

European Roma Rights Centre

DIS-INTEREST OF THE CHILD



Romani Children in the Hungarian
Child Protection System

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ERRC

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS	7
1. INTRODUCTION	9
2. METHODOLOGY	13
3. EXECUTIVE SUMMARY	17
4. INTRODUCTION TO THE HUNGARIAN CHILD PROTECTION SYSTEM	19
5. THE RIGHT OF CHILDREN TO PROTECTION	23
5.1 International Law Related to Institutionalisation	25
5.2 International and Domestic Law Regarding Adoption	26
5.3 International and Domestic Law Related to Placement in Institutions for the Mentally Disabled	26
5.4 Data Protection Considerations	28
6. THE OVER-REPRESENTATION OF ROMANI CHILDREN IN STATE CARE	33
6.1 The Proportion of Romani Children in State Care	35
6.2 Factors Contributing to the Over-Representation of Romani Children in State Care in Hungary	39
6.3 Romani Children Disproportionately Sentenced to a Life in the System with an Administrative Decision	54
6.4 The Question of Ethnic Identity in Adoption Processes	65
6.5 Disproportionate Categorisation of Romani Children in State Care as Mentally Disabled	79
6.6 Structural Problems in the Child Protection System and Their Impact on Romani Children	92
7. GOOD PRACTICES FROM OTHER COUNTRIES	99
7.1 The United States	99
7.2 Canada	100
7.3 England	101
8. RECOMMENDATIONS FOR ACTION BY THE HUNGARIAN GOVERNMENT	103
9. BIBLIOGRAPHY	113
10. ANNEXES	117

10.1	Map of the regional division of Hungary	117
10.2	Breakdown of focus groups composition	118
10.3	List of the institutions and professionals visited during field research	119

LIST OF TABLES

Table 1:	Origin of Children Living in Hungarian Children’s Homes	38
Table 2:	Estimated Percentage of Romani Children Amongst the Clientele of the Basic Child Welfare Service	40
Table 3:	Education of Children Living in Hungarian Children’s Homes	89
Table 4:	Ethnic Breakdown of Special Education Representation in Hungarian Children’s Homes	90
Table 5:	Comparison of Children in Professional Care Attending Mainstream and Special Learning Needs Classes	91

LIST OF TEXTBOXES

1.	The Impact of Usury on the Institutionalisation of Romani Children	42
2.	European Court of Human Rights on Child Protection	52
3.	Rejection by Educators	82
4.	Confusion Resulting from Different Terminology in the Child Protection System and the Education System	88

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* * *

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1. INTRODUCTION

According to statistics published by the Ministry of Labour and Social Affairs, in 2005 (the most recent data available), 17,456 children below the age of 18 were in state care under the supervision of a state-appointed legal guardian. Of those children, 14,907 children were in short-term care, 1,764 children were in long-term care and 785 were in a temporary centre awaiting placement.¹ It is widely held to be true that the situation of Romani children compared to non-Romani children is especially vulnerable vis-à-vis the child protection system of the country in which they live. In its most recent Concluding Observations on Hungary, the United Nations Committee on the Rights of the Child (hereafter “Committee”), which oversees the implementation of the Convention on the Rights of the Child (hereafter “CRC”), stated that it was “particularly worried about the considerable over-representation of Roma children among children in institutions.”² However, in the absence of relevant data disaggregated by ethnicity, it is difficult to provide details as to the actual extent of this over-representation. Regardless of this fact, the main problems noted with regard to Romani children in the Hungarian child protection system relate to the following three areas:

1. The massive over-representation of Romani children in professional children’s homes;
2. The way in which identity issues influence the adoption of Romani children; and
3. The disproportionate categorisation of Romani children in professional care as mentally disabled.

This can largely be noted to be the result of the impacts of historical and current racism and discrimination against Roma and the resulting vulnerable socio-economic position of a large percentage of Roma in Hungary. However, there are also widely voiced concerns about the manner in which the Hungarian child protection system functions. For example, it has been noted by experts in the field that deficiencies in the Hungarian child protection legal system enable child protection workers and public officials to work in a manner not fully respectful of fundamental rights of Romani and other excluded children;

¹ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 43. Last accessed on 29 September 2007.

² Committee on the Rights of the Child. 17 March 2006. Concluding observations: Hungary. Available online at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.HUN.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.HUN.CO.2.En?OpenDocument). Last accessed on 27 October 2007.

through, for example, the broad definition of endangerment and its application which results in children being removed from their families for material reasons, though this is banned by law.

As a result, segments of generations of Romani children are growing up outside the care and protection of their natural families, often in an institutional setting, and are destined to an adult life without any substantial support network. In its Concluding Observations, the Committee expressed concern “about the high rate of children placed in alternative care, often for financial reasons, many of them for a long period of time, including very young children and children with disabilities. [It noted] with regret that about half of these children are not in foster families but in institutions [and that] not enough efforts are made to return children to their families as soon as possible.”³

These same children are also reportedly forced into an identity crisis because they grow up with a weak sense of ethnic identity in the absence of their parental or community influence and input, and may even experience rejection by this community, although they will also most likely be treated as a member of the Romani community by non-Roma, which undoubtedly will influence their success and happiness as adults. The results of this are widely believed by child protection experts to have negative consequences for the children concerned in terms of their personal, social and economic development, given that treatment flowing from ethnic identity is more often based upon the perceptions of others than it is about self-identification.

In order to devise effective measures to reduce and achieve proportionate numbers of Romani children in the state child care system and ensure the protection of their family lives and identities, it is important for policy makers to have a solid understanding of the reality of discrimination against Roma. This means being able to understand the phenomenon, its causes and extent, through the collection of data disaggregated by ethnicity.

This report examines the findings and implications of research on Romani children in the Hungarian child protection system, explores the applicability of good practices from other countries and provides a series of recommendations for future actions by the Hungarian Government.

³ Committee on the Rights of the Child. 17 March 2006. Concluding observations: Hungary. Available online at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.HUN.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.HUN.CO.2.En?OpenDocument). Last accessed on 27 October 2007.

Due to the highly sensitive nature of the subject examined and out of respect for the persons interviewed, the ERRC has chosen not to refer directly to any individual interviewed during research towards the preparation of this report. Members of the child protection profession are referred to herein by their job title and location. In the vast majority of locations, more than one professional was interviewed. The children and Romani parents interviewed during the course of research are referred to by their initials.

2. METHODOLOGY

Following extensive discussions with expert working groups formed within the project,⁴ it was decided that the primary research for this study would be conducted by means of focus group discussions. Amongst the reasons for choosing this method of research were concerns related to difficulties in developing an appropriate sample base to which questionnaires could be administered due to the number of experts in question as well as regional variations and levels of employment.

Focus group discussions enabled the analysis of typical situations encountered by various experts relevant to child protection in their day-to-day work, looking more at generally experienced situations, rather than an individual focus. With the aid of well-formulated decision-making situations adjusted to the main research concerns, it was possible, however, to provide revealing interpretations of the interconnected factors related to social and economic forces as well as the influence of social policy and social psychology, beyond the dilemma situations for use by the participants of focus group discussions – as well as by the professionals making up the public of the research study. Furthermore, the focus group discussions provided a good opportunity to uncover professional and institutional conflicts of interest, differences and similarities in terms of professional considerations and approaches existing in the various fields, and individual perceptions of plausible solutions.

One focus group discussion was conducted in all 7 regions of Hungary, allowing for the inclusion of representatives of all related professional fields from the entire country.⁵ In designing the groups, attention was paid to avoiding the placement of people from the same workplace or living in the same location in the same group in order to increase the likelihood of straightforward responses and to avoid a self-enclosed nature of conversation. In total, 68 professionals participated in the focus groups discussions.⁶

⁴ Three expert working groups were established within the framework of this project. The first, addressing issues regarding the over-representation of Romani children in child care institutions, was comprised of Maria Nemenyi, Laszlo Molnar and Aranka Varga. The second, addressing issues regarding adoption, was comprised of Maria Herczog, Gabriella Varju and Miklos Radoszav. The third, addressing issues related to the over-representation of Romani children in institutions for the mentally disabled, was comprised of Gabor Havas, Lajos Orosz and Agnes Torda.

⁵ See Annex 10.1 for a map of the regional division of Hungary.

⁶ See Annex 10.2 for a breakdown of the focus groups' composition.

To account for the views, attitudes and experiences of parents and children affected by child protection issues in Hungary, 2 focus group discussions were conducted with groups of parents and children, respectively; 4 in total. These focus group discussions took place in Budapest and Pecs. Altogether 13 parents and 12 children participated in the focus group discussions. The parent groups were composed of natural, foster and adoptive parents. Discussions with parents focused on their opinions concerning the institutionalisation of children in professional care, the preceding basic care, their experiences with local schooling, health care providers, etc., the type of institution to which the child was transferred and his/her life there. Information was collected related to the experiences of isolation of children and their segregation in children's homes and schools.

