



Hungarian Helsinki Committee

SUBMISSION
BY THE HUNGARIAN HELSINKI COMMITTEE
REGARDING THE SIXTH PERIODIC REPORT OF HUNGARY

TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

This alternative report on the rights of children in Hungary has been prepared by the Hungarian Helsinki Committee (HHC) as part of the periodic review procedure of the UN Committee on the Rights of the Child. Founded in 1989, the HHC is a human rights watchdog NGO based in Budapest, Hungary. As a leading Hungarian human rights organisation with a globally recognised reputation, the HHC works towards a world in which everyone's human rights are protected. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment and the right to fairness in the criminal justice system. The HHC contributes to monitoring Hungary's compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights fora and mechanisms. Contributions prepared by partner civil society organisations related to issues falling under their mandate is also included in relevant sections of the report. The following civil society organisations provided input (their authorship is indicated under the respective chapters in footnotes):

- Rosa Parks Alapítvány (Rosa Parks Foundation)
- Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)
- Validity Foundation

The report follows the structure of the "List of issues prior to submission of the sixth periodic report of Hungary" (CRC/C/HUN/QPR/6, 8 June 2018), hereafter referred to as the 'List of Issues', and primarily deals with the issues included therein. There are some cases where the report also draws attention to problems not explicitly formulated in the List of Issues but regarded by the HHC as being of particular importance, and also to issues that emerged after the List of Issues had been formulated.

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1. NEW DEVELOPMENTS

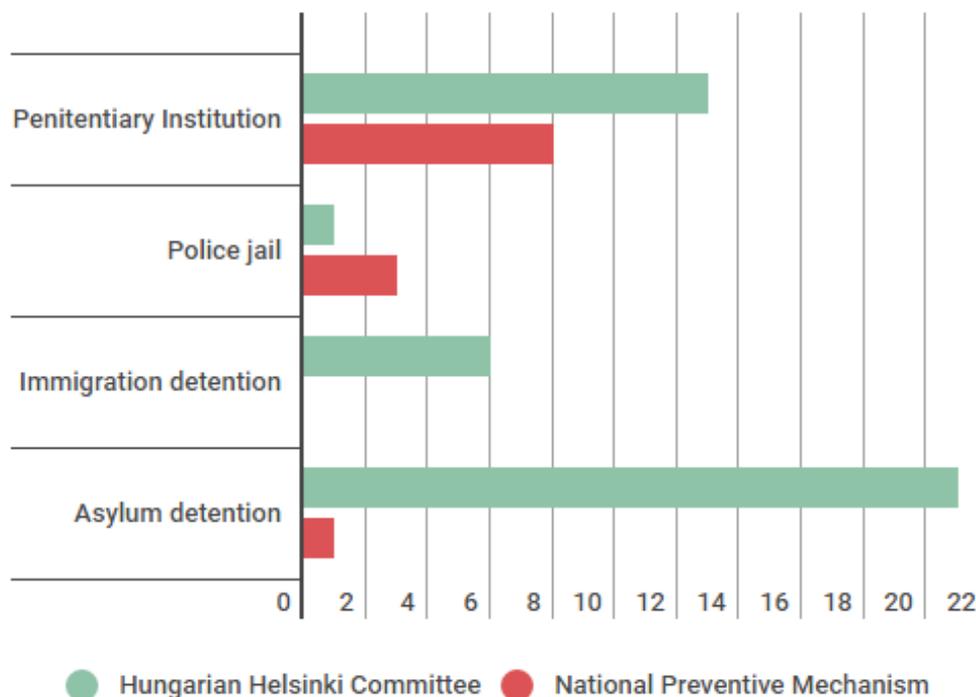
LIST OF ISSUES §2

1.1. Cancellation of cooperation agreements

The HHC concluded cooperation agreements with a number of national authorities to facilitate systematic monitoring of the enforcement of human rights in detention facilities¹. These cooperation agreements ensured direct contact with potential clients and served the interests of both the national authorities and the detainees or asylum seekers. Most of the agreements were concluded for an indeterminate term. Over the course of four months in 2017, the relevant national authorities unilaterally terminated all four agreements which had been the basis of effective cooperation for decades.

As a consequence of the unilateral termination of the agreements, the HHC ceased to be entitled to conduct systematic monitoring visits in police detention facilities, penitentiary institutions, immigration detention facilities, asylum detention facilities, and open reception centres for asylum seekers. Consequently, civilian oversight, independent legal control, and the possibility of wide-ranging legal counselling services were no longer available in these detention facilities. The National Preventive Mechanism at the Office of the Commissioner for Fundamental Rights (NPM, established based on the Optional Protocol to the Convention against Torture²) could not replace the work of civil society human rights organisations as it does not provide regular and free legal counselling. The NPM is mandated with the monitoring of hundreds of institutions but it lacks the capacity and resources required to achieve the scale and quality of monitoring as prescribed by law.

The table below compares the number of visits conducted by the HHC and the NPM to various types of closed facilities between 1 January 2015 and the termination of the last cooperation agreement on 15 October 2017:



¹ Detailed information on the contents of the agreements in English is available here: <https://www.helsinki.hu/en/authorities-terminated-cooperation-agreements-with-the-hhc/>

² Optional Protocol to the Convention against Torture: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

Between 15 October 2017 and 1 August 2019, the NPM visited thirteen detention facilities (out of which eight were police jails):

Name of the institution	Date of visit	Report published
Fejér County Police Jail	19 October 2017 ³	2018 ⁴
Szabolcs-Szatmár-Bereg County Penitentiary	28-30 November 2017 ⁵	not yet published
Three Police jails in Nógrád county	30-31 January 2018 ⁶	2019 ⁷
Medical Department of the Szeged Penitentiary	13-14 June 2018 ⁸	15 May 2019 ⁹
Four Police jails in Baranya county	17-18 September 2018 ¹⁰	not yet published
Central Hospital of the Prison Service	30 November 2018 ¹¹	not yet published
Bács-Kiskun County Penitentiary	27-28 February 2019 ¹²	not yet published
Baracska Penitentiary	24-25 April 2019 ¹³	not yet published

The NPM also visited 3 social institutions between 15 October 2017 and 1 August 2019:

Name of the institution	Date of visit	Report published
Integrated Social Institute of South Borsod county	22-23 May 2018 ¹⁴	not yet published
4 Foster Homes belonging to the network of the Vas County Child Protection Service	25 October 2018 ¹⁵	not yet published
Aranykor Visegrád Home for the Elderly	11 December 2018 ¹⁶	not yet published

The low number of visits might be attributed to the size and financial resources of the Optional Protocol to the Convention against Torture (OPCAT) NPM department within the Office of the Commissioner for Fundamental Rights. According to its organisational and operational rules, the NPM department is the second smallest within the Office and only the human resources department has fewer employees.¹⁷ According to the Annual Report of the Commissioner for Fundamental Rights the NPM's expenses in 2018 totalled 82,7 million HUF (cca. 285,000 USD) and on average the department employed 8 public servants.¹⁸ The total annual budget of the Office of the Commissioner in the same year was 1299,8 million HUF (cca. 4,246,000 USD).¹⁹

The HHC, and other civil society organisations, have made numerous offers to the NPM to provide their expertise and employees so that more visits could be conducted and reports could be published in a timely manner. Sadly, these offers were rejected.²⁰

³ Statement on the visit: https://www.ajbh.hu/documents/10180/2609315/5272_NM_r%C3%B6vid+k%C3%A9pes+h%C3%ADr.pdf

⁴ Report of the visit: <https://www.ajbh.hu/documents/10180/2809026/FMRFK+Jelentés+Végleges.pdf/>

⁵ Statement on the visit: https://www.ajbh.hu/documents/10180/2609315/5864_nyh_rh.pdf

⁶ Statement on the visit: https://www.ajbh.hu/documents/10180/2806238/792_honlap_h%C3%ADr_kieg%C3%A9sz%C3%ADtett.pdf

⁷ Report of the visit: <https://www.ajbh.hu/documents/10180/2936606/SAJ%C3%81T+N%C3%93GR%C3%81D+MEGYE+honlapra.pdf>

⁸ Statement on the visit: https://www.ajbh.hu/documents/10180/2806238/Nagyfa_r%C3%B6vidh%C3%ADr_HU.pdf

⁹ Report of the visit: https://www.ajbh.hu/documents/10180/2936606/AJB-646_2019.pdf

¹⁰ Statement on the visit: https://www.ajbh.hu/documents/10180/2806238/Baranya+megye+honlap+h%C3%ADr_korr_SI.pdf

¹¹ Statement on the visit: https://www.ajbh.hu/documents/10180/2806238/OPCAT+NMM+ut%C3%A1nk%C3%B6vet%C5%91+l%C3%A1togat%C3%A1s+T%C3%B6k%C3%B6l%C3%B6n_honlap_r%C3%B6vidh%C3%ADr.pdf

¹² Statement on the visit: https://www.ajbh.hu/documents/10180/2953404/1271_2019_rh.pdf

¹³ Statement on the visit: <https://www.ajbh.hu/documents/10180/2953404/OPCAT+látogatás+a+Közép-dunántúli+Országos+Büntetés-végrehajtási+Intézet++baracska+objektumában.pdf>

¹⁴ Statement of the visit: <https://www.ajbh.hu/documents/10180/2806238/BI+--+rövid+hír.pdf>

¹⁵ Statement of the visit: <https://www.ajbh.hu/documents/10180/2806238/Vas+Megyei+Gyermekevédelmi+Központ.pdf>

¹⁶ Statement of the visit: https://www.ajbh.hu/documents/10180/2806238/Vis_rövid+hír.pdf/

¹⁷ Organizational and Operational Rules of the Office of the Commissioner for Fundamental Rights, p.21., available at <https://www.ajbh.hu/documents/10180/806018/szmsz.pdf/>

¹⁸ Annual Report of the Commissioner for Fundamental Rights on the activities of OPCAT NPM in 2018, p. 18., available at: https://www.ajbh.hu/documents/10180/2809026/2018.+évi+átfoglaló+jelentés_végleges.pdf

¹⁹ Annex I of Act C of 2017 on the Central Budget of Hungary for 2018

²⁰ See the Annual Report of the Commissioner for Fundamental Rights on the the activities of OPCAT NPM in 2018, pp.21-22.

1.2. The destruction of the asylum system

Since 28 March 2017, the Hungarian domestic law on asylum has been in systematic breach of the country's obligations under international and European Union (EU) law.²¹ The most important supporting pillar of the current legal system is the 'state of crisis due to mass migration' (hereinafter: emergency regime) which allows for serious deviations and derogations from ordinary procedures set forth by Act LXXX of 2007 on Asylum, (hereinafter: Asylum Act,) and arbitrarily limits basic rights set forth in Act XXXI of 1997 on the Protection of Children and Guardianship Services, (hereinafter: Child Protection Act).

