours, and this loss cannot be regained in any way. This creates serious situations and there is no assessment why this had happened or how parents and students could be encouraged to attend school regularly.

142 Law 79 of 2009. modifying Law 31 of 1997 on the protection of children and on guardianship administration and other social laws http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0900079.TV-lbj1param

143 A 2006 és 2009 közti változásokról l. Erdős Zsuzsanna, Gyermekszegénységet, családokat érintő jogszabályváltozások 2005 és 2009 között, In.: Ferge Zsuzsa, Darvas Ágnes (szerk), Gyerekesélyek Magyarországon. A „Legyen jobb a gyermekeknek!” Nemzeti Stratégia Értékelő Bizottságának 2009. évi jelentése. (MTA Budapest 2010.) 133-162.old.

144 Law 121 of 2007. modifying certain social laws

145 Law 84 of 1998. on the support of families, 6. §. (2)

146 Law 74 of 2010. modifying Law 84 of 1998, on the support to families and Law 31 of 1997 on the protection of children and guardianship administration, regarding paragraphs fulfilling compulsory education

147 The law provides reasoning, recognising the importance of education: „The basic goal of the law is to convey a clear message that truancy and missing school without substantiated reason is intolerable behaviour and draws consequences through the removal of family welfare benefits.”

148 Csökkent az iskolakerülések száma az iskoláztatási támogatás megvonásának köszönhetően. <http://www.kormany.hu/hu/nemzeti-eroforras-miniszterium/szocialis-csaladi-es-ifjusagugyvert-felelos-allamtitkarsag/hirek/csokkent-az-iskolakerulesek-szama-az-iskolaztatasi-tamogat-as-megvonasanak-koszonhetoen>

149 Aki nem jár iskolába 2012.09.06. http://hir6.hu/cikk/68183/aki_nem_jar_iskolaba (2012.10.11.)

150 Law 122 of 2010. modifying the law on tax and contributions, law on accounting and auditing chambers and laws aiming to fulfill the European commitments on the harmonisation of tax and customs laws.

151 Law 66 of 2010. on modifying Law 84 of 1998 on the support of families and Law 31 of 1997 on the protection of children and guardianship administration, regarding paragraphs on fulfilling compulsory education

Welfare

Condition of access to welfare has become stricter, affecting many families with children. Access is linked more and more to work and to lifestyle. The first program that provided welfare in return for public work started in 2009 and had fairly light conditions (e.g. skills and education were considered, the official minimum wage was provided)¹⁵². The 2011 law on public works¹⁵³ defined much stricter conditions¹⁵⁴.

Article 27.: Right to Adequate Standard of Living

Child Poverty

The rate of child poverty has increased in Hungary between 2005 and 2010. Due to the differences of methodologies there are different data on the number of children living in poverty, but considering them all, they indicate an increase.

According to Report Card 10 of UNICEF¹⁵⁵ every third child is considered deprived in Hungary even though the country spends a high ratio of its GDP on family benefits (financial and in-kind services, tax benefits). In the 35-country report Hungary is fourth, after France, UK and Sweden in terms of how much it spends on children and families (as a ratio of GDP). In light of this we recommend reconsidering how resources are distributed and grouped and to more effectively redistribute them with the goal of decreasing child poverty.

Between 2005 and 2010 the rate of Roma children in the lowest income quintile has radically increased.¹⁵⁶ The Program Against Child Poverty of the Academy of Sciences has made a representative survey in four of the most disadvantaged micro-regions between 2009 and 2011 and it shows the serious deterioration of the situation of families with children. The last subsistence calculations of the Central Statistical Office were published in 2010, which show that 37% of the population live under subsistence level¹⁵⁷. Meals for Children Foundation estimates that 20,000 children go hungry every day, and there are 80,000 at risk children¹⁵⁸. The rate of poverty increased by 1,5% between 2010 and 2011, and close to one third of those under the poverty line are children (30,3%)¹⁵⁹, the number of children living in poverty (below 17) increased by 39,000 in a year.

152 Law 107 of the year 2008. on the modification of certain social and employment laws

153 Law 106 of the year 2011. on the modification of laws related to public employment

154 One must accept public works offers that are far from one's residence and is not according to his skills. Payment is much lower than the minimum wage, and local governments can prescribe further behavioral and lifestyle conditions for people applying for welfare payments.

155 UNICEF (2012): Innocenti Report card 10 - Measuring child poverty - New league tables of child poverty in the world's rich countries, page 2, 26.