The children's groups included Romani and non-Romani children between the ages of 14 and 21 living in child protection institutions (apartment homes, child care homes and with foster parents) or with an adoptive family. These discussions focused on the development of identity of children living in a non-family environment, the analysis of their relationship with their original family (identification, acceptance, refusal, other) and the reactions of institutional care providers and the broader social environment to such issues; that is, all factors potentially influencing the processes of self-identification.

To supplement and expand the results of the focus group discussions, the ERRC conducted a series of in-depth interviews with government officials involved in the development of law and policy in the area of child protection, and persons working at the level of both basic and professional care in Hungary.⁷ The ERRC also spoke with children residing in children's home and Romani parents whose children had been removed from their care. This research was conducted during the summer of 2007 in 3 areas: Budapest and Pest County, Baranya County and Borsod-Abaúj-Zemplén County. These areas were chosen because each has a substantial Romani population and due to geographical coverage considerations. Within each area, the ERRC attempted to visit receiving centres, large institutional-type children's homes and family-type children's homes at the professional care level, and child welfare services at the basic care level. The homes visited were chosen on the basis of random selection from the long list of child protection institutions in Hungary. The main aims of this research were to determine:

- If there is in fact an over-representation of Romani children in state care (given that ethnic data is not collected on this issue in Hungary);
- The main reasons Romani children end up in professional child care (and in which form), it is believed, in such high numbers;

⁷ See Annex 10.3 for a list of the institutions and professionals visited during field research.

- The availability, or lack thereof, of programmes to prevent the removal of Romani children from their families; and
- Possible solutions to the problems addressed within this study.

An additional feature of the research was analysis of the practices in several Western countries, where the issues addressed in this research have been on the agenda for several decades.

3. EXECUTIVE SUMMARY

In response to repeatedly raised concerns about the vulnerable position of Romani children in relation to the various child protection systems in Europe, the ERRC recently conducted an in-depth study on the situation of Romani children in children's homes, in adoption and in institutions for the mentally disabled in Hungary.

The results of this study indicate that the Romani children are overwhelmingly over-represented in the Hungarian child protection system. Amongst the sample of children in professional care institutions interviewed by the ERRC, 40% were of Romani origin and 18% were half-Romani; 58% in total. According to reasonable estimates, Romani children account for only 13% of the child population in Hungary. This appears mainly to be the result of indirect discrimination against Roma through the application of the provisions of the child protection law and functioning of the system itself, which have a disproportionate impact on Roma.

Although the Hungarian Child Protection Act bans the removal of children from their families for purely material reasons, Romani children appear to be removed more frequently from their families for material reasons than non-Romani children. Preventative social care and community development programmes in Hungary are extremely underdeveloped. Also of concern is that according to ERRC research, the temporary or short-term care of children unofficially becomes long-term care in almost all cases, meaning that a disproportionate number of Romani children in state⁸ care are relegated to life in an institutional setting. Because the legal framework on child protection allows children to be placed in temporary and short-term care on the basis of an administrative decision, many Romani children and parents are *de facto* long-term separated without any court involvement (which is required for the official long-term placement of children in professional care in Hungary).

With regard to the position of Romani children in relation to adoption processes, ERRC research indicates that Romani children are less likely to be adopted than non-Romani children and therefore disproportionately spend longer periods of time in an institutional setting. According to Hungarian child protection professionals, the majority of adoptive parents are non-Romani adults who are unwilling to adopt Romani children for reasons ranging from anti-Romani

⁸ Throughout this report, the terms "state" care and "professional" care are used synonymously.

attitudes, to a lack of preparation to take on a Romani child, to pressure from the surrounding environment, to fear of being incapable of raising a Romani child. In addition, potential adopters reportedly refuse *en masse* to adopt children with disabilities. As Romani children are more likely than non-Romani children to be labelled with a mental disability or special learning need, they are at a double disadvantage regarding the identification of suitable adoptive families. Sixty-three percent of the children interviewed by the ERRC who were categorised as having a mental disability or special learning need were Romani.

Romani children are also disproportionately categorised as mentally disabled, which impacts their position in the child protection system and with regard to educational and later-life opportunities. Child protection experts in Hungary indicate that children entering in the child protection system before school age are at an increased risk of being categorised as mentally disabled or having a special learning need upon entering school due to the lack of a nurturing environment during childhood which slows development, although they do not likely actually have any disability or special learning need. In addition, those Romani children of school age entering care are already disproportionately represented amongst those students categorised as mentally disabled or having a special learning need. State appointed guardians are less likely to contest educational decisions regarding mental disability or learning needs than natural parents, leaving these children in a vulnerable position.

The over-representation of Romani children in institutionalised care is a considerable problem because children growing up in an institutional setting will be without any substantial support network as adults. Alarming, workers in the children's homes informed ERRC researchers that there are indications that many children growing up in homes will themselves end up having their children removed due to their socio-economic situation as adults, creating a nasty cycle from which it is very difficult to emerge.

4. INTRODUCTION TO THE HUNGARIAN CHILD PROTECTION SYSTEM

The Hungarian system of child protection was dramatically reformed with the adoption of Act No XXXI of 1997 on the Protection of Children and Guardianship Administration (hereafter “Child Protection Act”). Section 3 of the Child Protection Act outlines the system for the protection of children, which, according to Article 14(1) aims “to promote the upbringing of the child within a family, prevent and eliminate the endangerment of the child, and ensure the substitute protection of a child leaving care of parents or other relatives.” In accordance with the Child Protection Act, the Hungarian system of child protection is divided into 4 sections which operate between the various levels of government in Hungary:⁹

1. The first section of the child protection system relates to financial support available to the family to ensure the proper development of the child. Financial supports available include regular child benefits, exceptional child benefits, advance payments of child support and housing benefits.
2. The next section of the Hungarian child protection system is basic child welfare services. The services available to Hungarian families at this level include child welfare services, day-time care of children and temporary care of children (refers to the placement of children with substitute parents, in temporary homes of children or temporary homes of families for a maximum of 12 months; parental rights of supervision are not affected at this time and parents can request to get their children back at any point).
3. The third section of the child protection system is professional child protection services. These services include home-like provisions (children’s homes, foster care, etc.) and county professional child protection services.
4. The fourth section concerns administrative measures of child protection and welfare. The measures included here are:
 - Placement under protection;
 - Acceptance of the child in another family;
 - Temporary placement;
 - Short-term foster care (refers to short-term placement in a setting listed in point 3 above; hereafter “short-term care”);

⁹ Article 15 of the Child Protection Act.

- Long-term foster care (refers to long-term placement in a setting listed in point 3 above hereafter “long-term care”);
- Supervision;
- After-care; and
- After-care provision.

Basic child welfare services

Child welfare workers at the basic care level begin working with families and children upon receiving an “indication” of possible endangerment of the child. Indications may come from schools, police, district nurses, doctors, guardianship authorities, local government bodies, private individuals, etc. Service at this time is voluntary unless the family fails to co-operate with child welfare workers and the situation of the child fails to improve or deteriorates. At this point, the child may be placed under protection, at which time co-operation with child welfare workers the use of the services are no longer voluntary.

Failing the success of these measures, child welfare workers may recommend the removal of the child from their family, about which the local guardianship authority must make the decision.

Basic child welfare services also provide, for a period of one year following the placement of a child back with their family, after-care to ensure the re-integration of the child in the family.

Professional child protection services

Beyond these remedies, the responsibility of care provision transfers to county-level professional child protection services and is not voluntary for the family. As a first measure, temporary placement refers to the removal of the child from their family and placement in a temporary receiving centre for children (for children under the age of 3 or for those children over the age of 3) or with foster parents. Here, the regional professional child protection service conducts a case assessment involving expert appraisal of the child and analysis of the information gathered about the family (including at the basic care level). After a placement meeting to which the parents are invited and on the basis of the assessment by the regional professional child protection service, the Guardianship Office issues a decision regarding the placement of the child.

At this point, children may be placed back with their family, in short-term care or long-term care. In short-term care, the parental rights of supervision are suspended on the basis of an administrative decision and the child is placed in either a children's home or with a foster family. During this time, parents are to be supported by basic child welfare services to improve their situation such that the child may return home.

In cases of extreme endangerment or if the parents fail to maintain contact with the child, guardianship authorities may seek the removal of parental rights. In this instance, the parental rights to supervision may be permanently removed via court order. In this case, if there is no third person to take over parental responsibility and adoption is not possible, the child enters long-term care. For children under the age of 3, this is possible within 6 months of placement in short-term care, and for children over the age of 3 within one year.

For children remaining in the child protection system upon reaching 18 years of age, professional child protection services also offer the possibility of after-care services until the age of 24 if the individual so requests. After-care services include accommodation in a state home setting or with foster parents, assistance finding employment or educational support.