According to Section 4 (1) (c) of the Child Protection Act, its scope shall not cover unaccompanied minors between the ages of 14 and 18 when an emergency regime is in effect²². Section 80/J (6) of the Asylum Act mirrors this provision as it sets forth that unaccompanied minors below the age of 14 shall follow ordinary asylum procedures. This means that the Child Protection Act, which references Hungary's commitment to the UN Convention on the Rights of the Child, (hereinafter: Convention or CRC), in its preamble, ceased to afford rights and protection to all children under the country's jurisdiction.

Unaccompanied minors above the age of 14 and children arriving with their family members are also obliged to stay in the transit zone for an indefinite period of time by virtue of Section 80/J (5) of the Asylum Act.

Since the previous reporting period, the Hungarian Government has invested heavily in inciting hatred and intolerance against asylum-seekers and foreigners, which obviously has a negative impact on children as well. The Government's restrictive attitude towards asylum leaves many children deprived of their personal liberty and wanting of their basic human rights.

2. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS GENERAL MEASURES OF IMPLEMENTATION LIST OF ISSUES §§3-8

2.1. Legislation

During the reporting period, the following relevant legislative changes related to the Convention have been enacted:

2.1.1. Regarding asylum and migration

Act XX of 2017 on amending Acts in relation to the aggravation of procedures conducted at the border protection area (hereinafter: Amending Act)

This Act introduced arbitrary and indefinite detention of asylum seekers in the transit zones to Hungarian law and made collective expulsion from the entire territory of Hungary a reality. It also amended the Child Protection Act, as referred to in section 1.2.

Act I of 2017 on the Code of Administrative Litigation (hereinafter: Administrative Litigation Code)

This Act regulates how the decisions, omissions and other acts of administrative bodies can be challenged at court.

Act L of 2016 on the General Rules of Administrative Procedures (hereinafter: Administrative Procedures Act)

This Act regulates the main procedural rules that apply to all asylum procedures. Only certain provisions of this act are applicable in asylum procedures.

²¹ For more information on the amendments that entered into force on 28 March 2017, including an English translation of the adopted bill, see: <https://www.helsinki.hu/en/the-english-translation-of-the-adopted-bill-on-amendments-to-the-asylum-and-state-border-act/>

²² The emergency regime was extended to the entire territory of Hungary with Government Decree 41/2016. (III. 9.) and has been prolonged ever since, most recently with Government Decree 20/2019. (II. 22.) that will be in effect until 7 September 2019. The Ministry of Interior announced on 31 August 2019 that it will request the government to extend it with another six month: https://index.hu/belfold/2019/08/31/a_belugyminiszterium_szerint_meg_kell_hosszabbítani_a_tomeges_bevandorlas_okoza_valsaghelyzetet/

Act CXXX of 2016 on the Code of Civil Procedures (hereinafter: Civil Procedures Code)

This Act regulates the procedural rules of non-administrative disputes before courts. Certain provisions are applicable in administrative court procedures as well.

The Seventh Amendment to the Fundamental Law of Hungary

This Amendment introduced the concept of the safe transit country to Hungarian law. Article XIV Paragraph (4) now reads as follows:

"Hungary shall, if neither their country of origin nor another country provides protection, grant asylum upon request to non-Hungarian citizens who, in their country of origin or the country of their usual place of residence, are subject to persecution on the basis of race or nationality, being a member of a specific social group, religious or political conviction, or whose fear of being subject to direct persecution is well founded. A non-Hungarian citizen who reached the territory of Hungary through a country where he or she did not face persecution or the immediate risk of persecution shall not have the right to asylum."

2.1.2. Regarding criminal law and criminal justice

Act XC of 2017 on the Code of Penal Procedures (hereinafter: Penal Procedures Code)

Please see in detail in section 9.3. of this submission on the administration of juvenile justice.

2.1.3. Legislation, child-rights impact assessment

While Act CXXX of 2010 on Legislation (Legislation Act) stipulates that all legislative acts must be in line with Hungary's obligations flowing from the Fundamental Law, international law and EU law,²³ several aspects of the newly enacted amendments, especially the Asylum Act, are in stark contrast with these obligations. The Act further provides for a reasonable preparation period before the entry into force of new legislation.²⁴ This has certainly not been the case with the Amending Act, which entered into force a mere 42 days after it was passed by Parliament, despite serious complaints regarding the bill's compatibility with the Fundamental Law raised by the HHC to the President of the Republic.²⁵ Our letter has remained unanswered ever since.

The Legislation Act also obliges the sponsor of a bill to carry out an impact assessment of the proposed legislative act.²⁶ This requirement was completely neglected in many cases that affected the rights of children. The most obvious of such cases may be the Amending Act, the first version of which openly stated that the bill *"provides for the possibility to practically detain [asylum seekers and migrants]..."*²⁷ While detaining asylum seeking children certainly has a great and adversary impact on them, the HHC has no knowledge of an impact assessment ever being carried out before its entry into force.

According to Act CXXXI of 2010 on public involvement in legislation (Public Involvement Act) bills of laws and government decrees must be published and circulated for public consultation.²⁸ This phase was completely disregarded in many cases, as bills were not submitted to Parliament by the Government but rather by individual Members of Parliament, in which case no such obligation is envisaged.²⁹

In some cases where bills were proposed by the Government, the deadlines were so short that it was not realistic to expect public consultation could take place.³⁰

²³ Section 2 (4) Legislation Act

²⁴ Section 2 (3) Legislation Act

²⁵ The letter in Hungarian http://www.helsinki.hu/wp-content/uploads/Normakontroll_20170310.pdf

²⁶ Section 17 Legislation Act

²⁷ Bill T/13976 <https://www.parlament.hu/documents/10181/1207467/Cser%3%a9lt+sz%3%b6veq+T13976/10aecba7-3eef-4127-9564-207afc4d1296>

²⁸ Section 5 (1) Public Involvement Act

²⁹ See the Act on Amending the Law on Administrative Courts: <https://www.helsinki.hu/en/fidesz-to-modify-law-on-admin-courts/>

³⁰ See for example the case of the setting up of a new administrative court system in Hungary in Amnesty International and Hungarian Helsinki Committee, *A constitutional crisis in the Hungarian judiciary*, 9 July 2019, pp. 6-7., <https://www.helsinki.hu/wp-content/uploads/A-Constitutional-Crisis-in-the-Hungarian-Judiciary-09072019.pdf>

On 11 June 2019, the Hungarian Deputy Prime Minister, Zsolt Semjén, submitted an amendment³¹ to Act CXC of 2011 on Public Education without prior consultation with professional organisations and without public consultation. Numerous NGOs protested against the amendment and requested the government to consult professional organisations and NGOs representing different affected groups.³² Their petition was signed by more than 40 NGOs and all opposition parties. Other NGOs also raised their voices against the amendment and the lack of consultation. For example the Union of Associations of Persons with Disabilities [Mozgássérültek Egyesületeinek Országos Szövetsége]³³ requested that the government postpone the vote until it had completed consultations with professional organisations, including NGOs representing students living with disabilities. The amendment was voted into law on 12 July 2019. According to the amended law, now all 6-year old children must start primary school unless they have serious and well-documented health problems. The new law restricts home-learning options and stipulates that private schools with alternative curricula need to comply with the public school curriculum as determined by the National Core Curriculum. The amendments also eliminate the previous right of school parental boards and teachers to comment on applications for the post of head teacher.

The HHC wishes to respectfully direct the Committee's attention to the fact that the Government failed to provide an answer to this question raised by the Committee.

2.2. Comprehensive policy and strategy

Since June 2016, the Hungarian state has completely withdrawn integration services provided to beneficiaries of international protection, thus leaving recognised refugees and beneficiaries of subsidiary protection to destitution and homelessness. Where integration services are available it is through non-governmental and church-based organisations that provide housing, assistance with finding employment, Hungarian language classes, or family reunification depending on their financial resources and organisational capacity³⁴.

While families with children fell victim to the State's absolute withdrawal from integration services, unaccompanied minors continue to enjoy protection and integration services provided by the State to a certain extent (excluding those who are confined in the transit zones).

The Károlyi István Children's Home in Fót (a small town near Budapest) houses not only unaccompanied minors, but also Hungarian children with special needs. The Government has been planning to close the Home for some time. Most recently it was announced that the home would close in February 2019³⁵ but the home remains open and no new date for closure has been communicated to the children and staff. The children and staff's main source of news relating to the pending closure of their home is the press.

No consultation was carried out prior to announcing the closure of the Children's Home. It remains unclear where children currently residing in Fót would be moved to if the home is closed. The Government argues that the Children's Home must be closed because it is a remnant of an outdated child protection policy, a "mass institution" which does not serve the best interests of the child. However, the Home currently houses approximately 60 children who have access to the green park with a lake in the Home's grounds and can thus benefit from a wide range of recreational services. According to a press source, the Government has been investing in expanding children's homes in Kalocsa and Zalaegerszeg, where children from Fót would be moved after the closure of their current Home.³⁶ The children or their families have so far been unaware of the exact details of this potential change of residence. This is extremely problematic especially because the children's home in Zalaegerszeg was strictly criticised by the Commissioner for Fundamental Rights for widespread peer-to-peer violence and substandard material conditions.³⁷

³¹ The text of the amendment is available here: <https://www.parlament.hu/irom41/06457/06457.pdf>

³² <https://szuloihang.hu/2019/06/27/we-protest-against-amendments-to-hungarian-public-education-laws/>

³³ <http://www.meosz.hu/blog/a-meosz-garanciakat-ker-a-fogyatekos-tanulok-erdekeben/>

³⁴ HHC, *Two Years After – What's left of refugee protection in Hungary?*, September 2017 https://www.helsinki.hu/wp-content/uploads/Two-years-after_2017.pdf

³⁵ Súlyos kérdések a fóti gyermekközpont megszüntetéséről

https://helsinkifigyelo.blog.hu/2019/03/01/sulyos_kerdések_a_foti_gyermekközpont_megszüntetéséről

³⁶ Abcúg: Omladozó falak és puszta várja a fóti gyerekeket <https://abcug.hu/omladozo-falak-es-a-pusztá-varja-a-foti-gyerekeket/>

³⁷ Report no. AJB-159/2017 of the Commissioner for Fundamental Rights

<http://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+a+Zalaegerszeg->

[botfai+Gyermekotthon+vizsg%C3%A1lat%C3%A1r%C3%B3l+159_2017/eff52397-1c41-49f4-9878-9d1e9349bf7e?version=1.0](http://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+a+Zalaegerszeg-botfai+Gyermekotthon+vizsg%C3%A1lat%C3%A1r%C3%B3l+159_2017/eff52397-1c41-49f4-9878-9d1e9349bf7e?version=1.0); Press

According to the above-cited sources, the Government had been planning to move unaccompanied minors to Aszód, to the backyard of a youth detention facility. The Government since seems to have abandoned the plan, as no step has been taken to rebuild the old school building intended to house unaccompanied minors, which has been abandoned for decades.