156 Darvas, Tausz: 2006

157 http://nol.hu/belfold/20120525-negyemillioan_a_letminimum_alatt

158 <http://hirek.msn.mainap.hu/itthon/20-ezer-gyerek-rendszeresen-ehezik-15409/>

159 Egyre több a szegény Magyarországon 2012.10.04. portfolio.hu

Cluster 7.: Education, Leisure and Cultural Activities

Article 28. (paragraph 1.) Right to education

The Commissioner for Education Rights does not cover or even mention child rights in his reports and inquiries.

When defining his competencies he doesn't even mention the Convention. His 2010 report is the latest one available. Child rights is not mentioned once, and in the list of relevant laws the Convention is not listed¹⁶⁰.

The network of nurseries is in constant change, and while capacity is increasing, it is still well under the European average, and is sufficient for the accommodation of only 9% of nursery-age children. Capacity has increased not because there are more nurseries but because the Ministry of Social Affairs and Labour's regulation 31/2009 (December 22.)¹⁶¹ increased the number of children per group from 10 to 12 or 14 (this latter if all children in the group are older than 2 years old)¹⁶²

Capacity is unevenly distributed in kindergarten; they have been struggling with a lack of capacity, the groups have become bigger (there are regions where overcapacity is close to 40%¹⁶³). In settlements with too little capacity or no kindergarten, the rate of disadvantaged children is the highest¹⁶⁴. Roma children get into kindergarten the oldest, because in case of lack of capacity priority is for children who have reached 5 years of age, then those whose both parents work, so those children who would need it most (whose parents are unemployed or on disability pension, disadvantaged) get admission the last. Due to their late admission in kindergarten they also get to school later.

The 2011 Law on Public Education makes it compulsory to attend kindergarten from the age of 3. However kindergarten (as mentioned above) already struggle with a lack of capacity¹⁶⁵.

Assessments have already shown that financial support to disadvantaged families to ensure children attend kindergarten raises several problems. Without appropriate sensitisation and in absence of developing the conditions of kindergarten attendance, neither the members of the community, nor professionals understand that early kindergarten supports the development of children despite the well-meaning legislative change of 2008¹⁶⁶. It also raises other issues: (1) it violates parents' right to decide about the care and upbringing of their child; (2) the possibility is now open to take away the family benefits from children that are not attending regularly, (3) the lack of preparation of professionals may lead to serious opposition and the exclusion and discrimination of children.

160 <http://www.oktbiztos.hu/torveny/index.html>

161 Ministry of Social Affairs and Labour regulation 31/2009 (XII.22.) 6§ (1) és (2)

162 Korfa Népesedési hírlevél A KSH Népeségtudományi Kutatóintézet kiadványa demográfiai kérdésekről 2012.március XII. évfolyam 1.szám www.demografia.hu/korfa

163 Education data,2011/2012. Statisztikai tükör. VI: évfolyam, 23.szám. 2012.április 13. <http://www.ksh.hu/docs/hun/xftp/idoszaki/oktat/oktatas1112.pdf>

164 Havas: 2008

165 Education data,2011/2012. Statisztikai tükör. VI: évfolyam, 23.szám. 2012.április 13. <http://www.ksh.hu/docs/hun/xftp/idoszaki/oktat/oktatas1112.pdf>

166 Law 31 of the year 2008. modifying certain laws promoting equal opportunities in public education 2.§ (7.)

The integrated education of Roma children and children with disabilities is not resolved and discrimination and exclusion is traceable. Chance for Children Foundation has won several court cases for the exclusion, discrimination, segregation of children, but this has not changed policies; according to governmental stakeholders segregated education is useful and is in the interest of the children affected¹⁶⁷.

Education of Children Living with Disabilities

The Committee – in relation to the right to education - made recommendations regarding the enhancement of integration of children with disabilities in education, but these recommendations have not been implemented at all.

Education of Migrant Children (asylum seekers with special needs and minors receiving subsidiary protection)

There is no explicit data in Hungary about the education of migrant children, but it is known that educational institutions do not have special integration programs, inter-cultural education, focus on individual, differentiated needs and appropriate mental health services (maturity tests, skills and capacity assessments, psychological help). Education of migrant children was not discussed during the public education reform of 2010-2011 either.