5. THE RIGHT OF CHILDREN TO PROTECTION

The rights of the child are paramount in the discussion of the position of Romani children in relation to child protection considerations. On 20 November 1989, the United Nation's General Assembly adopted the Convention on the Rights of the Child¹⁰ (hereafter "CRC"), which constitutes the international legal framework for the rights of children. This Convention was signed by the Republic of Hungary on 14 March 1990, and became part of Hungary's domestic legislation in 1991.¹¹ Article 2(1) of the CRC states:

"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Article 7(1) of the Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereafter, "Equal Treatment Act") states, "Direct negative discrimination, indirect negative discrimination, harassment, unlawful segregation, retribution and any orders issued for those mean a violation of the principle of equal treatment, particularly as set out in Chapter III." Article 8 defines direct discrimination as "All dispositions as a result of which a person or a group is treated or would be treated less favourably than another person or group in a comparable situation" on a series of grounds, including racial origin, ethnic origin, nationality, mother tongue, sex, social origin and financial situation, amongst others.

Article 9 defines indirect discrimination as "Those dispositions are considered indirect negative discrimination, which are not considered direct negative discrimination and apparently comply with the principle of equal treatment but put any persons or groups having characteristics defined in Article 8 at a considerably larger disadvantage than other persons or groups in a similar situation were or would be."

¹⁰ Available online at: <http://www.unhchr.ch/html/menu3/b/k2crc.htm>. Last accessed on 15 September 2007.

¹¹ LXIV Act of 1991 provides for the promulgation of the Convention.

Article 8 of the CRC provides that the state must respect “the right of the child to preserve his or her identity, including nationality, name and family relations.”¹² In addition, Article 30 of the CRC states:

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

The fundamental rights of children are also secured in the Hungarian Constitution¹³ at several points. Article 67(1) states “In the Republic of Hungary all children have the right to receive the protection and care of their family, and of the State and society, which is necessary for their satisfactory physical, mental and moral development.” Article 15 concerns the protection of the institution of marriage and the family, whilst Article 16 declares that “The Republic of Hungary shall make special efforts to ensure a secure standard of living, instruction and education for the young, and shall protect the interests of the young.”

The right of the child to special protection as well as obligation of the state to take measures to protect the child is also set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “ECHR”) to which Hungary is a party.¹⁴ Whilst there are not many articles directly pertaining to rights of children in the ECHR, all provisions of the Convention can be applied to any child as much as to any other legal subject. Both the Convention and the decisions of the European Court of Human Rights indicate that any person can apply to the Court as long as they fall under its jurisdiction, including a child. Amongst others, the Convention guarantees such rights and freedoms as the right to a fair trial (Article 6), the right to respect for private and family life (Article 8) and the right to an effective remedy (Article 13). The Article 14 prohibition of discrimination with regard to rights contained in the Convention, and the ECHR

¹² In its explanation of Article 8, the handbook issued to facilitate implementation of the CRC makes it clear that name, nationality and family relations are just individual elements of identity, and that the personal history, racial affiliation, culture, religion and language of the child also belong to identity. The CRC, as promulgated in Hungarian law, therefore clearly provides for the respect of the child’s national and ethnic origin, and preservation of the child’s language and culture, and their freedom of thought, conscience and religion, regardless of whether the child is living with a family or in a form of state care replacing the family as a subjective right. See: Hodkin, Rachel and Peter Newell. 2002. Implementation Handbook for the Convention on the Rights of the Child. UNICEF: New York, page 125.

¹³ Available online at: <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=94900020.tv>.

¹⁴ Hungary ratified the European Convention for the Protection of Fundamental Freedoms and Human Rights on 5 November 1992.

Protocol 12 general prohibition of discrimination,¹⁵ including on the basis of ethnicity, are seen as one of the crucial values of democratic society.

The 1997 Child Protection Act provides the legal basis for the child protection system in Hungary. Article 2(1) of the Child Protection Act declares amongst its fundamental principles that, “in applying the law it is necessary to take into consideration the primacy of the best interests of the child.”

5.1 International Law Related to Institutionalisation

Article 3(1) of the CRC sets out that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” At the same time, Article 5 stipulates that:

“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

In accordance with Article 9, “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

With a view to preventing the removal of children from their families, Article 19(1) of the CRC establishes that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child [...]” In addition, Article 27(3) sets out that States Parties, “in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right [right of the child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development] and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

At Article 20(3), the CRC establishes that those children temporarily or permanently removed from their family environment shall be entitled to care

¹⁵ Hungary signed Protocol 12 on 4 November 2000.

which gives due regard “to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”

5.2 International and Domestic Law Regarding Adoption

Article 21 of the Convention on the Rights of the Child sets out that:

“States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall: a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary [...]”

Article 7(2) of the Hungarian Child Protection Act states that a child who for any reason is deprived of their family “has the right – in an adoptive family or another form of care replacing the family – to protection substituting parental care or that of other relatives.” Article 7(3) is of particular importance, stating that “in the course of substitute care of the child, their freedom of conscience and religion must be respected, and consideration must be given to their national, ethnic and cultural affiliation.”

Chapter 6 of the Act IV of 1952 on Marriage, Family and Guardianship outlines the legal framework for adoptions in Hungary, at articles 46 through 59.

5.3 International and Domestic Law Related to Placement in Institutions for the Mentally Disabled

Article 23(1) of the Convention on the Rights of the Child states that mentally or physically disabled children “should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.” Further:

“2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance [...].”

3. [...] assistance extended in accordance with paragraph 2 of the present article [...] shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”

In the Convention on the Rights of Persons with Disabilities, States Parties, at Article 19, recognise “the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement [...].”¹⁶

Article 4/A of Act LXXIX of 1993 on Public Education (hereafter “Public Education Act”) contains requirements concerning equal treatment in education. The Equal Treatment Act prohibits unlawful segregation at Article 7(1). Unlawful segregation is defined in Article 10(2) as, “a conduct that separates individuals or groups of individuals from other individuals or groups of individuals in a similar situation on the basis of their characteristics as defined in Article 8, without any law expressly allowing it.”

In accordance with Article 4(7) of the Public Education Act, “Those involved in the organisation, direction, operation and performance of tasks in public education when making decisions and taking measures shall take into account the primacy of the best interests of the child. [...]” Pupils have the right to receive education appropriate to their skills, interests and abilities.¹⁷

Until 2003, the Public Education Act referred to pupils with “physical, sensory, mental or other disabilities”. In 2003, the terms “special learning need”, and “special learning needs children and pupils” were introduced. According to Article 121(29) of the Public Education Act, a child was categorised as having special learning needs that based, on the opinion of the expert and rehabilitation board, was:

¹⁶ This Convention, opened for signature on 30 March 2007, is not yet in force. Hungary ratified the Convention on 20 July 2007.

¹⁷ Article 10(3) of the Public Education Act.

- a) Multiply impaired due to the combined presence of physical, sensory, mental, speech, autism or other impairment,
- b) Permanently and seriously hindered in the learning process due to mental development disorders (for example, dyslexia, dysgraphia, dyscalculia, mutism, hyperkinetic disorder or hyperactivity).

From 1 January 2007, point B was amended. In its place, Article 30(7) states, “If the child and pupil has adjustment, learning and behavioural difficulties – including the child and pupil permanently and severely hindered in the learning process due to non-organic reasons [for example, dyslexia, dysgraphia, dyscalculia, mutism, hyperkinetic disorder or hyperactivity] the child and pupil is entitled to rehabilitation teaching promoting integration into community life. [...] in the framework of educational guidance, nursery teaching and school education.”

According to Article 30(8) of the Public Education Act, “The expert and rehabilitation board shall at the request of the educational advisor reach the decision as to whether the child and pupil has adjustment, learning and behavioural difficulties or special learning needs.”

5.4 Data Protection Considerations

Article 59 of the Hungarian Constitution guarantees, as a fundamental right, the protection of personal data. Article 2 of LXIII Act of 1992 on the Protection of Personal Data and the Publicity of Public Interest Data (hereafter “Data Protection Act”) lists the following as special data: Racial origin, affiliation to national and ethnic minority, political opinion or party allegiance, religion or other ideological conviction, membership of rights representation organisation, health condition, pathological addiction, data referring to sexual life and personal data relating to criminality.

The Data Protection Act endeavours to bolster the handling of special data with strict rules, but as a general rule special data can only be handled if the person concerned gives their written consent, or if this is prescribed by law or other rule of law of appropriate level.¹⁸ Therefore, according to the Data Protection Act, the written voluntary and informed consent of the data subject is required for the collection and handling of personal ethnic data.

According to the provisions of the Child Protection Act currently in force, child protection officials specified in the act are not authorised to handle special personal

¹⁸ Article 3 of the Data Protection Act.

data related to ethnic origin.¹⁹ Article 135 states that data regarding the property, health and clean records of the child, parent and other legal representative, substitute parent and foster parent as well as the school grades, behaviour, and educational level of the child may be managed by the agencies listed in points a) – i) of paragraph 135(1) for the purposes set forth in paragraphs (1) – (4) of Article 15. Article 15 refers to financial supports, basic child welfare services, professional child protection services and administrative measures related to child protection and welfare including temporary placement, short-term care and long-term care when adoption of the child becomes possible, amongst others.