Whether this move is supported by a comprehensive strategy or an impact assessment remains unclear. If such documents exist – which seems to be the case – they have been kept secret by the Ministry of Human Resources (*Ministry of Human Capacities as translated by the Government*).³⁸

2.3. Coordination

The HHC has no knowledge of meaningful Government efforts to establish effective coordination mechanisms regarding children's rights.

2.4. Data collection

An important methodological change took place in 2015 when the Hungarian Central Statistical Office (HCSO) stopped the calculation (and consequently, the publication) of the annual minimum subsistence level.³⁹ Since then, until 2019, a private think tank continued to calculate and publish this data with the same methodology the HCSO established. However, in 2019 the HCSO refused to provide the necessary data to the think tank and it was forced to introduce a different methodology.⁴⁰

The reluctance of authorities and state institutions to provide timely, precise and accurate statistical information is a growing concern of the public. The HHC is currently suing the National General Directorate for Alien Policing as its predecessor, the Immigration and Asylum Office, consistently refused to provide monthly statistical data on asylum applications and procedures, including those of children. At the time of submission, no date on a court hearing has been announced yet.

The Hungarian Prison Service Headquarters no longer publishes the national command's normative instructions on their website. The HHC requested the currently applicable ones through a freedom of information request. As the Prison Service Headquarters did not comply with the request, the HHC is currently suing the prison authority. These normative instructions regulate many day-to-day practical matters, including rules pertaining to juvenile detention facilities or the special wing where mothers are detained with their new-born babies.

2.5. Independent monitoring

After the ratification of the OPCAT by Hungary in 2012, the Commissioner for Fundamental Rights was designated to be the National Preventive Mechanism (NPM) in Hungary as of January 2015. Since according to Section 2.8 of the General Observations of the Sub-Committee on Accreditation (hereinafter: General Observations) the SCA assesses NHRIs also as national preventive and monitoring mechanisms, it is necessary to assess the Ombudsperson's performance as the Hungarian NPM.

As far as the structure and independence of the Hungarian NPM is concerned, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) reported after its visit to Hungary in 2017 that it is "particularly concerned at the **lack of functional independence of the mechanism** within the Office of the Commissioner for Fundamental Rights".⁴¹

release of the Commissioner for Fundamental Rights: Az alapjogi biztos utóvizsgálata az Emberi Erőforrások Minisztériuma Zalaegerszegi Gyermekotthonában <https://www.ajbh.hu/-/az-alapjogi-biztos-utovizsgalata-az-emberi-eroforrasok-miniszteriuma-zalaegerszegi-gyermekotthonaban?inheritRedirect=true&redirect=%2F>

³⁸ A kormány fői titkai: Szél Bernadett bírósághoz fordult a Magyar Helsinki Bizottság segítségével <https://www.helsinki.hu/a-kormany-foti-titkai/>

³⁹ Fruzsina Albert, *ESPN Thematic Report on In-work poverty in Hungary*, European Commission European 2019, p. 19. Available online: <https://ec.europa.eu/social/BlobServlet?docId=21109&langId=en>

⁴⁰ Policy Agenda, *Preliminary, estimated minimum subsistence level in 2018*. Policy Agenda 2019. Available online: <https://www.policyagenda.hu/wp-content/uploads/2019/06/L%C3%A9tminimum-%C3%A9s-t%C3%A1rsadalmi-minimum-el%C5%91zetes-adatok-2018.pdf>

⁴¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Hungary undertaken from 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism – Report of the Subcommittee*, CAT/OP/HUN/2, § 14.

The NPM **only conducted altogether 54 monitoring visits to date** in the past almost five years,⁴² meaning an average of 10-11 per year, which is a low number, especially considering that the NPM's mandate covers over 500 facilities, from penitentiaries to psychiatric institutions. **The publication of visit reports is slow**, it usually takes more than six months, and at the time of submitting the present paper, only 33 reports have been published as compared to the 54 visits already conducted. The SPT highlighted in its 2017 report in this regard that "extended delays in drafting and publication of visit reports can have a negative impact on the timely follow-up to the visit report recommendations and, eventually, on the overall conditions of detention of persons deprived of their liberty" (§ 37). Finally, the SPT also observed in its report that the NPM "mainly focuses on detention monitoring activities" and recommended that the NPM "focus[es] also on other preventive activities" (§§ 33–34).

The **insufficient number of visits** and the **lack of preventive activities** relates closely to **the lack of adequate resources and funding of the NPM**. In its 2017 report the SPT expressed its concern that "only nine staff members have been assigned to perform tasks related to the [NPM's] mandate, a situation that affects the ability of the mechanism to fully carry out its mandate under the Optional Protocol" (§ 21). The SPT was "also concerned that a lack of financial resources presents a major obstacle to the effective and efficient functioning of the national preventive mechanism" and that "the failure to allocate the necessary resources seems to be due to the fact that the Hungarian authorities do not consider that the mechanism requires additional support to carry out its mandate effectively" (§ 22). However, the situation has not improved: in 2018, the NPM employed eight public servants on average, and its budget was 82.7 million HUF (ca. 285,000 USD),⁴³ while the total annual budget of the Office of the Commissioner was 1299.8 million HUF (ca. 4,246,000 USD).⁴⁴

Since it started its operation in 2015, the **NPM has demonstrated a development in its methods** of monitoring, recommendations included in recent reports have become more specific and pragmatic, and international standards are duly referred to in its findings. However, the **monitoring methods demand further development** when it comes to the thorough evaluation of facts and follow-up: strict and direct follow-up is lacking even in cases when severe violations of the CAT are revealed by the monitoring visits, and as the SPT noted in its 2017 report, "there is no clear policy concerning a systematic follow-up and dialogue procedure" (§ 38).

Cooperation with the members of the NPM's **Civil Consultative Body (CCB)**, including the Hungarian Helsinki Committee, has improved. At the same time, more substantive contribution of CCB members would improve the efficiency of the NPM. Also, **the NPM does not include legal experts of the CCB and other civil society organisations with relevant expertise in its monitoring teams**, although the pertaining legislation would clearly allow for this and it could be a solution for the problems deriving from the lack of capacity, and could facilitate the acceleration of the publication of reports and the increase of the number of monitoring visits. This is so in spite of the fact that civil society organisations, such as the Hungarian Helsinki Committee which has decades-long monitoring experience with regard to places of detention, have repeatedly offered their expertise and lawyers to the NPM free of charge. Unfortunately, these offers have been expressly rejected,⁴⁵ even though the NPM has on occasions employed psychiatrists, physicians and dietitians as external experts.⁴⁶ The basis for the rejection is that the required legal expertise is available within the Ombudsman's Office. While this might be true in the sense that the NPM staff has members with sound expertise in detention monitoring, the low number of visits and the significant delays in reporting show that they do not have a sufficient number of such internal experts, and therefore the NPM could significantly improve its overall performance by involving NGO expertise. In line with this, in its 2017 report, the SPT also recommended the NPM to "engage more directly and independently with civil society organizations, including, at a minimum,

⁴² See: <http://www.ajbh.hu/hu/opcat>.

⁴³ *Annual Report of the Commissioner for Fundamental Rights on the activities of OPCAT NPM in 2018*, https://www.ajbh.hu/documents/10180/2809026/2018.+évi+átfogó+jelentés_végleges.pdf, p. 18.

⁴⁴ Annex I of Act C of 2017 on the Central Budget of Hungary for 2018

⁴⁵ See e.g.: *Annual Report of the Commissioner for Fundamental Rights on the activities of OPCAT NPM in 2018*, https://www.ajbh.hu/documents/10180/2809026/2018.+évi+átfogó+jelentés_végleges.pdf, pp. 21–22.

⁴⁶ *Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism – Replies of the national preventive mechanism*, § 22.

through their increased participation in mechanism visits, internal training, outreach activities, report-writing and dialogue with the domestic authorities" (§ 29), but to no avail.

Please also see section 1.1. of this submission on new developments.

3. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS DEFINITION OF THE CHILD LIST OF ISSUES §9

Act V of 2013 on the Civil Code (Civil Code) provides that everyone below the age of 18 is a minor.⁴⁷ Until 28 March 2017, Hungarian domestic law was fully in line with this general principle flowing from the Civil Code and Article 1 of the Convention on the Rights of the Child (CRC). However, following the entry into force of the Amending Act, this ceased to be the case.

The Act amended the Child Protection Act so that its scope does not cover unaccompanied asylum-seeking children above the age of 14 under the emergency regime. While they are still minors under the Asylum Act, by falling outside the scope of the Child Protection Act, they are treated as children, but as asylum-seekers with a limited capacity to act. That approach is in stark contrast with the CRC Committee's Joint General Comment No. 22, which clearly states that children must first and foremost be treated as children, not as illegal immigrants.

4. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS GENERAL PRINCIPLES LIST OF ISSUES §§10-12

4.1. The best interest of the child

As explained above, legislative changes were often carried out without a child rights impact assessment, thus the best interest of the child was not a primary consideration, and was potentially not considered at all.

As all the rights guaranteed by the CRC are in a child's best interest⁴⁸, the rights violations set out in this report demonstrate that instead of the best interest of the child, it was often short-term political gain and propaganda that was at the forefront of Government policy.

In an interview in 2016, Zoltán Balog, then Minister of Human Resources said the following:

*'My job is – and I am now quoting the Prime Minister by word – that if an unaccompanied asylum seeking child wants to enter Hungary, we let him or her in and treat him or her as our own. It is true however that I have seen children with beards in the Children's Home in Fót. If a 21-year-old claims to be a 16-year-old, there is nothing to do, we must guarantee him the rights of the child.'*⁴⁹

While in some cases unaccompanied asylum-seeking children were treated well and were given a real chance to fulfil their human potential – in great part, due to the work of NGOs⁵⁰ – the following measures indicate that if Hungary truly treats asylum-seeking children as its own, it is an abusive parent against whom the authorities would be required to act under the CRC:

- under the emergency regime, asylum-seeking children are not covered by the scope of the Child Protection Act
- pushbacks to Serbia affect all who had entered the territory of Hungary irregularly, including children, often paired with violence

⁴⁷ Section 2:10 (1) Civil Code. This section also stipulates that minors may marry from the age of 16 and acquire full legal capacity before turning 18.