In the international context, according to the Migrant Integration Policy Index III's (MIPEX III) 2011 results, Hungary fares worst when compared with other EU member states on migrant children's education. The education situation of asylum-seeker, refugee and protected children is not satisfactory either. It is not uncommon that children under subsidiary protection, who have been residing in Hungary for several years, are placed in so-called preparatory classes for years.

Education of Roma Children

Research and the everyday experience shows that Roma are over-represented in disadvantaged regions, settlements and districts; that there is ghettoization of their housing and the segregation in education by school-maintaining local governments.

In special schools for children with educational difficulties (children with disabilities) Roma children are over-represented. They can almost exclusively continue their education only in vocational schools and their drop-out is high even from these schools. The majority of the public, school maintainers, teachers and parents are prejudiced and are against Roma, and are obstructing the implementation of integrated education, despite the regulation on equal treatment. There are no consequences of this.

Differences among schools have largely increased after the democratic changes in Hungary¹⁶⁸. Children coming from disadvantaged families participate in lower-quality school education due to their segregation. PISA surveys have shown that the most important determinant of the performance of children is family background.

„The Committee recognizes with appreciation that education is compulsory and free until the age of 18 and that the overwhelming majority of children use the provided opportunities for primary as well as secondary education.”

¹⁶⁷ http://www.cfcf.hu/index_hu/html

¹⁶⁸ Kertesi-Kézdi: 2005

Enhancement of the social integration of Roma children is hampered also by the new Public Education Law, reducing the age of compulsory education. The age was reduced from 18 to 16. In light of this, the possibility for further education is reduced even more for older, children who repeated certain years. These children will tend to attend the 3-year vocational schools where the teaching of basic subjects is reduced to 12 hours per week and after that the focus is on practical skills as trainees in companies but at a questionable quality and in uncertain format. The Hungarian education system continues to fail at decreasing inequalities, rather, it re-produces them. The new measures increase social inequalities and widen the social gap even further.

The school performance of children in institutional care and with foster parents is very low, the rate of school failure, truancy and continuing education is at the same level for them as for those who are from the same social background but live at home: this shows the low quality of alternative care and the lack of targeted programs.

Cluster 8. Special Protection measures

Article 22: Refugee Children

Although Hungarian regulations prohibit the detention of minors, the Hungarian Helsinki Committee (HHC) knows of cases when minors were detained¹⁶⁹. In alien policing jails there are often detainees of questionable age, who visibly look much younger than other detainees. The ombudsman also inquired into the situation of foreign unaccompanied minors in 2009 and among other things it pointed out the necessity of performing complex age assessment tests, beyond physical inspection. This report has been used by the UN as well. Age assessments continued in 2012. No provisions are set forth in order to assess the age of unaccompanied minors that do not possess ID documents. The methods used for age assessment focus only on physical aspects and do not consider psychological aspects or cultural and environmental factors. A legal guardian is only appointed after age assessment so he/she cannot be present to assist the child before or during the assessment. There is rarely a possibility to appeal the results of the age assessment tests that are included in the asylum decision.

The right of foreign unaccompanied minors is violated at several instances. According to the Convention the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason.

The number of foreign unaccompanied minors is the highest in Hungary from among neighbouring countries – in 2009 271, in 2010 150, in 2011 61 asylum applications were submitted.¹⁷⁰

According to the 2010 joint report of the Hungarian Helsinki Committee, and the Hungarian Police Headquarters joint report UNHCR¹⁷¹ there are cases when foreign unaccompanied minors are expelled to neighbouring countries without the competent authorities making sure the child was reunited with other members of his family or taken to institutional care. Hungarian authorities have been implementing readmission agreements applying to adults, when returning minors.

169 Hungarian Helsinki Committee: Stuck in Jail, Immigration detention in Hungary (2010) p. 11, http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf

170 <http://www.unhcr-centraleurope.org/pdf/resources/statistics/asylum-trends-in-central-europe-2009-2011.html>

171 Menedékkérő hozzáférése az ország területéhez és a menedékjogi eljáráshoz a Magyar Köztársaságban (2010) <http://helsinki.hu/wp-content/uploads/books/hu/Hatatmegfigyelo-program-2008-2009.pdf>

In recent years the HHC found - in the framework of its border monitoring programme together with the UNHCR - that unaccompanied minors' access to the territory of the country and the asylum procedure might be hindered by several factors. The border monitoring program has been operating since 2007, through the tri-partite agreement of the National Police, UNHCR and HHC.