It is interesting to note that child protection representatives identified in law are legally empowered to handle special data related to the health of the child, though data pertaining to ethnic origin is disallowed.

The right to self-identification and data protection

An important point in the discussion about data collection and protection relates to who has the right to declare the membership of an individual with a particular, and especially, protected group. Article 3 of the Council of Europe’s Framework Convention for the Protection of National Minorities (hereafter “CPNM”) clearly outlines that “Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”²⁰

Hungarian law related to minorities holds similarly. Article 7 of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (hereafter “Minorities Act”) states, “The profession and declaration of belonging to a national or ethnic group or minority is the exclusive and inalienable right of the individual. No-one is obliged to make a statement concerning the issue of which minority one belongs to – excluding the exception given in paragraph 2.”²¹

In Hungary, however, there are a number of conflicting points in existing law of utmost importance to any discussions regarding data protection and the right

¹⁹ Article 135(2) of the Child Protection Act lists types of data which the child protection bodies may handle “in the course of offering, performing, checking and ensuring child protection care with the purpose of promoting the implementation of the rights set down in this Act.”

²⁰ Hungary promulgated the FCNM via Act XXXIV of 1999 on Promulgation of the Council of Europe’s Framework Convention for the Protection of National Minorities.

²¹ Paragraph 2 states, “Law or a regulation issued to implement the law can tie the exercise of a minority right to the statement by the individual.”

to self identification and identity; particularly in light of the disproportionate numbers of Romani children in state care.

Under Hungarian law, as a general rule the parent or the child²² themselves may make a declaration about the origin of the child. Act IV of 1959 on the Civil Code (hereafter “Civil Code”) states that the legal representative may make a declaration on behalf of an incapable minor and that the agreement or retrospective consent of the legal representative is required for the declaration of a minor of diminished capacity to be valid.²³

However, Hungarian law also establishes that, in general, the guardian of children under professional care may be the foster parent or the director of the children’s home.²⁴ According to the letter of the law in Hungary, the guardian, being the child’s legal representative and exercising the supervisory rights of the parent, may therefore make any declaration to which a parent would be entitled.

This provision, however, is clearly at odds with internationally and domestically accepted norms of self-determination with regard to ethnic identity. State-appointed guardians should under no circumstances be legally empowered to make a declaration related to the often perceived ethnic identity of a child under their supervision, whether the child is in short-term or long-term care.

²² The question of from what age a child is able to make a declaration about his or her ethnic origin does not have a definite answer under Hungarian legislation. In Resolution 21/1996 (V.17) AB, the Constitutional Court stated that a concrete age cannot be determined as a condition of constitutional law capability. To establish fundamental rights capability requires individual consideration, which needs to take into account the mental ability of the minor and the “risk threatening the child”. Based on the above it can be established that the legislation in force does not contain any provision which would define from what age the consent and declaration of a child can be regarded as fully valid. Deciding this question, therefore, requires individual consideration.

²³ Article 12 of the Hungarian Civil Code. Article 12/A(1) defined a minor of diminished capacity as “A minor is of diminished capacity if he or she has reached the age of fourteen years and is not incompetent.”

²⁴ Section 98(1) of the Marriage, Family and Guardianship Act sets out that “That child belongs under guardianship who has been taken into short-term or long-term care, furthermore that child who has been placed with short-term effect with a foster parent, in a children’s home or other living-in institution, and against whose parent legal action is in process to terminate the parental supervision. Section 98(2) further states, “In the case defined in paragraph (1) the guardianship authority shall assign a guardian to the child. The following can be assigned as guardians as suitable to fulfil guardianship tasks: a) foster parent, b) director of the children’s home, where the guardianship office has placed the child.”

The need to legally empower child protection representatives to handle ethnic data and to promote declarations of ethnic origin

In light of the preceding discussion, Hungarian child protection law is in need of amendment to legally empower child protection representatives to gather and handle data concerning the ethnicity of parents and children under child protection. This is necessary in order to ensure that the Hungarian child protection system ensures the best interests of the Romani child. In its March 2006 Concluding Observations on Hungary, the Committee on the Rights of the Child recommended that the Hungarian government “thoroughly examine the existing laws and regulations that impede the collection of disaggregated data [...]. In addition, it recommends the State party to significantly improve the collection of data relevant for the implementation of the Convention via a comprehensive and well coordinated system in order to assess progress made and to devise and implement the necessary positive action programmes.”²⁵

In order to achieve success in this area, the Hungarian government also has a responsibility to create an environment in which Romani parents and children feel confident in declaring their ethnic origin, especially at the time of placing Romani children in state care. First, the declaration of identity is necessary in order to observe and implement the Hungarian law, which amongst other declares:

“It is the right of children in short-term or long-term care to receive, in particular, full care offering permanence and emotional security and appropriate education in line with their age, health conditions, development and other needs and taking into account their national, ethnic and religious affiliation [...]”²⁶

Given the disproportionate placement of Romani children in state care outlined in this report, it is also important that declarations of identity be made in order to ensure that the state system provide the means for children to grow up with positive self-identities and knowledge of and affiliation with their roots.

²⁵ Committee on the Rights of the Child. 17 March 2006. Concluding observations: Hungary. Available online at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.HUN.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.HUN.CO.2.En?OpenDocument). Last accessed on 27 October 2007.

²⁶ Section 9(1) of the Child Protection Act. Section 85(4) of the NM Decree 15/1998. (IV. 30.) on the professional tasks and operation of child welfare and child protection institutions and individuals offering individual care provides similar regulations. It obliges the “care-offerer” of the children to promote that “the child in care who belongs to a national or ethnic minority can preserve their minority self-identity, foster their traditions and have access to their minority cultural values.”

In the process of adoption, the use of ethnic data would enable adoption workers to attempt to match Romani adoptive parents with Romani children (where both parties so desire). It would also be beneficial for the child if the adoptive parents, regardless of their background, knew the ethnic identity of the child to enable them to foster knowledge of the child's background and a sense of identity.

Finally, in the continuing absence of systematically-collected, ethnically-disaggregated data, the Hungarian government is not in a position to properly assess the actual degree of over-representation of Romani children in state care and the contributing factors or develop effective and efficient policies and programmes in order to reverse this situation.

6. THE OVER-REPRESENTATION OF ROMANI CHILDREN IN STATE CARE

According to the 2001 census, there were 205,720 Roma in Hungary, out of a total population of 10,198,315 (2.017% of the Hungarian population). Romani children, on the other hand, accounted for 4.19% of the population from the ages 0 – 14 (or 71,005 out of 1,694,396).²⁷ Credible estimates, however, place the number of Romani in Hungary closer to between 550,000 and 600,000 persons (5.39% – 5.89% of the total population) and the percentage of Romani children amongst the child population in Hungary at 13%.²⁸

According to a representative poll conducted in December 2005, anti-Romani sentiment in Hungary ran high. According to the poll:²⁹

- 62% agreed with “inclination to criminality is in Roma people’s blood”; and
- 80% agreed with “Roma people’s problems would be solved if they would finally start working”.

Only 10% of the respondents agreed that “Roma should be given more support than non-Roma.” Amongst the responses to the opinion poll, there was a very low proportion of “I don’t know” responses, indicating that the majority of Hungarians hold strong opinions with regard to the questions posed.

According to targeted ERRC research on the employment of Roma, due to the endemic discrimination affecting Hungarian Romani communities, many Roma have been long-term unemployed, only sporadically participating in the formal employment market/sphere. Structural exclusion of Roma from the labour market is further aggravated by patterns of discrimination against Roma by employers. A number of recent Roma-specific studies affirm the significant levels of discrimination against Roma in the labour market. Few of the initiatives of the Hungarian government in this area were designed to meet the needs of the labour market or to re-build confidence and work-based competences of Roma.

²⁷ Information available at: www.nepszamlas.hu.

²⁸ Kemeny, Istvan and Bela Janky. Roma Populations of Hungary 1971 – 2003. Available online at: http://www.mtaki.hu/docs/kemeny_istvan_ed_roma_of_hungary/istvan_kemeny_bela_janky_roma_population_of_hungary_1971_2003.pdf. Last accessed on 15 September 2007.

²⁹ See: <http://www.tarki.hu/tarkitekinto/20060201.html>. Last accessed on 15 September 2007.