⁴⁸ CRC General Comment No. 14. para I. A. 4.

⁴⁹ https://index.hu/belfold/2016/10/10/balog_zoltan_orban_viktor_menekultvalsag_rogan_antal_lazar_janos_emmi_szuperkorhaz/

⁵⁰ EuroChild and SOS Children's Villages International, Let Children Be Children, November 2017, available at: <http://bit.ly/2HjyOKn>

- the unlawful detention, in inhumane conditions, for an indefinite period of time of unaccompanied minors under the age of 14 and children arriving with their family (accompanied children) in the transit zones
- substandard education in the transit zones
- the impact of the Government's starvation of children's adult relatives, often parents, in the transit zones
- lack of integration services for accompanied children, thus subjecting them to destitution
- years-long uncertainty surrounding the fate of the Children's Home in Fót.

Decision making in asylum proceedings is not tailored to identify and evaluate the best interest of the child and no reference is made to the CRC or the relevant parts of Hungarian domestic law⁵¹ in asylum decisions. This includes decisions on return and the applicability of the principle of *non-refoulement*.

5. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS CIVIL RIGHTS AND FREEDOMS LIST OF ISSUES §§13-14

5.1. Nationality

Please see the joint report on statelessness by the HHC, the European Network on Statelessness, and the Institute on Statelessness and Inclusion submitted to the Committee on 1 September 2019.

5.2. Hostile environment for LGBTIQ+ community

LGBTIQ+ people, including children, find themselves in an increasingly hostile environment in Hungary. Although no specific anti-LGBTIQ+ legislation has been adopted, leading figures of the governing parties, as well as the state- and pro-government propaganda media continuously voice homophobic insults. Below are some examples from 2019 in chronological order:

- On 16 January 2019 the public broadcast channel 5's 'This is the question' programme focused on homosexuality. The introductory narration '**Status? Sickness? Distortion?**' was followed by a 45 minute discussion between the two guests and the presenter on the **possible treatment of homosexuality**. The programme was reported to the Media Council of the National Media and Infocommunications Authority which found no problems with the way LGBTIQ+ people and homosexuality was portrayed.⁵²
- On 15 May 2019 the Speaker of Parliament, a founding member of the governing Fidesz stated at a public event held at a university in Budapest: 'normal homosexuals do not see themselves as equal'. He went on to say that **morally there is no difference between a paedophile and a homosexual person who wants to adopt a child**⁵³.
- On 13 June István Boldog, an MP of the governing party Fidesz called for the ban of Budapest Pride in the Parliament. He declared: 'I support that we protect our children from sexual and other kinds of aberrations, so **I ask that everything be done so that the upcoming Pride cannot be held publicly**. Everyone does what they want inside four walls, I don't care, they don't have their disagreements with me, but with nature.'⁵⁴

⁵¹ Section 4 (1) and 45 (2) Asylum Act

⁵² No procedure will be initiated due to the 'gay-curing' programme on public media. Available at: https://index.hu/kultur/media/2019/02/21/mediahatosag_nmhh_m5_kozteve_melegkek/

⁵³ Kóvér: normal homosexuals do not regard themselves equal. Available at:

https://index.hu/belfold/2019/05/15/kover_laszlo_forum_normalis_homoszexualisok_pedofilia/

⁵⁴ 72nd session, 13 June 2019, minutes available at: https://www.parlament.hu/web/guest/ulesnap-felszolalasai?p_p.id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p.lifecycle=1&p_p.state=normal&p_p.mode=view&p_auth=43w1xQai& hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_naplo.naplo_fadat_aktus%3Fp_ckl%3D41%26p_uln%3D72%26p_felsz%3D87%26p_felsziq%3D114%26p_aktus%3D7

5.3. Hate Crimes

The HHC is a founding member of the Working Group Against Hate Crimes, a coalition of Hungarian NGOs and independent academic experts⁵⁵. The Group has been working for over 10 years to convince the Police to adopt a standard operating procedure (hereinafter: SOP) for the handling of hate crimes by the law enforcement agency. The SOP was adopted on 18 July without any consultation with the working group and other civil society groups and came in to force as of 1 August 2019.⁵⁶ It is positive that the indicators listed in the SOP were previously devised by the Working Group,⁵⁷ and the Working Group's proposal on data protection in investigations of hate crimes was also incorporated.⁵⁸ The adoption of the SOP is a bold and significant step towards better identification and investigation of hate crimes in Hungary. As the SOP entered into force on 1 August 2019, the evaluation of its implementation is not yet possible.

5.4. Migrant and asylum-seeking children

Hungarian Parliament adopted amendments⁵⁹ to several acts that entered into force on 5 July 2016. According to these, the police are obliged to automatically push back asylum-seekers who are apprehended within 8 km (5 miles) of either the Serbian-Hungarian or the Croatian-Hungarian border to the external side of the border fence regardless of their personal circumstances. Those pushed back cannot seek asylum and do not receive any formal decision which effectively leaves them with no way forward. Legalising extrajudicial collective expulsions (push-backs) denies asylum-seekers the right to seek international protection and is in breach of relevant obligations emanating from international and EU law.⁶⁰ As of 28 March 2017, the territory from which these push-backs can occur was extended to the entire country.⁶¹ These push-backs are sometimes violent and they affect children as well.⁶² Most recently the Committee on Civil and Political Rights (CCPR) concluding observations on the sixth periodic report of Hungary of 9 May 2018⁶³ and the Committee on the Elimination of Racial Discrimination's (CERD) concluding observations on the combined eighteenth to twenty-fifth periodic report of Hungary of 6 June 2019⁶⁴ called upon Hungary to cease these unlawful, and often violent measures. Nonetheless, this practice continues as the table⁶⁵ below clearly shows:

<i>Year</i>	<i>Number of push-backs</i>
2016 ⁶⁶	8,466
2017	9,136
2018	4,151
2019 ⁶⁷	4,569
Total	26,322

⁵⁵ See more on the Working Group here: <http://gyuloletellen.hu/about-us>

⁵⁶ Order no. 30/2019 of the Chief Commissioner of the Police on carrying out duties in relation to hate crimes, available at <http://www.kozlonyok.hu/kozlonyok/Kozlonyok/12/PDF/2019/41.pdf>

⁵⁷ List of indicators for a more effective criminal procedure, available at <http://gyuloletellen.hu/aktualitasok/indikatorlista-hatekonyabb-buntetoeljarasert>

⁵⁸ Guidelines on data protection available at <http://gyuloletellen.hu/aktualitasok/utmutatot-keszitetunk-gyulolet-buncselekmenyek-sertettjeinek-es-mas-tanuinak>

⁵⁹ Amended Article 71/A (1) of the Asylum Act and newly added Article 5 (1a) of Act LXXXIX of 2007 on State Borders

⁶⁰ See, among others, Articles 32-33 of the 1951 Refugee Convention and Article XIV (1) of the Fundamental Law of Hungary. See also Article 13 of the ICCPR and Section 10 of General comment No. 15: The position of aliens under the Covenant (1968).

⁶¹ Newly added Article 80/J (3) of the Asylum Act.

⁶² Apart from numerous NGO and media reports, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) documented such cases and published them in their report following their visit to Hungary from 20-26 October 2017, pp. 16-19, available at: <https://rm.coe.int/16808d6f12>

⁶³ CCPR/H/HUN/CO/6, paras. 47-48., available at

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhnsnm97%2BRfSonZvQyDICMC7to7lkIHViwiffCriXVJVYr7AYGd1bD3LqpWwx7fiwdowpOXO09j1KeHx2S0%2Be4%2FGUZf4WEtz0X6rsDTnt6FAcrQ>

⁶⁴ CERD/C/HUN/CO/18-25, paras. 24-25., available at

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhnsBPZR%2bma7TJoQMjUUGralEB8ByvxCL0FoA9GiWZtIFxmGLZ0Z5RyIIPqxMqHU%2fDYqBmwR9tn1ICAcCkuH7c4tnI3ILV67wG%2blp%2fhzf32jjjT5zLhayJvNzVxWWMJL1ThA%3d%3d>

⁶⁵ Data source: Police

⁶⁶ Between 5 July 2016 and December 31 2016.

⁶⁷ Between 1 January 2019 and 31 July 2019.

6. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

LIST OF ISSUES §§17-18

6.1. Family environment

According to the Child Protection Act, the Hungarian state has to take measures to ensure that children belonging to minority groups do not face discrimination, in particular with regard to the removal of children from their home environment and the State child care system. According to the Act 'Children shall not be separated from their family due to vulnerability resulting from financial reasons alone'⁶⁸- something confirmed by the Hungarian Government in its report. A child may not be taken away from their family on the grounds of poor financial conditions and instead the family should be assisted to take 'good enough' care of their children so as to eliminate the factors endangering the child.

Although it is forbidden to remove a child from his or her family on the ground of the family's economic situation, it is the case that **30% of children in foster care are there because of their family's poverty**. The ombudsperson examined the situation of children in foster care in 2017. The inquiry showed that every third child taken into state care is there due to their family's financial constraints. According to the ombudsperson this practice breaches obligations undertaken by Hungary with the UN Committee on the Rights of the Child severely violates the child's right to be raised and looked after in a family. **Roma are disproportionately affected by this unlawful practice as they are among the poorest groups in Hungarian society**.

As the Hungarian government confirmed in the ombudsperson's report, the removal of a child from its family should be the ultimate tool for protecting the child and is a measure that can only be enforced while respecting the principle of gradualism. In accordance with this principle, the child welfare services are responsible for the endangered families and should assist them to take 'good enough' care of their children. For example, if a family has housing problems, alternative housing opportunities should be guaranteed. Every endangered child must be supported by the welfare services and being removed from their family must be kept as an *ultima ratio* solution.

However, when it comes to reality, surveys show that just **a small minority of disadvantaged children were assisted by the services before being removed from their families**.⁶⁹ Social welfare services are in a critical situation in Hungary, as confirmed by several professionals within the system.⁷⁰ The child welfare system is heavily underfunded and staff turnover is very high. At the national level 30% of positions within welfare services are not filled leaving huge gaps in human resources.⁷¹

Regarding unaccompanied minors, SOS Children's Villages Hungary managed a project in 2017 to recruit and train families who would be willing to be a foster family for children from a migrant background.⁷² Based on personal discussions with SOS Children's Villages Hungary staff members, the HHC can report that a few families have completed the training. One child, who had been represented by the HHC in their asylum procedure, moved to a foster family in September 2017 and has been living with them ever since. While being placed with a foster parent, the children's legal guardian remains the same as before – this role is not given up by the child's legal guardian or shifted to the foster families.