Article 38.: Children and Armed Conflict

In Hungary military secondary schools are going to be re-introduced. From the 2012-2013 school year, there will be a military school in Debrecen, and according to the new National and Basic Curriculum one can take a final exam in the subject of home defence. A study circle and camp program was started in secondary schools entitled 'military school',¹⁷² during which students can learn about hand-to-hand combat and other military strategy¹⁷³.

Article 37: Right not to be Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment and Restriction of Liberty

Hungary has not fulfilled the recommendation of the Committee that persons under 18 years of age in conflict with the law have access to legal aid as well as independent and effective complaints mechanisms. It has not fulfilled the principle of non-discrimination and has not created juvenile courts, in fact the opposite: now all judges – depending on professional experience¹⁷⁴ - can rule in juvenile cases.

The Committee recommended the investigation of ill-treatment of juveniles by law enforcement officials, but that has not happened during the reporting period.

Since the last report there have been substantial changes in administrative structure of juvenile justice, but also in the area of treatment of offenders.

As a result of the August 2010 modification of the Law No.69 of 1999, juveniles (children between 14-18) can be punished by detention even for petty offences, including offences against property. (This is the most severe form of punishment for a petty offence, it is implemented in prison, its duration for juveniles is up to 30 days, in case of cumulative punishment up to 45 days.) The new Law No. 2 of 2012 on petty offences, on petty offence processes and on registration also includes this regulation. Detaining juveniles for petty offences is a clear violation of Article 37 point b) of the Convention according to which detention shall be used as a "measure of last resort" and „for shortest possible time". The law also violates the so-called „Beijing Rules"¹⁷⁵ that states that detention should be a measure of last resort for the shortest period of time. The current regulation puts detention not as „last resort" but as the standard case; without special provision for its length for juvenile offenders. This is a serious step-back from where child rights were earlier in Hungary. (Further violation of child rights is the lack of legal provisions of

172 Ismét katonasuli tábor Szolnokon 2012.07.25. <http://www.kormany.hu/hu/honvedelmi-miniszterium/hirek/ismet-katonasuli-tabor-szolnokon> (2012.10.12.)

173 www.katonasuli.hu

174 Law 183 of the year 2010. évi CLXXXIII. törvény helyezte hatályon kívül a büntet eljárásról szóló 1998. évi XIX. törvény 448. § (1) bekezdését

175 40/33. United Nations Standard Minimum Rules for the Administration of Juvenile Justice („The Beijing Rules")

point c) of Article 37 of the Convention on the separation of adults and juveniles in detention and point d) on the prompt access to legal assistance.)

During the short period of detention for petty offences 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.¹⁷⁶

During his inquiries the ombudsman has found serious shortcomings regarding the detention of juveniles. He found the physical conditions unacceptable (e.g. in the facility of Tököl one warm shower per day was not ensured for minors), two out of four juveniles reported violent activities in the detention facility. The ombudsman found much better conditions in correctional facilities.

According to experience the above described change in legislation has led to the anomaly that juveniles committing petty offences go through a process that provides less guarantees for them, they get a swift process and end up with a detention sentence more often than those committing crimes. Juveniles that steal - in the value defined as petty offence - typically get a 30-day prison sentence in an adult facility (although in a separated section in theory). Juveniles stealing – in the value defined as a crime – however, can benefit from restorative justice and receive a detention sentence in the rarest of cases.

It is worrisome that complaints are assessed in detention facilities by the director of the facility.

Article 40.: Administration of 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 juveniles¹⁷⁷.

With the reorganisation of the organisational structure of judges, the exclusive jurisdiction of courts that used to be the fora for juveniles was terminated¹⁷⁸, instead all judges can rule in juvenile cases, if appointed by the National Judicial Council¹⁷⁹, instead of judges that have specialised training for juvenile cases. The 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.¹⁸⁰

176 Vaskúti, 2011

177 Law No.2. of 2012. about petty offences, procedure of petty offences, petty offences registration. Chapter 4 SPECIAL PROVISIONS 18. Regulations concerning juveniles and soldiers 27. para (2)

178 Law No. 89 of 2011. 165. para (2.) point f.)

179 Resolution of the President of the National Judicial Council about nominating judges making judgments about cases as defined by resolution of the National Judicial Council 3/2012 (Jan 11) on juvenile justice criminal cases and the Law 19 of 1998 Article 17 paragraphs (5) and (6) on criminal processes.