According to a recent United Nations Development Program (hereafter “UNDP”) study, unemployment amongst Roma is significantly higher than amongst non-Roma.³⁰ According to the UNDP’s report, the share of Romani respondents who perceived themselves as unemployed stood at almost 60% in Hungary. Comparatively, according to the Hungarian Central Statistical Office, the overall rate of unemployment in Hungary was 7.2% as of the 3rd quarter of 2007.³¹

With regard to access to health care, access to health services is problematic for some Romani communities due to the fact that these communities live in geographically isolated and/or economically depressed areas. A survey conducted by Delphoi Consulting in 2003 revealed inequalities in access to health care affecting smaller settlements. Excluding Budapest, 5.9% of the country’s population lived in a settlement without a local doctor. In the case of Roma, figures indicated that, excluding Budapest, 18.6% of the country’s total Roma population, or over 100,000 individuals, lived in settlements without a local doctor.³² In some parts of Hungary, Roma have reported to the ERRC that emergency aid services refuse to attend to their calls. In a 2004 study, Delphoi Consulting found that 20.7% of adult Roma reported the refusal of ambulance services to respond to calls during weekends and nights.³³

Concerning the housing conditions of Roma in Hungary, forced evictions are widely and frequently reported in the country, arising due to a number of factors, including changes to the legal regime which have significantly eroded the rights of tenants. In its May 2007 Concluding Observations on Hungary, the United Nations Committee on Economic, Social and Cultural Rights (hereafter “CESCR”), which oversees implementation of the International Covenant on Economic, Social and Cultural Rights,³⁴ noted particular concern “about the increasing number of forced evictions of Roma, often without provision of adequate alternative housing, and about the Constitutional Court’s ruling that the need to implement eviction orders takes precedence over the right of children not to be separated from their families and placed in the State care system.”³⁵ The CESCR also expressed deep concern “that

³⁰ United Nations Development Program. 2002. *Avoiding the Dependency Trap*. Bratislava, p. 33.

³¹ Hungarian Central Statistical Office. October 2007. *Employment and Unemployment: July – September 2007*. Available online at: <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/gyor/fog/fog20709.pdf>. Last accessed on 29 October 2007.

³² Delphoi Consulting. 2004. *Differences in Access to Primary Healthcare – Structures, Equal Opportunity and Prejudice. The Results of an Empirical Study*. Available in English at: <http://www.errc.org/db/00/CC/m000000CC.doc>. Last accessed on 15 September 2007.

³³ Delphoi Consulting. 2004. *A szegénység csapdjában. Cigányok Magyarországon - szociális-gazdasági helyzet, egészségi állapot, szociális, és egészségügyi szolgáltatásokhoz való hozzáférés*. Budapest, 2004, p. 62.

³⁴ Hungary ratified the International Covenant on Economic, Social and Cultural rights on 17 January 1974.

³⁵ See: Hungarian Constitutional Court Decision 71/2002.

one-fifth of the Roma in the State Party live in slum settlements, often without access to running water, adequate sewerage or located close to municipal dumpsites [...].³⁶ Local authorities in Hungary have in recent years sold off significant amounts of the public (including social) housing stocks, apparently in order to compensate for declining revenues, creating a situation in which Hungary may not be able in practice to meet the housing needs of the poor and/or extremely poor. Finally, widespread anti-Romani sentiment in Hungary means that unfortunately, allegations of racial discrimination in the allocation of public housing are often plausible. For example, in 2005 the Hungarian Constitutional Court struck down as unconstitutional provisions of a Budapest 3rd District Local Government decree regulating social housing. The ERRC had challenged the decree on a number of grounds, including the fact of its having a disproportionate, negative impact on Roma.³⁷

With regard to access to education, educational attainment is directly related to the quality of educational services provided. According to ERRC research, an increasing number of Romani children in Hungary in recent years have been deprived of equal educational opportunities as a result of widespread patterns of school segregation, often in schools and classes for children with mental disabilities or special learning needs.³⁸ The segregated education of Romani children is a major cause of the considerable disparities that exist between Roma and non-Roma. During its recent review of Hungary, the CESCR also noted concern about “the high dropout rate among Roma students at the secondary level and about their low enrolment in higher education.”³⁹

6.1 The Proportion of Romani Children in State Care

According to statistics published by the Ministry of Labour and Social Affairs in 2005, 17,456 children below the age of 18 were in state care under the supervision

³⁶ Committee on Economic, Social and Cultural Rights. 22 May 2007. Hungary: Concluding Observations of the Committee on Economic, Social and Cultural Rights. Available online at: http://www.ohchr.org/english/bodies/cescr/docs/e_c12_hun_co3.doc. Last accessed on 30 October 2007.

³⁷ European Roma Rights Centre. 2005. Hungarian Constitutional Court Strikes Down Discriminatory Housing Decree. Available online at: <http://www.errc.org/cikk.php?cikk=2157>. Last accessed on 16 September 2007.

³⁸ See, for example, European Roma Rights Centre. 2004. Stigmata: Segregated Schooling of Roma in Central and Eastern Europe, a survey of patterns of segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia. Budapest. Available online at: <http://www.errc.org/db/00/04/m00000004.pdf>. Last accessed on 16 September 2007.

³⁹ Committee on Economic, Social and Cultural Rights. 22 May 2007. Hungary: Concluding Observations of the Committee on Economic, Social and Cultural Rights. Available online at: http://www.ohchr.org/english/bodies/cescr/docs/e_c12_hun_co3.doc. Last accessed on 30 October 2007.

of a state-appointed legal guardian. Of those children, 14,907 children were in short-term care, 1,764 children were in long-term care, and 785 were in a temporary centre awaiting placement.⁴⁰ It has long been hypothesised and estimated that the proportion of Romani children in the child protection system in Hungary is alarmingly much higher than their proportion of the population in Hungary.

Even in the absence of specific data on this subject, it is possible to infer this result from various other established facts. To begin with, according to the Ministry of Labour and Social Affairs, 8 out of 10 children that enter state care in Hungary do so because of poverty, and statistical data reveals that material and living conditions are problems most dealt with by basic child welfare services.⁴¹ It is a well documented fact, and one which is confirmed by the Hungarian government,⁴² that Roma in Hungary live in decidedly worse conditions than their non-Romani counterparts, and discrimination against Roma in accessing employment impacts employment levels amongst Hungarian Roma. In this situation, it would easily follow that Roma are more often affected by the removal of their children from their care for reasons of poverty, material and living conditions. In addition, widespread discriminatory attitudes and prejudices existing in Hungary can be assumed to affect also those persons working in the child protection system, which will also influence the removal of Romani children from their parent's care.⁴³

⁴⁰ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 43. Last accessed on 29 September 2007.

⁴¹ See: <http://www.es.hu/old/0117/publi.htm>. Last accessed on 20 September 2007. This fact is in clear contradiction to Section 7(1) of the Child Protection Act, which states, "Children may be removed from their parents or other relatives only in their own interests and in the instances and by the means determined by law. Children may not be separated from their own family due to a risk which exists exclusively due to material reasons."

⁴² For example, at paragraph 416 of its February 2006 report to the United Nations Committee on Economic, Social and Cultural Rights, the Hungarian government stated, "The situation of the Roma, in terms of equality and discrimination, remains a major challenge, in particular in the area of housing." In addition, the government admitted, at paragraph 79, that discriminatory practices impact the employment of Hungarian Roma and that complex approaches are required to reduce unemployment within the Romani community. The full report is available online at: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/404/73/PDF/G0640473.pdf?OpenElement>. Last accessed on 14 September 2007.

⁴³ According to Dorothy Roberts, a black American legal scholar and social critic, federal research in the U.S. established that when families have the same characteristics and problems, black children are more likely to be placed in protective care. Ms Roberts also found that in the U.S., the number of black children in substitute care is 42%, whilst they constitute only 17% of American youth. This research also established that if a black child enters the American child protection system, they are likely to remain there longer, move more often, and are less likely to be adopted and return to their family than their white counterparts. Ms Roberts concluded that one reason for the over-representation of black children in the American child protection system is racial discrimination. See: http://www.northwestern.edu/univ-relations/media_relations/releases/01_2002/childwelfare.html. Last accessed on 14 September 2007.

The professionals participating in the focus group discussions organised in preparation for this report arrived at a consensus about the relatively larger proportion of Romani children in professional care compared to their proportion in the population, or about their absolute majority among institutionalised children regarding certain types of institutions (primarily those for the disabled). The focus group discussions revealed that the proportion of Romani children in child protection institutions is likely varied in the 7 regions of Hungary. This was considered to be due, in part, to their actual proportion of the overall population and to the different practices of child protection characterising the different regions of Hungary. For example, besides varied institutional conditions (concerning differences in the capacity of child care homes, in practices of adoption, in the development of foster parent networks, etc.), the non-standardised conditions of institutionalisation in child protection form the background of regional variation. Non-standardised conditions include factors like the age group under the focus of child protection – for example, it is children under the age of 3 that child protection is focused upon, or adolescents, as has become characteristic in recent years.