⁶⁸Section 7 Child Protection Act

⁶⁹ According to data from 2009, 17 % of the children were assisted prior to their removal. Data quoted in Andrea Rácz, Az előítéletes gondolkodás megjelenése a gyermekvédelemben, *Esély*, 2014 (3), p. 32., available at http://esely.org/kiadvanyok/2014_3/2004-3_1-2_Racz_eloiteletes_gondolkodas.pdf

⁷⁰ Statement by the Hungarian Child Welfare Association (2015) available at http://www.macsgyoe.hu/hirek/aktualitasok/2015-03-20/veszelyben_a_gyerekvedelem_-_macsgyoe_kozlemenye.html.

⁷¹ *A gyermekjóléti szolgálatok feladatellátásának értékelő elemzése országos szinten*, edited by Andrea Rácz, (Budapest, 2015, Rubeus), available at <http://rubeus.hu/wp-content/uploads/2015/07/a-gyermekjoleti-szolgalatok-feladatellatasanak-ertekelo-elemzese-oroszagos-szinten.pdf>

Contribution authored by the **Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)**

⁷² EuroChild and SOS Children's Villages International, Let Children Be Children, November 2017, available at: <http://bit.ly/2HjyOKn>, 75.

However, since September 2017 there have been no cases of foster families being successful trained to welcome unaccompanied minors into their homes.

As of 1 January 2019, Act I of 2007 on the entry of stay of foreigners with the right to free movement (Free Movement Act) and Act II of 2007 on the right to entry and stay of third country nationals (Third Country Nationals Act) were amended. Before that day, third country national relatives of children bearing Hungarian citizenship would fall under the scope of the Free Movement Act and were therefore eligible for a residence card, allowing them to lawfully stay with their child. In such cases, the third country national parents could be exempted from proving that they had sufficient funds and full healthcare coverage, since their remaining on the territory of Hungary was in the best interest of their child. Third country nationals could remain in Hungary even if they did not live in the same household with their children due to separation or divorce with the other parent.

From 1 January 2019 third country national parents of Hungarian children do not fall under the scope of the Free Movement Act, but the Third Country Nationals Act. By application of the latter, they may be eligible for a residence permit for the purpose of family unity or a national residence permit. However, by application of the Third Country Nationals Act, parents must live in the same household as their Hungarian child. This restriction creates unnecessary complications and endangers a child's right to family life when the parents separate or get a divorce.⁷³

The same restriction does not apply to the third country national children of the spouses of Hungarian citizens.⁷⁴ The Third Country Nationals Act therefore discriminates against Hungarian children.

The amended Third Country Nationals Act further stipulates that a third country national may be denied a national residence permit if his or her stay is not in Hungary's interest.⁷⁵ The Act's implementation decree sets forth that in application of this criterion, the immigration authority may take into account Hungary's economic, scientific, cultural or sport interests, and the third country national's high level of integration.⁷⁶ The interest of the child is therefore not listed as Hungary's national interest.

7. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS DISABILITY, BASIC HEALTH AND WELFARE LIST OF ISSUES §§19-24

7.1. Mistreatment of children with disabilities, Topház Special Home

The Topház Special Home is a (previously state-run) residential institution for children and adults with disabilities. It has capacity for 220 individuals and currently houses 192 people, of which nearly 40 are children. During visits to the institution in 2017, Validity⁷⁷ (formerly known as the Mental Disability Advocacy Centre) discovered serious abuse and ill-treatment. Its report exposing the instances of ill-treatment and neglect was published on 3 May 2017.⁷⁸

The Hungarian Ombudsperson's investigation from early 2017 confirmed Validity's findings and in its report⁷⁹ of 18 May 2017, the ombudsperson stated that "overall, and the individual measures on their own raise the issue of violating the ban on degrading, inhuman treatment".

Following the publication of the report, Validity has consistently reached out seeking information and to offer assistance to the victims, including submitting multiple Freedom of Information requests. The Government and the Topház Special Home have refused to release any information about the status of the residents and whether

⁷³ Section 2 de) Third Country Nationals Act

⁷⁴ Section 2 dd) Third Country Nationals Act

⁷⁵ Section 35 (1a) Third Country Nationals Act

⁷⁶ Section 103 (6) of Government Decree 114/2007. (V. 24.) on the Implementation of the Third Country Nationals Act

⁷⁷ <http://validity.ngo>

⁷⁸ Validity Foundation: Straightjackets and Seclusion http://www.mdac.org/sites/mdac.info/files/straightjackets_and_seclusion_-_mdac.pdf

⁷⁹ Straight jackets and seclusion http://www.mdac.org/sites/mdac.info/files/straightjackets_and_seclusion_-_mdac.pdf

the residents have been provided with the necessary medical, social, and psychological assistance to remedy the ill-treatment. Validity and other civil society actors have repeatedly been denied access to the home, even though Validity holds a Power of Attorney signed by one of the residents. The institution uses the lack of legal capacity of the residents, and their placement under guardianship, as an excuse to deny Validity staff permission to meet with the residents. Validity has submitted numerous freedom of information requests seeking the names of the residents' public guardians in order to be able to ask them for permission to speak to the residents, yet the State has rejected every request and this information has still not been made available.

Validity have initiated multiple legal actions against the State on behalf of the victims. Validity filed a criminal complaint against the staff and management of Topház for the ill-treatment and threat to life posed to the residents of the institution on 2 May 2017 and an *actio popularis* claim on 15 December 2017. In the course of the proceedings, Validity discovered that in a six month period around Validity's visits, at least 10 residents of Topház died. This confirmed the organisation's convictions that the lives of residents of Topház are in immediate and serious danger. The information about the deaths of specific residents at the institution was submitted to the law enforcement authorities but the investigation into the criminal complaint was completed at the end of January 2019 with no charges brought. Validity submitted additional information regarding the deaths of two more residents shortly after that; the investigation into those death cases is still pending. Although deaths in detention must, by law, be subject to independent investigation in Hungary, the Topház institution is not considered a place of detention by the Ministry of Human Resources – despite the fact that it is monitored as such by the Hungarian Commissioner for Fundamental Rights.

To date, no progress has been achieved in the *actio popularis* lawsuit. Redress for the victims of ill-treatment in Topáz is therefore still not in sight. No appropriate steps to provide redress to the victims, or to ensure the ill-treatment of residents in the institution ceases, have been, to Validity's knowledge, adopted. Some infrastructural improvements and trainings of staff were implemented, but with no meaningful structural change.

According to the announcement of the Hungarian Charity Service of the Order of Malta [Magyar Máltai Szeretetszolgálat] it has taken over the operation of the special home. It is operated in the same place, but under different name, it is called the House of Providence [Gondviselés Háza]. This act took place after Validity had filed an *actio popularis* procedure against the State and the institution and was a clear attempt by the State to avoid legal liability. The State argued that, as Topház no longer legally existed as a State-run institution, the relevant State bodies could no longer be considered defendants in the action. This argument was overruled by the judge in an interim decision which the State has now appealed.

The Order of Malta conducted some form of assessment of the needs of the residents but no changes in the guardianship of the residents took place.

After publication of Validity's report, the Ministry of Human Resources published a 30-point plan for actions to be taken in relation to Topház and the victims and committed to de-institutionalising the residents by moving them out into the community. On 23 July 2019, pursuant to another Freedom of Information request, Validity received the detailed "de-institutionalisation" plan. Instead of the provision of support for the victims to redress the ill-treatment they have suffered, provision of secure family life in the community for the children, and facilitation of adult residents transition to living independent lives, the plan envisages "real estate development". It will:

- create smaller rooms and "apartments" within the existing structure,
- expand and modernise the institution,
- construct smaller buildings to house 12 people,
- develop "day-care" services in the north-east wing of the institution,
- modernise an old castle building on the grounds to include segregated education facilities, and
- establish new offices for staff of the institution and a second kitchen and laundry.

The plan does not include independent living or family life for the children among its enumerated goals. It is evident that it does not in any way represent redress, rehabilitation, or support for independent living or inclusion in the community for the children and adults concerned. There is no evidence to suggest that the child residents of Topház participated effectively in the development of the plan or will participate in its

implementation. Validity's Co-Executive Director, Ann Campbell, stated that *"This plan makes a mockery of the concept of de-institutionalisation. It prioritises infrastructural development over the lives of the victims. Without any genuine efforts to provide rehabilitation and support for the victims to exercise real choice about where and with whom they wish to live, they will remain in the same place, vulnerable to the same abuses and ill-treatment for the rest of their lives. The damage caused to the children in Topház institution is life-long unless they have access to specialised supports and are allowed to grow up with families in the community. The State is grossly failing in its duty to restore the dignity and autonomy of the residents."*

After publishing the report Validity was accused of unlawfully entering the institution, and of taking photos of the residents and publishing them. The Director of the Directorate-General for Social Affairs and Child Protection submitted a complaint with the Hungarian Data Protection Authority alleging the violation of data protection rules for taking pictures and publishing details of the shocking conditions. Validity was represented by the Hungarian Helsinki Committee during the procedure. In addition, a criminal investigation was initiated on the same grounds.

The Hungarian Data Protection Authority agreed with Validity's position that the organisation was acting in the interests of the residents when taking the images and making them public.

According to the Authority, Validity's allegations were supported by the Hungarian Ombudsman and there was ample evidence that the rights of the Topház residents were severely violated. Accordingly, Validity's collection of photographic evidence for legal and other actions on behalf of the residents was justified in order to protect the fundamental rights of the victims. The Authority found that in this case the fact that Validity did not obtain consent from the resident's legal representatives did not render its actions unlawful as it was in fact impossible for Validity to obtain such consent when the serious human rights violations were discovered and documented.

The Authority added that it was satisfied that Validity took all necessary steps to protect the privacy of the residents by anonymising the data and photos.

The criminal investigation remains active and Validity staff were again interrogated by the police earlier this year.