180 Civilek tiltakoznak a 12 éves büntethet ségi korhatár ellen. 2012.06.25. http://hvg.hu/itthon/20120625_civilek_buntehetoseg

The ombudsman regularly visits juvenile justice penitentiaries; in 2012, as part of his priority project he visited four juvenile justice institutions (Tököl, Kecskemét, Szirmabeseny , Pécs), where his recommendations made earlier have been mostly implemented (see: Tököl – daily use of warm shower), but there are too few psychologists, and the reintegration of young offenders is a serious problem.

According to the position of the Hungarian Helsinki Committee the Hungarian government mis-understands the meaning of child-friendly justice, and consequently its measures – by mistake – only pertain to minor victims or witnesses. International documents and guidance however – which are often referred to by the government – also build high expectations for the treatment of and regulations related to juvenile offenders. It can be clearly stated that Hungary is in violation of its international legal obligations by its detention of juveniles for petty offences and crimes; its justice system can hardly be considered child-friendly and even progress towards it is hardly evidenced.¹⁸¹

The ombudsman has complained about the possibility of detaining minors for petty offences in several of his reports, pointing out that deprivation of liberty should be a last resort. He then applied to the Constitutional Court requesting the abolition of the regulation allowing the detention of minors for petty offences.

Despite the legal possibility that has been in place since 2006, restorative justice has been implemented in a very low number of cases. There were counties where this was proposed in none of the cases. The reasons for this may be the lack of information and preparation of practitioners, public support for punishment and the total lack of support or attention of media.

In criminal cases probation officers or trained and contracted lawyers facilitate victim-offender mediation. Due to budgetary problems some county services suffer from serious human resources shortages, they were forced to terminate contracts with lawyers or ask them to continue pro bono.

Recommendations

- Setting up juvenile courts where tribunals operate¹⁸²
- the use of diversion and the possibility of alternative restorative justice instead of detention
- Shortening processes

Article 33.: Drug Abuse

Research about the forms of drug use seem to indicate that one fourth of secondary school students have already used drugs. Data are showing an increase in drug- and alcohol use – and the age of children at the time of first use has decreased; the first experience with drugs happens during school¹⁸³. Drug prevention programs are not trying to explore the reasons for drug use and do not underline the importance of prevention, while – according to professionals – only those

181 http://helsinki.hu/wp-content/uploads/velemeney_helsinki_bizottsag.pdf, 1.oldal

182 Vaskúti, 2011

183 Paksi, 2006

programs are successful that include coherent, community support programs, prevention, treatment, care and harm reduction¹⁸⁴.

In 2011 (AJB 1092/2011 – then as a follow-up in 2012) a comprehensive ombudsman inquiry was published about the drug- and alcohol consumption of children: this inquiry revealed that Hungary is medium infected, but also that the age of first alcohol consumption is decreasing. Currently there is no child- and youth addictology in the country. The earlier adopted National Drug Strategy, in absence of an action plan to help its implementation is not in force. The sanctioning of popular legal highs is problematic in absence of emergency procedures that would enable the quick reaction to this quick-changing scene.

In relation to drug abuse we have to mention the birth of 50 to 100 babies per year that come into contact with services (methadone programs, syringe exchange programs, Club of Sober Babies, Kek Pont -Blue Point - Association), born to drug addict mothers as addicts, but there are no preventive program nor targeted programs to reach out to other affected people.

Operating programs (still) consider deterrence as the best tool for prevention. The new Criminal Code also focuses on sanctioning drug use and on making punishments stricter. It ignores the risks of legal psychotic substances (alcohol and medications).

Article 34.: Sexual Exploitation of Children

Child Prostitution Exists

Despite the recommendations of the Committee, Hungary has made no efforts to prevent, fight or study the different forms of child sexual exploitation. Sexual abuse is viewed by the public and professionals as a serious issue to be condemned, but when it comes to the commercial sexual exploitation of minors, comments include that children volunteered for money, that it was „their fault”, that they „provoked it” or that the act happened with „their consent”. The government of Hungary did not make a clear statement about child prostitution, while the Minister of Interior said that „minor prostitutes have become prostitutes not through threat or constraint but voluntarily”.¹⁸⁵ The ratification of the optional protocol took place, but the regulation was not disseminated among the public and professionals, there were no campaigns or training to help its implementation. In the new Criminal Code there will be an independent statutory definition for child prostitution.