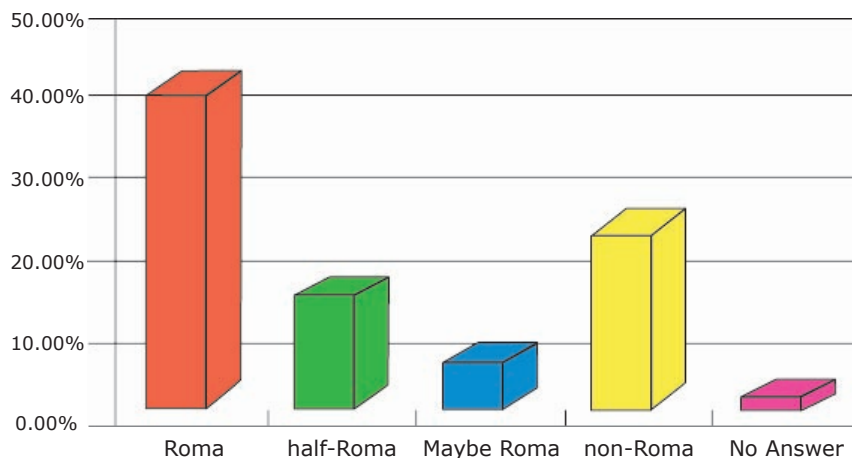
During field visits conducted by the ERRC in the summer of 2007, the directors of children's homes and children residing in children's homes were asked questions related to the number of children currently residing in the home and the ethnicity of the children. The director of almost every home visited by the ERRC responded to questions related to the ethnicity of the children under their care based on their perceptions. Most of the children interviewed also responded to this question, and in some cases in which the director of the home (also the guardian of the child) was present, the director confirmed what the child stated. The results of these interviews yielded very worrying results.

On the basis of the interviews conducted in children's homes in Budapest and Pest County, Baranya County and Borsod-Abauj-Zemplen County, the ERRC found that out of 120 children present at the time of interview, 48 children (40%) indicated they were Romani, 22 (18.33%) stated they were half-Romani,⁴⁴ 10 (8.33%) said they may have Romani heritage, 38 (31.67%) stated they were non-Romani and 2 (1.67%) did not answer.⁴⁵

⁴⁴ Persons in this category include those individuals who noted having one Romani parent.

⁴⁵ This information is based on self-identification by the children interviewed. The head of the institution/legal guardian of the children concerned was also asked about the number of Romani children under their care based on their perceptions; the results did not differ significantly.

Table 1: Origin of Children Living in Hungarian Children’s Homes



** Graphical information based on the responses of 120 children interviewed by the ERRC living in Hungarian children’s homes.

Several studies conducted in the past also point to the over-representation of Romani children in state care, though the degree of over-representation reported differed from study to study. One of the most relevant of these studies was published in 2006 by Maria Nemenyi and Vera Messing at the request of the Ministry of Education and Culture and the then Ministry of Youth, Social Affairs, Family and Equal Opportunities (now Ministry of Labour and Social Affairs).⁴⁶

According to the results of this country-wide study with a sample of 1,866 children, Romani children comprised 32% of the overall sample, or 38% of those children in counties willing/able to answer questions related to ethnicity.⁴⁷ On average, Romani children are reportedly 2.5 times more likely to be institutionalised than non-Romani children (with regional differences), but their chances of institutionalisation decrease as they get older.⁴⁸ Regardless of which of the figures above one chooses to

⁴⁶ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, pp. 2-19. The study was conducted with the assistance of the then National Family and Social Policy Institute (now Social Political and Labour Issues Institute).

⁴⁷ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, p. 5. According to the authors, Pest County’s questionnaires were discarded due to misinterpretation and Veszprem County did not want to participate.

⁴⁸ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, p. 5.

use, the proportion of Romani children in state care is alarmingly high considering their proportion of the child population in Hungary, which is estimated to be around 13% of the under 18 population in Hungary.⁴⁹

6.2 Factors Contributing to the Over-Representation of Romani Children in State Care in Hungary

From the preceding information, there can be little doubt that Romani children are indeed over-represented in the Hungarian child protection system.⁵⁰ Determining the causes of this over-representation is a difficult task, and the information available from the focus group discussions, the field research and that already available point to a myriad of influencing factors.

One of the contributing factors to the over-representation of Romani children in children's homes in Hungary is their comparatively low placement with foster families. In addition to this, Romani children appear to be returned from foster families to an institutional care setting more often than non-Romani children: Out of 120 children interviewed by the ERRC, 11 had been returned to the children's home system from a foster family. Of those children, 3 were Romani, 5 were half-Romani and 3 were non-Romani.

The over-representation of Romani children in a professional care setting is also consistent with the over-representation of Romani children and families under basic care in Hungary. Of the basic child welfare offices visited during the course of research for this report, the following estimates were provided in relation to the share of Roma amongst the clientele:

⁴⁹ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, p. 18.

⁵⁰ The level of over-representation, however, requires more in-depth study and the requisite collection of disaggregated data by the government.

Table 2: Estimated Percentage of Romani Children Amongst the Clientele of the Basic Child Welfare Service

Location	Percentage
<i>Borsod-Abaúj-Zemplén County</i>	
Sajoszentpeter	70%
Ozd (and 14 surrounding villages)	More than 90%
Megyaszo (and 7 surrounding villages)	99%
Alsozsolca	70 - 80%
<i>Budapest/Pest County</i>	
Budapest 21st District	50%
Budapest 7th District	65%
Budapest 8th District	95%
<i>Baranya County</i>	
Pecs	60%
Sellye	60%
Siklosnagyfalu (and 3 surrounding villages)	60%

** Estimates provided by the workers interviewed based on their perceptions of the ethnic make-up of their clientele. In most cases, several persons were interviewed in each location and the data contained in this table refers to the average of the responses given by all individuals in a particular location.

Causes of labelling as endangered and removal

According to the Romani children interviewed in children’s homes in Hungary, the most common reason for their removal from their families were bad family circumstances including unemployed parents, bad housing conditions, lack of food and poor attendance at school.⁵¹ During interviews, many child welfare workers stated that, in line with the indication system, the most frequent source of indications with regard to their Romani clients were related to:

1. School absenteeism;
2. Health and hygiene;
3. Living conditions; and
4. Criminality.

The ERRC was alarmed that child protection workers at times linked some of the possible reasons for child endangerment with Romani mentality or culture.

⁵¹ Out of 25 children citing the reason for removal, 16 (64%) provided this response.

For example, during discussions regarding the indication system in a town in southern Hungary, child welfare workers stated, “It is also a matter of culture: They see it [theft] in the family.”⁵² Family help workers in northern Hungary stated, “It is the attitude of the families that is the problem”.⁵³

Previous research has indicated that where the conditions relate to the action of the parents, Romani children are more likely to be indicated due to bad housing conditions and involvement in crime than non-Roma. At the same time, where the conditions relate to the action of the child, Romani children are more likely to be indicated due to absenteeism from school and involvement in crime, whilst non-Romani children are more likely to be indicated for behavioural problems and mental and physical health issues.⁵⁴ This fact was corroborated by the child welfare workers interviewed by the ERRC who indicated that for non-Roma the most common indication related to behavioural problems of the children.⁵⁵

During discussions with child protection workers, most of the professional interviewed insisted that, in general, most Romani children are removed from their family due to several overlapping reasons, often under the broad label of neglect, which taken together, place the child in such an endangered position that it is not safe for them to remain with their families.⁵⁶ Such “life-threatening” conditions were rarely, in the view of the social workers,⁵⁷ the result of a single cause, such as sexual abuse, but more often were the result of various combined factors. In Budapest and Pecs, several of the child welfare workers also made reference to children being removed from their parents care due to homelessness resulting from eviction.⁵⁸ Homelessness was confirmed to be an important reason for children being taken into temporary care in the statistics published by the Ministry of Labour and Social Affairs.⁵⁹ Given the tenuous living and social conditions of Roma, it is likely that they are more often implicated in such situations.

⁵² ERRC interview with child welfare workers. Sellye, August 2007.

⁵³ ERRC interview with a family help worker. Megyaszo, August 2007.

⁵⁴ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, p. 6.

⁵⁵ ERRC interview with a family help worker. Alsozsolca, August 2007.

⁵⁶ ERRC interviews with social workers in Alsozsolca and Budapest. August 2007.

⁵⁷ For the purposes of this study, the ERRC uses the term social worker to refer to persons employed as social workers, child welfare workers and family help workers within the Hungarian child protection system.

⁵⁸ ERRC interviews with child welfare workers in Budapest and Pecs. July and August 2007.

⁵⁹ See: <http://www.szmm.gov.hu/main.php?folderID=891>. Last accessed on 29 September 2007.

The Impact of Usury on the Institutionalisation of Romani Children

Many of the child welfare workers interviewed by the ERRC noted that private loan schemes and the practice of usury were an important factor which exacerbates the situation and conditions of Romani families (although non-Romani families are also affected by this phenomenon). Many of the families with whom child welfare services work reportedly take small loans to make ends meet between the receipt of their social benefits. The loans, however, are to be repaid at exorbitant interest rates, which push the families further and further into debt, which often require that they take more “loans”, and their children move into increasing levels of endangerment. One Romani woman whose children were under special protection with whom the ERRC spoke in Megyaszo, Borsod-Abauj-Zemplen County, said that her family had long ago taken a small loan (approximately 100,000 HUF or 400 EUR) and were now required to repay their “lender” to the amount of half their monthly social benefits. The family had reportedly been paying the loan back from a very long period and were to continue paying for a long time to come.