The Human Rights Committee has also raised concerns about reported violence, and cruel, inhuman and degrading treatment, as well as allegations of a high number of non-investigated deaths in closed institutions and was in particular concerned with Topház Special Home.⁸⁰ The Human Rights Committee stated that the Hungarian State should *"strengthen the Strategy on deinstitutionalisation aimed at replacing large social institutions with community-based settings and ensure that any decision to isolate, place, or treat persons with mental, intellectual, and psychosocial disabilities is made after a thorough medical assessment, that any restrictions are legal, necessary, and proportionate for the purpose of protecting the individual in question from serious harm or preventing injury to others; that sterilization of persons with disabilities only takes place with the free and informed consent of the persons concerned; and that guarantees of an effective remedy are included and any abuse is effectively investigated and criminal liability is imposed in appropriate cases."*

Validity has also submitted complaints to the European Commission and to the European Ombudsperson relating to the violations in Topház. The Commission dismissed the complaint in 2019. The Ombudsperson is expected to release their findings later this year. Their preliminary findings indicated maladministration by the Commission in the handling of the complaint, as well as concerns about the Commission's role in funding the Topház institution.⁸¹

7.2. Violence in homes for disabled children

As the case of the Topház Special Home clearly demonstrates, mistreatment and abuse of disabled children in residential facilities remains a widespread issue. In January 2019, a psychologist who had been working in a

⁸⁰ Concluding observations of the Human Rights Committee (2018) CCPR/C/HUN/CO/6
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/HUN/CO/6&Lang=En

⁸¹ Contribution authored by the **Validity Foundation**

children's home published an article in the weekly magazine *Magyar Narancs*, outlining the following issues with regard to living conditions for children with special needs accommodated in state-run homes:

- inadequate separation resulting in abuse among children
- heavy reliance on disciplinary and restrictive measures
- legal guardians do not physically visit the children they are responsible for
- children are reported to the police by the children's home for misbehaviour resulting from their condition
- inadequate sexual education

The psychologist claims to have left the children's home where they were working after just three months. This is similar to many professionals who have left these roles as they are severely underpaid and overworked.

According to Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner has a special mandate to examine and address human rights violations affecting children and vulnerable groups⁸². He however did nothing in relation to the planned closure of the Children's Home in Fót and did not address the above-detailed anomalies surrounding the planned changes.

The Commissioner has never carried out an official visit to either of the transit zones which resulted in them publishing a report. No independent human rights institution or NGO has been able to carry out monitoring visits to the transit zones and the Government has only allowed UN and Council of Europe bodies and agencies to enter. However, in November 2018, members of the UN Working Group on Arbitrary Detention were denied access to the transit zones and as a result the Working Group has suspended its visit to Hungary⁸³.

Since all asylum seekers, except for unaccompanied minors under the age of 14, must stay in the transit zone for the entire duration of their asylum procedure, disabled children arriving with their family members are also accommodated there. As described in detail below, the transit zones are not suitable places for children, especially not children with disabilities.

The HHC has knowledge of many cases where children with various forms of disabilities were, or have been, accommodated in the transit zones for extended periods of time. The case of H.A. and Others v. Hungary (application no. 39498/18) before the European Court of Human Rights (ECtHR) exemplifies how detention conditions in the transit zones are inappropriate for vulnerable children. This case concerned a young Iraqi girl detained in the Tompa transit zone, who due to her serious physical disability (paralysed limbs) is only able to move with a wheelchair. The transit zones' different areas are not accessible by wheelchair, thus she relied solely on her parents to push her around on the sharp, porous pebbles and to lift her manually to the showers and the bathroom. The ECtHR ordered an interim measure, requesting the Government to improve her conditions.

8. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS EDUCATION, LEISURE AND CULTURAL ACTIVITIES LIST OF ISSUES §§25-26

8.1. Segregation

School segregation of Roma children shows no sign of abating and approximately 45% of Roma children attend schools or classes in Hungary where all or the majority of their classmates are also Roma. In 2014, 381 primary and secondary schools officially reported having 50% or more Roma among their students.⁸⁴ A recent study carried out by the Hungarian Academy of Sciences shows that the level of segregation has increased in 2016 with the segregation index increasing by 10 points to 38.6.⁸⁵ According to the Roma inclusion index of 2015,

⁸² Section 1 (2) a) and d) of Act CXI of 2011

⁸³ UN human rights experts suspend Hungary visit after access denied

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23879&LangID=E>

⁸⁴ Bernard Rorke, Segregation in Hungary: the long road to infringement. *ERRC Blog*, 30 May 2016. Available at:

<http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>

⁸⁵ A közoktatás indikátor rendszere 2017 [Indicator system of public education 2017], MTA Közgazdaság- és Regionális Tudományi Kutatóközpont Közgazdaság-tudományi Intézet, p. 147. available at (in Hungarian) <http://www.mtaki.hu/wp->

'while literacy is not a problem and preschool inclusion has been significantly improved, the situation of Roma in education in all areas is worsening. Gaps are increasing and percentages of Roma not completing different levels of education are very high. At the same time school segregation is increasing and the only available data for special education indicate overrepresentation of Roma.'⁸⁶ The gap between Roma and non-Roma in primary education has significantly increased, meanwhile the situation of Roma has dramatically worsened with Roma 19% less likely than others to accomplish primary school education.⁸⁷ The educational gap has only reduced in pre-school education. A European Commission country report from 2018 states that disadvantaged students have very low chances of entering higher education, and that early school leaving has increased in Hungary between 2014 and 2017 to 12.5%.⁸⁸ Experts argue that this is the result of reducing the compulsory school age from 18 to 16. The report also stresses that *'the separation of disadvantaged pupils, including Roma, has accelerated in the last decade. Increasing residential separation and the effect of parental choice on local school enrolment policies within the highly differentiated school system have resulted in the education system becoming ever more segregated on ethnic grounds. Despite the state taking over the management of all public schools from municipalities in 2013 with the aim of levelling inequalities, most Roma children still attend schools where all or most children are Roma.'*⁸⁹

The lack of reliable data on Roma children in education remains the main barrier for measuring and combating segregation. Special measures adopted by the Government to foster education opportunities for Roma children are mostly mainstream measures that are targeted to multiple disadvantaged groups which means that their impact on Roma children cannot be properly measured. The socially disadvantaged and multiple disadvantaged statuses have been used as a proxy for Roma. However, as explained below this proxy – due to a legislative change in 2013 - no longer covers the majority of Roma people and as a consequence the impact of these measures on Roma people cannot be measured in a reliable manner. In 2013, the definition of multiple disadvantaged children in the Child Protection Act⁹⁰ was modified and further conditions were added to the former eligibility criteria. CSOs warned that *'it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiple disadvantaged into the category of disadvantaged'*.⁹¹ A dramatic decrease in the number of multiple disadvantaged children can be observed in recent years, but at the same time child poverty has been increasing extensively in Hungary.⁹²

On 26 May 2016, the European Commission launched an infringement procedure against Hungary over the segregation of Roma children in schools and in special education. Despite the ECtHR ruling in *Horváth and Kiss v. Hungary*, app. no. 11146/11 in 2013⁹³ Romani children continue to be channelled to special schools in Hungary. To date, the Hungarian government has failed to implement the Court's judgment⁹⁴.

While one of the main arguments for centralising the administration of education was that this way the state can effectively step up against inequalities, a series of court cases shows that the Hungarian state has failed to live up to its promise, and has largely abandoned the problem of segregation. By way of example, in an April 2018 judgment, the Budapest Regional Court found that the Ministry responsible for education had violated the

[content/uploads/2018/02/A_kozoktatasi_indikatorrendszer_2017.pdf](#). Segregation index is the degree to which 'disadvantaged' and 'especially disadvantaged' children are separated from their non-disadvantaged peers in the course of their education, where the index is 0 if there is no segregation and 100 if they are completely separated from each other.

⁸⁶ Roma inclusion index, Decades of Roma Inclusion Secretariat Foundation, p. 15, , available at:

<https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

⁸⁷ Roma inclusion index 2015, Decade of Roma Inclusion Secretariat Foundation, p. 45. available at:

<https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

⁸⁸ Education and training monitor 2018 Hungary, European Commission, 2018, p. 6. available at:

https://ec.europa.eu/education/sites/education/files/document-library-docs/et-monitor-report-2018-hungary_en.pdf

⁸⁹ *Ibid.*, p. 6.

⁹⁰ Article 67/A of Act XXXI of 1997 on Child Protection.

⁹¹ Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary 2013, p. 50., available at: http://autonomia.hu/wp-content/uploads/2016/04/civil-society-monitoring-report_en.pdf

⁹² According to the assessment of the Chances for Children Association (GYERE) between 2007 and 2013 income inequalities grew significantly and increase of poverty within the total population was 14 percent, and 20% among children respectively. GYERE Civil Report (2013) p. 48. Available at http://www.gyere.net/downloads/2013_civil_jelentes.pdf

⁹³ A brief English summary of the case, as well as the original application, the Government's observations, the judgment, the Rule 9 Communication of the Committee of Ministers of the Council of Europe about supervising the execution of judgment is available here <http://www.errc.org/cikk.php?cikk=4200>

⁹⁴ See *Horvath and Kiss v Hungary*, Execution of Judgments, Last exam of the Committee of Ministers, December 2017, available at <http://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-10905%22%5D%7D>

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requirement of equal treatment in relation to Roma pupils in 28 elementary schools (10 in Budapest, 18 in other Hungarian cities/towns) by having failed to take action against school-level segregation starting from the 2003/2004 school year. In 2009, the Chance for Children Foundation (CFCF) initiated an *actio popularis* lawsuit against the then Ministry of Education and Culture, as the entity ultimately responsible for the management of the Hungarian system of education. The CFCF asked the Court to conclude that by not taking effective action – directly and/or through the administrative bodies responsible for the operation of educational institutions – against segregation of Roma children in education, the ministry failed to fulfil its obligations stemming from the Equal Treatment Act and the Act on National Public Education, and thus violated the segregated Roma pupils’ right to equal treatment. In its petition, the CFCF referred to research from 2005 (by sociologists Ilona Liskó and Gábor Havas) commissioned by the predecessor of the Ministry, which concluded that in 2005 there were 44 schools where the proportion of Roma pupils exceeded 50% and in some schools it exceeded 80%, and that these percentages were on the rise. Segregation was accompanied by substandard physical conditions and a lower quality of educational services.

The court concluded that the Ministry must have been sufficiently aware of the situation and it must also have been aware of the fact that the situation was not improving, and if it was not aware of that fact, it would mean that its monitoring mechanisms and guidelines were deficient. Therefore, the Ministry – as the entity ultimately responsible for the lawful operation of the Hungarian educational system – is certainly accountable for the fact that the statutory requirement of non-segregation is not met.⁹⁵

The court ordered a number of measures to be taken, including the gradual closing down of 13 segregated schools, the distribution of the pupils who would attend these schools, the development of desegregation plans, and the amendment of the educational monitoring methodology. However, upon appeal, the court of second instance agreed that the Ministry was responsible for the segregation through its omission but discarded most of these measures in its judgment of February 2019, and only upheld the obligation to prepare desegregation plans and the public interest fine of cca. EUR 158,000 that was imposed by the first instance court on the Ministry.