Disadvantaged girls, who dropped out of school, or those that live or have escaped from institutional care are especially at risk of sexual exploitation. Presumably there are criminal groups behind those that organise the exploitation and trafficking of children, but investigation is very difficult and efficiency is low.

The ombudsman made a comprehensive inquiry into child prostitution in 2011 (AJB 1472/2011), during which it became quite clear that the phenomenon exists, members of the child protection referral system (e.g. child protection special services, police) are confronted with

¹⁸⁴ A drogpolitika szenvedélybetegsége Topolánszky Ákos szerint a tények nem támasztják alá a döntéseket. Népszabadság, 2012.07.01.

¹⁸⁵ <http://gyerekszemle.posttr.hu/magyarorszagon-marpedig-nincs-gyerekprostitucio-vagy-megis>

it regularly, on the other hand there is no universal database, or appropriate resources to curb it. There would be a need for the improvement of sexual education (and body awareness) and for the effective operation of the child protection referral system in a cooperative way – in line with the legal provisions.

In 2011 the ombudsman's ex officio inquiry about the sexual abuse of children in institutional care (AJB 2031/2011) pointed to the importance of de-institutionalisation, as well as data-collection and treatment of the phenomenon according to the definition of sexual abuse developed by WHO; introduction of methodology and training for professionals working with children to appropriately identify the phenomenon, while also developing effective measures to develop a complaint mechanism for children, and programs aimed at prevention.

Children victims only incidentally receive appropriate care after they are taken into public care. In many cases the documentation on the child does not include information (or only partial information) on whether the child was sexually abused. Even if the professional has the skills and experience to help the child through the trauma, it may be only much later that he/she is confronted with the real needs of the child. There would be a need for statistics and targeted research as well as a universally used and accepted professional protocol.

Criminal Code and its Provisions

The Criminal Code considers children under 18 victims of crime in case of sexual exploitation. The Child Protection Law also considers forcing a child into prostitution as abuse. Yet according to the Law on Petty Offences that came into effect on August 19, 2010 a minor can be detained if he/she offers his/her body for sale outside the tolerance zone. The new law makes child prostitution into a policing category: it considers children forced into prostitution as criminals/offenders, not as victims.

Latency

Latency regarding the phenomenon is very high, exact numbers (and concepts) are not available. Identified criminal acts are the tip of the iceberg; there is no reliable information about the extent of the problem.

Article 35.: Sale, Trafficking and Abduction

The latency of child abduction is high, but it is an existing phenomenon, professionals are often confronted by the lack of effective operational capacity of police¹⁸⁶.

There are some, incidental, one-off, prevention programs of some NGOs, financed through EU sources to prevent human trafficking, but since there is no cooperation among the members of the care system, often there are parallel programs running with the police and NGOs, without them reaching the target group, or joining their forces.

Child victims are mostly trafficked to the Netherlands and Switzerland, but internal trafficking exists as well. Hungary expects help for curbing the sexual exploitation of minors from abroad; in 2011, when the number of Hungarian child victims increased in Switzerland, Hungary started a media campaign, but there was no measure beyond press presence¹⁸⁷.

186 Anonim interjú, 2012. június

187 <http://www.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/tarsadalmi-felzarkozasert-felelos-allamtitkarsag/hirek/balog-zoltan-is-tamogatja-a-fiatalkoru-nok-prostitutciojanak-szigoritasat-celzo-svajci-kezdemenezest>

Article 30: Children Belonging to a Minority or an Indigenous group

We have covered the situation of Roma children under several Articles above. As is revealed, Roma children are exposed to continuous discrimination from their birth, their childhood is accompanied by segregation in housing, education, free-time activities, restricted access to health care, the prejudice and stigmatisation of society. Crimes against Roma have increased in recent years, although official criminal statistics¹⁸⁸ do not include the category of hate crimes. Between 2008-2009 there have been attacks on Roma, resulting in deaths (including children) in nine Hungarian settlements¹⁸⁹. Hungary has not fulfilled the recommendation of the Committee to improve measures against the stigmatisation and exclusion of Roma children.

Hungary played a major role in developing the EU's Roma Integration Program, but unfortunately the right of children, their welfare and well-being is only mentioned in terms of future employment and integration; children do not feature in the document in their own rights.

188 ERRC 2012

189 Galgagyörk, Piricse, Nyíradony, Tarnabod, Nagycsécse, Alsózsolca, Tatárszentgyörgy, Tiszalök, Kisléta

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