ERRC interview with Ms P. Megyaszo, July 2007.

6.2.1 Broad Definition of “Endangerment” and Subjective Interpretation by Social Workers

Article 5(n) of the Hungarian Child Protection Act defines endangerment as “conditions – as a result of certain behaviour, failure or circumstances – blocking or hindering the child’s physical, intellectual, emotional or moral development.” Article 7(1) further states, “The child may only be separated from his or her parents or other relatives in the child’s own interest, in cases and with methods provided from by law. The child shall not be separated from his or her family exclusively on account of endangerment prevailing for material reasons.”

From the outset, the ERRC was concerned about the manner in which the very broad term “endangerment” and the subjective manner, possibly infected by racial animus, in which this concept is applied in the removal of children from her/his family. Based on previous research, this is believed to affect, in particular, Romani families and their children, most of whom live in very poor circumstances.

In the previously published study “Child Protection and Equal Opportunities”, the causes of neglect were broken down into “objective” and “subjective” forms of neglect. Objective neglect included conditions of

addiction or harassment, whilst subjective neglect included bad social and housing conditions, amongst other factors which depend on the interpretation of the assessor. In line with this division, it was found that “subjective” forms of neglect were more commonly listed as the reasons for removal in Borsod-Abaúj-Zemplen, Hajdu-Bihar and Szabolcs-Szatmar-Bereg counties (more than 1/3 of cases compared to the national average of 23%), which all have high Romani populations.⁶⁰ The study also found that children from larger families are more likely to be institutionalised due to subjective neglect. Indeed, the large size of Romani families was cited as a source of problems during interviews with basic care workers in various locations during research.⁶¹

Field research during the course of this study, as well as the accompanying analysis of existing data all point to the fact that this is indeed a problematic point in this discussion, and certainly does influence the situation of Roma vis-à-vis the child protection system in Hungary, particularly in the application of the term by child protection workers in the basic care level; the majority of whom are non-Romani.⁶²

During discussions between the ERRC and social workers operating at the basic care level in Hungary, there was indeed no consensus amongst the persons interviewed when it came to questions related to endangerment and the application and assessment of this term, especially with regard to what level of endangerment is required to recommend the removal of a child from parental care. Most of the social workers interviewed expressed the opinion that what constitutes endangerment is self-evident, that one knows it when one see it, but when asked to explain the term in specifics, many were unable and the differences in the explanations put forth were abundant. In addition, there were, according to the persons interviewed in the course of field research, no official methodological guidelines applicable to all social workers across the country to use in engaging in the assessment of child endangerment and in assessing the need for removal or other forms of assistance.

During discussions with social workers, child welfare workers and family help workers in various parts of Hungary, the ERRC was alarmed by the almost unanimous agreement amongst professionals in the field that a more specific definition of the

⁶⁰ Nemenyi, Maria and Vera Messing. 2007. Gyermekvédelem és esélyegyenlőség. (Child Protection and Equal Opportunities). Kapocs 28, VI. évf. 1. szám, p. 10.

⁶¹ For example, ERRC interview with a family help worker. Alsozsolca, August 2007.

⁶² Child protection workers at the basic care level are primarily responsible for assessing the endangerment of children and are responsible for recommending to or alerting other members of the system that the removal of a child from its family should be considered.

term “endangerment” would negatively impact their ability to do their work.⁶³ The vast majority of child protection workers indicated that such a development would hinder their work because it would not allow for an “individualised” assessment of the child’s situation. It was also noted that the viewpoint of the social workers is an important consideration in the assessment, being the closest to the family/child, and more specific guidelines would limit this.⁶⁴

Only 2 of 39 social workers interviewed indicated that they believed a better definition of the term “endangerment” and specific guidelines for assessing this would be necessary to improve the functioning of the child protection system in Hungary.⁶⁵ One child welfare worker from Budapest expressed that the lack of specific guidelines meant that “minimum provision levels are missing which account for different cultures and conditions. These factors become reasons for removal although they should not be.” In the absence of specific guidelines, there were reportedly “no limits for social workers in determining what actually constitutes “endangerment”. Social workers apply their own standards to the situation without modifying them to fit other people’s situations.”⁶⁶

This fact was strikingly clear during visits to Romani communities in different parts of the country, or even in different towns and villages in the same county, as the conditions of the families visited differed greatly. Amongst those families with children under protection or whose children had been removed from their care, there was no way of knowing why one family’s child was taken away whilst another’s was not. The Romani individuals with whom the ERRC spoke were also very cognizant of this. For example, in speaking with one family whose children had been forcibly removed from their care in July 2007, the parents stated, and the neighbours confirmed, “We see other families in much worse conditions but they get to keep their kids. This system is not clear and fair. How do they choose who to take and who to leave?”⁶⁷

In a positive development, with a view to creating and maintaining a unified, overall, and integrated control or supervisory system for the profession, the Social Political and Labour Issues Institute was, at the time of drafting this report, in the

⁶³ ERRC interviews with child welfare workers, family help workers, notaries and other professionals at the basic care level in Budapest, Megyaszo, Alsozsolca, Ozd, Sajoszentpeter, Siklosnagyalu and Pecs. July and August 2007.

⁶⁴ ERRC interviews with social workers in Sajoszentpeter, Siklosnagyalu and Budapest (District 21). August 2007.

⁶⁵ ERRC interviews with social workers in Budapest’s 8th and 21st districts, August 2007. Interestingly, none of the social workers outside Budapest agreed with this.

⁶⁶ ERRC interview with a child welfare worker. Budapest (District 8), August 2007.

⁶⁷ ERRC interview with Mr R. and Ms L. Alsozsolca, August 2007.

process of developing standards, guidelines, protocols and requirements related to the various aspects of the Hungarian child protection system.⁶⁸ The aim of this work is to ensure that all citizens receive services of the same norms or standards regardless of which part of the country they live in, to enable the assessment of the quality and results of the various services available and to ensure better access to information for citizens. At the time of drafting this report, standards in the following areas, amongst others, had been prepared but were not “in force”: 1. Child welfare service; 2. Providing for children by foster parents; 3. Providing for children in children’s homes; and 4. The preparatory work for adoption of the child protection system. Unfortunately, amongst the work being done in this regard, there was no standard under development to standardise a specific definition of what constitutes endangerment and how this should be applied.

6.2.2 Social Workers Influenced by Prejudice and Blame Roma

Much time during focus group discussions and the interviews with social workers, child welfare workers and family help workers in Hungary concentrated on the conditions and situation of Romani families as the primary contributor to the vulnerable position of Romani children in relation to the child protection system in Hungary. That is, the causes of the over-representation of Romani children in the child protection system were viewed by professionals as external to the functioning of the system itself. These discussions ranged from fairly open-minded to discussions infused with racist rhetoric, though such extreme negative discussions were the minority.⁶⁹

The effects of this position, that Roma themselves are primarily responsible for their children being under special protection or removed from their care, held by many of the social workers met with during the course of research, is obviously deleterious for Romani children. The following explanations were offered to the ERRC by professionals for the over-representation of Romani children in the Hungarian child protection system.

Poor socio-economic conditions

In all 7 focus group discussions, professionals concluded that whilst the ethnic origin of the child in question is never the cause of institutionalisation, the

⁶⁸ See: <http://www.szmi.hu/?q=node/77>. Last accessed on 23 October 2007.

⁶⁹ The opinion expressed by the child protection workers was reflective of the general attitude towards Roma in Hungary outlined in Section 6 of this report.

degree of abuse and neglect is the main factor. In support of this idea, most groups raised the generally poor social conditions of Roma as the reason for the institutionalisation of children from this group. As one district nurse stated:

“When heating, lighting or cooking facilities are not available, young babies have hardly anything to eat, the whole community suffers from alcoholism, the colony itself is huge even in terms of relatives and let’s say, the 2-month-old baby is left out in the bushes for the night – these stories certainly require intervention.”⁷⁰

Deviant patterns of behaviour

Much of the discourse of the focus groups also pointed to the belief of child protection workers that the deviant behaviour of Roma is also a key factor in the disproportionate placement of Romani children in state care in Hungary. Deviant behaviour by Roma influencing institutionalisation supposedly included school absenteeism, juvenile delinquency and various forms of crime for which children below the age of 14 are not punishable at the initiation of the parents, according to the focus groups.

These views were echoed repeatedly during in-depth interviews with those working in the child protection system around the country. In addition, many of the professionals interviewed referred repeatedly to the inability of Roma to manage their finances, their dependency on social benefits for income, their unwillingness to find work, and to Roma who party and drink all day, do not clean or feed their children and do not pay their bills.