Another case that exemplifies the ambiguous attitude of the Hungarian government to the issue of segregation is the lawsuit launched by the CFCF against a denominational school that reopened a school in the middle of a segregated Roma neighbourhood that had been previously closed down with the purpose of putting an end to the segregation of the Roma children going there. In April 2013, Zoltán Balog, who was at the time the Minister responsible for educational matters actually attended the court hearing as a witness arguing that the court should allow the denominational school to continue even if practically only Roma children attend it. He is reported to have said in his capacity as witness that in his view it was possible to assist the children in catching up in segregated educational institutions if the children are taught by good teachers, using good methods, in a loving environment.⁹⁶

9. RIGHTS UNDER THE CONVENTION AND ITS OPTIONAL PROTOCOLS

SPECIAL PROTECTION MEASURES

LIST OF ISSUES §§27-31

9.1. Asylum-seeking and refugee children and children in situations of migration

9.1.1.1. Unlawful detention

Contrary to the Government’s statements, the transit zones are places of detention where children and adults are held in an unlawful manner.

On 14 March 2017, the ECtHR issued a judgement in the case of *Ilias and Ahmed v. Hungary* app. no. 47287/15, in which it ruled that the applicants were held in detention in an unlawful manner in the transit zone.⁹⁷

⁹⁵ <https://www.equalitylaw.eu/downloads/4641-hungary-education-ministry-found-to-be-in-breach-of-its-non-discrimination-obligations-for-failing-to-take-effective-action-against-segregation-in-28-elementary-schools-pdf-164-kb>

⁹⁶ https://index.hu/belfold/2013/04/26/balog_a_szeretetteli_szegregacioban_bizik/

⁹⁷ *Ilias and Ahmed v. Hungary*, application no. 47287/15., §§ 58-69.

While the above decision is not yet final (the case is currently pending at the Grand Chamber, awaiting a final decision), it is clearly in line with the consistent case law of the ECtHR, which confirms that the question of detention is not decided merely by whether or not a facility can be left voluntarily. Other factors, such as the level of control, the freedom of movement within the premises, the level of surveillance and the freedom to establish and maintain contact with the outside world are also to be taken into account. Considering the ECtHR's consequent jurisprudence, as well as the implicit or explicit position of relevant international bodies (UNHCR, Council of Europe CPT, European Commission, etc.) regarding this particular issue, the transit zone is definitely a place of detention.

Hungarian domestic courts have increasingly been arriving at the same conclusion in a number of cases, including those concerning unaccompanied minors. In several cases the courts have ordered the National Directorate-General for Aliens Policing (NDGAP)⁹⁸ to release asylum-seekers and transfer them to a reception centre where their human rights are not violated.

Regarding the Government's statements on the freedom to leave the transit zones, it must be stressed that the consequences of those would be dire and potentially irreversible as explained below. The NDGAP may issue a decision in the absence of the asylum-seeker, based on the information available.

According to the Asylum Act, the applicants have a duty to participate in their asylum procedure personally.⁹⁹ This means that certain procedural actions may be carried out solely by the applicants, even if they have a legal representative. It then logically follows that while absent, they cannot be heard by the NDGAP.

Should the NDGAP issue a decision rejecting the applicants' asylum claim, not being present in the transit zone, they would not be able to turn to the Court for judicial remedy. The applicants have a duty to hand in their appeal personally, which in such cases can obviously not be fulfilled, therefore their right to an effective remedy, as afforded by Article 13 of the ECHR, would be violated.

The other option for the NDGAP is to discontinue the asylum procedure and close it without an in-merit decision. This decision cannot be appealed.

It may therefore be concluded that asylum-seekers could not realistically hope for a positive outcome of their asylum procedure if they leave the transit zone.

The Hungarian Helsinki Committee has no knowledge of instances where requests from minors to return to Serbia were not automatically accepted. In fact, making such 'voluntary' decisions is actively encouraged in the transit zones.

9.1.2. Living conditions in the transit zones

Conditions in the transit zones remain inadequate. The HHC published a list of the most urgent changes that are needed to ensure that confinement in the transit zones is in line with relevant international, EU, and domestic standards of detention¹⁰⁰. To date, none of the requested changes to material conditions have been implemented. A slight improvement of services was observed after September 2017 when education for children started in the community rooms and after November 2017 when psychological care became available upon request.

It is only the community areas that have been equipped with air-conditioning, which leaves the metal containers where asylum-seekers sleep and spend most of their day very hot during the summer.

In the transit zones free WiFi is available and asylum-seekers may keep their mobile phones with them, but no public phones or computers are available. Many complain of very poor wireless internet connection, which only enables them to send messages, not participate in calls. Those with no personal mobile phone remain disconnected from the outside world.¹⁰¹

Detention conditions, including the lack of personal computers and the poor WiFi connection, are not conducive to self-education and self-learning despite what the Government states. Based on HHC's experience, those

⁹⁸ Until 1 January 2017, the authority was called Office of Immigration and Nationality (OIN). Between 1 January 2017 and 1 July 2019, it was called Immigration and Asylum Office (IAO). From 1 July 2019 however, following its integration into the Police, the IAO was renamed again to National Directorate-General for Aliens Policing.

⁹⁹ Section 35 (2) of the Asylum Act

¹⁰⁰ Hungarian Helsinki Committee: Minimum Standards Required in the Transit Zones on the Hungarian Land Borders <https://www.helsinki.hu/en/minimum-standards-required-in-the-transit-zones-on-the-hungarian-land-borders/>

¹⁰¹ AIDA, *Country Report: Hungary*, 2018, p. 87.

https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2017update.pdf

released from the transit zone talk about days spent without any meaningful activity and without the possibility to learn anything. The number of organisations allowed to organise programmes in the transit zones has also diminished as a direct result of the lack of funding provided for this purpose by the government.

9.1.3. Education in the transit zones

According to the government, educational activities started in the community rooms of the transit zone on 4 September 2017¹⁰². For children between the age of 6 and 16, school attendance is obligatory. Despite that, the educational activities in the transit zones do not follow a particular curriculum and the daily programme is organised according to the age of those attending on a given day. According to the Hungarian legislation on public education¹⁰³, the educational activities carried out in the transit zone are provided through a temporary licence, which does not oblige any school in Hungary to accept their certificate. In reality, this means that this is not considered as actual school education.

Based on personal meetings with unaccompanied children who had participated in these educational programmes the HHC came to the conclusion that this can hardly be perceived as effective education. Unaccompanied minors found them useful mostly because they had a sense of activity, rather than the typical lack of activity or purpose of the majority of their time spent in detention. Classes were not tailored or age-appropriate and teachers often lacked the necessary linguistic skills needed to teach effectively. Based on the observation of teaching materials handed out to unaccompanied minors who had been in the transit zone it could be seen that the classes mostly focused on enabling minors to say a few basic things in Hungarian. According to their statements, they were not using textbooks and were seemingly not following a detailed and carefully planned curriculum.¹⁰⁴

9.1.4. Access to guardians for unaccompanied minors

Those unaccompanied minors who are required to stay in the transit zone are not assigned a child protection guardian to be their legal representative as required by the Child Protection Act, but an ad hoc guardian.

Ad hoc guardians (or temporary guardians) are normally assigned to children who need immediate and temporary legal representation¹⁰⁵. Their mandate is therefore, by definition, a temporary one. They do not have to be trained to care for children the same way legal guardians need to be. They are also not trained on asylum law.

Given the physical distance between the ad hoc guardians' workplace (Szeged) and the transit zones, the children and their ad hoc guardians usually meet only twice: at the interview and when the decision is communicated. Based on personal interviews with unaccompanied children, the lawyers of the HHC found that most of the time there is no direct communication between the ad hoc guardians and the unaccompanied children they are responsible for. It is often the case that children do not know the name of their ad hoc guardian.

Child protection guardians, on the other hand, are properly trained child protection professionals, who work to ensure that the best interest of the child is respected in all situations. They are assigned with the aim of providing legal representation in all relevant spheres of the life of the child, including education, health care, financial affairs, and the asylum procedure. They are tasked with identifying long-term, durable solutions for the children they are responsible for. The Hungarian Helsinki Committee is of the firm opinion that child protection guardians are able and ready to effectively care for unaccompanied minors, unlike ad hoc guardians.

Child protection guardians have routinely been assigned to more children than it is legally allowed. Although one guardian may not be responsible for more than 30 children at the same time¹⁰⁶, the HHC has witnessed several cases where a child protection guardian was responsible for 40-45 children at the same time. The amendment of the Child Protection Act is therefore a welcome development – as of 1 January 2020, Section 84 (6a) will differentiate between children based on their individual circumstances.

9.1.5. Age assessment

¹⁰² AIDA, *Country Report: Hungary*, p. 87. http://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2017update.pdf

¹⁰³ Article 90 (9) of Act CX of 2011 on Public Education, <https://net.jogtar.hu/jogszabaly?docid=A1100190.TV>

¹⁰⁴ HHC, *Safety-Net Torn Apart*, 2018, p. 11. https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf

¹⁰⁵ Section 130/A of Government Decree 149/1997 (IX. 10.) on guardianship authorities and on child protection and guardianship procedures

¹⁰⁶ Section 84 (6) of the Child Protection Act

The law does not provide for an identification mechanism for unaccompanied children. The Asylum Act only foresees that an age assessment can be carried out in cases where there are doubts related to the alleged age of the applicant¹⁰⁷. In case of such uncertainty, the asylum officer, without an obligation to inform the applicant of the reasons, may order an age assessment to be conducted. Therefore, decisions concerning the need for an age assessment may be considered arbitrary.

Nothing that could potentially be labelled as a multidisciplinary age assessment procedure is practiced at the moment. The lack of this practice is in contrast with the recommendation of the Council of Europe.¹⁰⁸

Age assessments are conducted by a military doctor in the transit zone. The main method employed is the mere observation of the child's physical appearance, e.g. weight, height, etc., and the child's sexual maturity. In the context of age assessment, the National Directorate-General for Aliens Policing (NDGAP) does *not* use a psychosocial assessment.

Since the entry into force of the emergency regime, age assessment practices became even more important since the law differentiates between unaccompanied children below and above the age of 14. The consequences are severe as erroneous assessment of the applicant's age may result in their unlawful detention in the transit zone. It is therefore extremely worrying that the military doctor does not possess any specific professional knowledge that would make them suitable to assess the age of asylum-seekers, let alone differentiate between a 14 and a 15 year old.

As is explained at length in the third party intervention of the AIRE Centre, Dutch Council for Refugees and ECRE in the *Darboe and Camara v. Italy* case¹⁰⁹, there is currently a broad consensus among medical professionals that existing age assessment methods alone cannot narrow down the age of the applicant to an adequate range to be relied on in the asylum procedure. The margin of error is the broadest among those around 15 years of age. It can therefore be easily seen that carrying out an age assessment procedure with the aim of clearly identifying whether a child is under or above the age of 14 is highly problematic.

Based on interviews with unaccompanied minors, HHC lawyers found that in reality 'age assessment' in the transit zones takes only a few minutes, during which the military doctor simply measures the applicants' height, looks at their teeth, measures the size of their hips and examines the shape of their body (whether it 'resembles that of a child or more like that of an adolescent') alongside with signs of their sexual maturity (e.g. pubic hair, size of breasts). The HHC is of the opinion that this practice is highly unprofessional, unscientific and is in breach of the fundamental rights of children.

9.1.6. Starvation of rejected asylum seekers

In 17 cases since August 2018, the NDGAP wilfully withheld food from third-country nationals it was keeping in detention in the transit zones.

Following the amendment of the Third Country Nationals act, the NDGAP may continue to keep rejected asylum seekers in the transit zone for the duration of their alien policing procedure.

However, as the implementation decree of alien policing procedures¹¹⁰ does not contain any clear obligation to provide meals to those placed in the transit zone while under an alien policing procedure, the NDGAP informed the applicants that they will not receive any food. At the same time, the NDGAP made an exception and provided regular meals to children under 18 and to breastfeeding women. In each individual case, the HHC had to request an interim measure from the ECtHR to ensure that food would be provided to those in detention in the transit zones.¹¹¹

¹⁰⁷ Section 44(1) of the Asylum Act

¹⁰⁸ Council of Europe Children's Rights Division, *Ages Assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*, 2017 <https://rm.coe.int/age-assessment-council-of-europe-member-states-policies-procedures-and/168074b723>

¹⁰⁹ AIRE Centre et al., *Third party intervention in Darboe and Camara v. Italy*, Application No. 5797/17, 5 July 2017 <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Darboe%20Camara%205072017%20final%20INTERVENTION%20ONLY%20as%20sent.pdf>

¹¹⁰ Government Decree No. 114/2007 (V. 24) on the implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals

¹¹¹ See the continuously updated table on interim measures issues under rule 39 of the rules of court by the ECtHR to the Government of Hungary to ensure that migrants detained in the Hungarian transit zones are not deprived of food:

https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8/edit#gid=0 See also HHC's summary document, *One year after – how legal changes resulted in blanket rejections, refoulement, and systemic starvation in detention*, 1 July 2019, <https://www.helsinki.hu/wp-content/uploads/One-year-after-2019.pdf>

From the perspective of the affected families' children, the situation remained dramatic despite the NDGAP's exception to provide them with food. In many cases, in order to ensure that the children do not share their meals with their starving parent(s) or siblings older than 18, transit zone employees separated them from their families during the time of the meals. The staff also made sure that children do not bring back any leftovers to their starving family members. Such blatantly inhumane practice against asylum-seekers has no equivalent in Europe, but parallels may be drawn with the inhumane treatment of people at the Mexican border in the United States of America (USA).

In June 2019, the Hungarian Helsinki Committee published a bill¹¹² that would put an end to the starvation of people detained in the transit zones and the detention of children. HHC has called upon Members of Parliament to submit the bill and a debate on the bill is currently pending before the relevant parliamentary committee.¹¹³

In July 2019, an independent Member of Parliament filed a criminal charge with the National Bureau of Investigation, arguing that by subjecting detainees in the transit zone to starvation, despite the interim measures consistently indicated by the ECtHR, those ordering their starvation committed a crime. On 15 August 2019, the Police rejected the charge, arguing that Hungarian law does not set forth a duty to provide rejected asylum seekers with food, therefore no crime was committed.¹¹⁴

9.1.7. Integration of the asylum authority into the Police

As of 1 July 2019, the Immigration and Asylum Office operates as National Directorate General for Aliens Policing and falls under the scope of Act XXXIV of 1994 on the Police. The integration of the asylum authority into the police and the new name symbolise that Hungary does not regard asylum seekers as a '*particularly underprivileged and vulnerable population group in need of special protection*'.¹¹⁵ As Sándor Pintér, Minister of the Interior emphasised on 28 June 2019, at the celebratory event on the eve of the asylum office's integration into the police, illegal immigration and the unlawful acts relating to it made this new, policing-focused model necessary.¹¹⁶

9.2. **Trafficking**

As the State party noted in its submission, Government resolution No 1125/2019 (III.13.) has been adopted on the necessary measures to improve the effectiveness of the fight against trafficking, with the primary aim to ensure that children who became victims of sexual exploitation cannot be prosecuted.¹¹⁷ The deadline for amending the law was 1 July 2019 but as of 15 August 2019, no law has been amended. According to section 172 of the Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereinafter: Petty Offence Act) those who breach the regulation that prostitution is legal in authorised zones only, can be punished and fined. The punishment can entail incarceration, even in the case of children aged between 14 and 18.

9.3. **Administration of juvenile justice**

According to the paragraph 239 of the State Report, the minimum age of criminal responsibility is 14, but for certain criminal offences the age of criminal liability has been reduced to 12. This means that children may be punished for robbery (e.g. taking a personal belonging from another exclusively with verbal violence) or plunder (e.g. taking out a phone from a fainted person's pocket). Children between 12–14 years can also be deprived of liberty.

Furthermore, contrary to the argumentation of the State Report, research shows that children around 12–13 years of age do not perceive themselves as citizens who can be called to account for their behaviour by the state, and are unable to respect the legitimacy of laws and legal procedures. The HHC is of the position that criminal justice procedures should not be called into play instead of the child protection system in the case of

¹¹² Törvénymódosítási javaslatok a legsérülékenyebb menedékkérők szabadításáról és a fogvatartottak éheztetésének megszüntetéséről, https://www.helsinki.hu/wp-content/uploads/torvenymodositas_eheztes_ellen.pdf

¹¹³ Bill no. T/6493. <https://www.parlament.hu/irom41/06493/06493.pdf>

¹¹⁴ <https://444.hu/2019/08/15/rendorseq-nem-utkozik-a-magyar-joggal-a-kulfoldiek-eheztese-a-tranzitonaban>

¹¹⁵ M.S.S. v. Belgium and Greece [GC] application no. 30696/09. § 251.

¹¹⁶ Megalakult az Országos Idegenrendészeti Főigazgatóság <https://www.kormany.hu/hu/belugyminiszterium/hirek/megalakult-az-oroszagos-idegenrendeszeti-foigazgatosag>

¹¹⁷ <http://tamogatoweb.hu/index.php/jogszabalyfiqyelo/jogszabalyok-2019/319-1125-2019-iii-13-korm-hatarozat>

children between 12–14 years. The fact that the latter system is impotent and dysfunctional is not a reason to substitute it with the criminal justice system, which cannot deal with 12–14 years old children appropriately.

In addition, the HHC is of the position that the Hungarian government voluntarily misinterprets child-friendly justice, and its measures predominantly concern victims and witnesses and not children and that this is in conflict with the law.

In the past years the legal framework on petty offences became more severe. Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System (hereafter: Petty Offence Act) upheld an extended list of offences punishable with confinement (to be executed in penitentiaries), and made confinement possible for a third petty offence within 6 months even if none of the offences would be otherwise punishable by confinement. The law allows for converting a fine or community service into confinement without hearing the offender in case they fail to pay the fine or carry out the work, which violates the European Convention on Human Rights (ECHR). Although in some cases non-custodial sanctions are provided by law, community service and mediation are heavily underused as independent sanctions. Extremely strict deadlines and a lack of plain language in official papers hinder the conversion of fines into community service instead of confinement.

Juveniles may also be taken into petty offence confinement, which, in violation of Article 37 of the CRC is not applied only as a measure of last resort. Confinement of juveniles shall be executed in penitentiary institutions instead of juvenile reformatories (having a less strict regime), which is also against the Beijing Rules.

10. RECOMMENDATIONS

Based on the contents presented in this submission, the HHC respectfully submits the following recommendations for consideration by the Committee in relation to the sixth periodic review of Hungary:

- access to civil society organisations is allowed to detention facilities to conduct systematic monitoring visits, thus ensuring civilian oversight, independent control, and the possibility of providing quality counselling services.
- the Government ensures that the NPM department within the Office of the Commissioner for Fundamental Rights is provided with adequate funding to achieve the scale and quality of monitoring as prescribed by law.
- the Government ensures that civil society organisations may provide their expertise and employees so that sufficient number of visits could be conducted by the NPM department within the Office of the Commissioner for Fundamental Rights.
- civil society organisations are allowed to monitor the implementation of SOPs of state authorities.
- the Government take measures to ensure that children belonging to minority groups do not face discrimination, in particular with regard to the removal of children from their home environment and the State child care system.
- the Government adopt a national approach with contribution from civil society and other expert organisations to address violence against people with disabilities living in institutions and introduce legal protections to ensure vulnerable groups are not ill-treated without consequences in the future.
- victims of ill-treatment in Topház Special Home shall be provided adequate medical, social, and psychological assistance to remedy the ill-treatment and redress.
- the Government increase efforts to combat the segregation of Roma children in schools and in special education, and implement the judgment delivered by the ECtHR in the case of Horváth and Kiss v. Hungary.
- the Government amend Act LXXX of 2007 on Asylum to ensure that children are not kept in carceral conditions and are provided with adequate services and, if necessary, care appropriate to their age.
- the Government amend Act II of 2007 on the Entry and Stay of Third Country Nationals and the corresponding government decree 114/2007 (V.24.) to ensure that food is provided to all third country nationals kept in the transit zones.
- the future of Károlyi István Children's Home in Fót is decided upon meaningful consultation with children accommodated there and with relevant civil society and expert stakeholders to ensure the best interest of the child remain the primary consideration.
- the Government amend Act II of 2012 on Petty Offences, the Petty Offence Procedure, and the Petty Offence Registry System in line with the Government decree No. 1125/2019 (III.13.) to ensure that children who became victims of sexual exploitation cannot be prosecuted.
- the Government obtain the necessary information and opinions from public authorities, civil society organisations, experts, and key stakeholders affected by draft legislations. Sufficient time and opportunity is provided for public consultation.