Large family size

Professionals participating in the focus group discussions also stated that the generally larger size of Romani families also has implications vis-à-vis the institutionalisation of Romani children. One issue noted was that when making decisions regarding institutionalisation, child protection workers normally take more than one child into care where there are more children in the family, which necessarily increases the proportion of Roma children amongst the institutionalised.

This was also noted to be a problem when it came to identifying a non-institutional solution for children facing removal from their families. The relatively larger number of Romani children removed from one family was reported to have

⁷⁰ Statement by a district nurse in Western Transdanubia, June 2007.

a negative impact on the likelihood of Romani children being placed with a relative because of the difficulties of assuming responsibility for numerous children.

6.2.3 Lack of Romani Child Protection Workers/Bias

There is a stark absence of Romani workers amongst child protection professionals in smaller cities, towns and villages in Hungary. During field research, out of 39 child welfare workers at the basic care level interviewed, only 3 (7.69%) were Romani. Of the basic care offices visited, 14 of a total of 87 (16.09%) employees were Romani, according to those persons interviewed. Of the 14, 10 were employed in social work positions while the remainder were employed in maintenance-type positions. All of the Roma employed in these positions were in cities (Budapest, Pecs and Ozd); there were no Roma employed in the child welfare services in smaller cities or town and villages. This is alarming in light of the fact that the majority of the children interviewed by the ERRC outside of Budapest had lived with their families in smaller towns and villages prior to their removal for reasons outlined in Section 6.2 of this report. In addition, Romani child welfare workers in Budapest are reportedly employed in only a handful of districts.⁷¹

At the professional care level, none of the professional care workers interviewed were Romani. According to the information provided by the heads of the institutions visited, out of a total of 220 employees, 19 (8.64%) were Romani, however, most of these were reportedly employed in maintenance-type positions, meaning that they had no responsibility for the care of children living in professional child care homes.

There were a number of child protection workers interviewed by the ERRC that expressed the importance of increasing the number of Roma working in the child protection system. This was particularly true in Budapest. For example, according to an employee in Budapest's 7th District Child Welfare Service, "It is very rare that a district has as many Romani social workers as we have here. In many districts there are no Romani social workers and I don't know why because luckily there are quite a number of Romani social workers who have by now finished university. [...] I don't know about other districts; why can they not find work there?"⁷² Indeed, the ERRC met 2 Romani women with social work degrees who had been rejected when applying for work though they felt they met the criteria. Unfortunately, there were also individuals in the child protection system, albeit seemingly a small minority and mostly from smaller cities, towns and

⁷¹ ERRC interview with a child welfare worker. Budapest (District 7), August 2007.

⁷² ERRC interview with a child welfare worker. Budapest (District 7), August 2007.

villages, of the opinion that they would not be able to find Roma capable of doing this work.⁷³ This bodes rather unfavourably for the future of Roma interested in joining this field and rectifying this situation in some areas of the country.

In light of the low representation of Roma amongst the child welfare services work force in smaller centres where poverty and exclusion is generally higher, it is little surprise that Romani children are at a disadvantage with regard to removal from parental care and institutionalisation. In addition, whilst equal opportunities and non-discrimination training is available to child protection workers in Hungary, only professionals from Budapest (though not all) interviewed had undergone such training.⁷⁴ One of the problems highlighted in this regard was that whilst social workers are required to undertake a certain amount of training every 5 years in order to maintain their certification, training in this area is not provided for free by the government (whilst many others are) and is additionally much more expensive than other training opportunities available to professionals earning modest incomes.⁷⁵

It then follows logically that many non-Romani child protection workers are unable to understand the conditions and problems of their Romani clients and, in the end, apply their own standards to the situation of Roma. In addition, because the majority of child protection workers are non-Romani and may in fact hold the same impressions and prejudices that exist in wider Hungarian society, it was argued by some focus group members that child protection professionals, without doubt, tend to pay distinctive attention to Roma. This can be seen to play a role in the disproportionate number of Romani children in protective care.

Beyond the process of removing Romani children from their parents' care, the absence of Romani employees in the child protection system has massive negative implications for the development of ethnic identity and belonging for those Romani children growing up in state child care homes as these children are overwhelmingly cared for by non-Roma who do not share, and often associate negatively, with this culture.

6.2.4 Lack of Prevention, Development and Support Programmes Available

During the course of research, the ERRC noted an overwhelming lack of preventative, development or support programming available to vulnerable

⁷³ ERRC interview with a notary. Borsod-Abauj-Zemplen County. August 2007.

⁷⁴ Child protection workers in Sellye were not asked questions in this regard.

⁷⁵ ERRC interviews with a reference. Social Political and Labour Issues Institute. Budapest. June and July 2007.

children and families in Hungary, although these types of programmes should be the main focus of work at the basic care level.⁷⁶ This was generally the most severe in centres outside of Budapest, although child welfare and family help workers in Budapest also noted the lack of programmes and services they are able to offer or have access to in comparison to the needs of their clients. For example, child welfare workers in smaller centres stated that they do not have funds to employ professionals such as family therapists, child psychologists, educational psychologists, etc, or even day-time activity programmes for children, though many of their clients would benefit from this kind of assistance. It was also noted that these services are necessary outside of cities because many of their clients can not afford to travel to the city to utilise these services.⁷⁷

Many of the programmes which would be necessary in order to effectively improve the situation of families bordering on “endangered” situations require strong co-operation between child protection offices and other social services at the local level. For example, child welfare workers in the places visited also noted that it would be important for them to be able to offer local community development programmes, programmes to combat and address homelessness, personal financial management training programmes, employment training and adult education programmes, amongst others.⁷⁸ In its March 2006

⁷⁶ According to Articles 8 through 13 of Decree 15/1998 (IV.30) by the Ministry of People’s Welfare about the tasks and the conditions of the operations of institutions and individuals doing child protection and child welfare work offering personal services, child welfare workers should provide the following types of support to ensure children are raised in their family: Inform the child and parents about the rights, support and provisions available to ensure the child’s physical and mental health; assist the child and family in writing up and handing in applications for support and providing advice on how to access various supports available; provide or inform the family of the availability of family planning, psychological counseling, fostering (parental) counseling, and health and mental hygiene counseling services; helping pregnant women in crisis situations (including accessing temporary homes of families); organizing free-time activities for the child, initiating public education institutions, cultural institutions and NGOs to organise free-time activities and informing children and parents of such programmes; and help families in arranging official business and inform the parents about legal help and representation available.

In order to eliminate conditions of endangerment of children, according to Article 16 – 18 of the same Decree, child welfare workers should: Support the child in the positive development of their personality, help parents in parenting and organising the care of the child, initiate various social services available for parents and coordinate these with the services of the child welfare service; design a care plan in cooperation with the parent and the child and evaluate the progress made at least every six months; mediate in case of family conflicts and use conflict management and family therapy methods (or provide information about such services); and provide health or special education provisions if the endangerment is caused by the health or mental problems of the child or the parent. Available online at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800015.NM. Last accessed on 27 October 2007.

⁷⁷ ERRC interview with a child welfare worker. Siklosnagyfalú, August 2007.

⁷⁸ ERRC interviews with child welfare workers in Budapest (Districts 7 and 8), Pecs, Alsószolca, Megyaszó, Siklosnagyfalú. August 2007.

Concluding Observations on Hungary, the Committee on the Rights of the Child recommended that the Hungarian government, “provide adequate family support in order to prevent separation” and “undertake further preventive efforts to address root causes of poverty and to avoid that poor socio-economic conditions result in the separation of children from their parents.”⁷⁹

Overburdened case workers

In Budapest and larger centres in the country, there is a system of professionals available to which child welfare and family help workers can refer families in need of assistance to improve their situation and avoid the removal of their children from their care. However, for vulnerable families living in smaller towns and rural areas, there is virtually no form of support available beyond that provided by the social workers, who are, as a rule, extremely overloaded with cases. For example, whilst social workers at the basic care level should work with a maximum of 25 families or 45 children at one time,⁸⁰ family help workers in Ozd were working with between 110 and 350 children, family help workers in Budapest’s 21st district were assisting between 60 and 100 families each and child welfare workers were helping between 150 and 180 families in Budapest’s 8th district.⁸¹ With such overburdened caseloads, social workers at the basic care level are unable to provide adequate preventative, development or support services. They were also unable to devote time to identifying exceptional programmes or tenders offered by the government to develop programming at the community level or secure needed extra assistance for their clients.

Contributing to the extremely heavy workloads of child protection workers, members of the focus groups highlighted that professionals formally outside but related to the child protection system oftentimes shift their responsibilities to child protection workers. For example, it was noted that:

“It is always easier to point at one another, and very efficient to blame the public guardianship authority [...]. The inability of teachers to handle the

⁷⁹ Committee on the Rights of the Child. 17 March 2006. Concluding observations: Hungary. Available online at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.HUN.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.HUN.CO.2.En?OpenDocument). Last accessed on 27 October 2007.

⁸⁰ See: Decree 15/1998 (IV.30) by the Ministry of People’s Welfare about the tasks and the conditions of the operations of institutions and individuals doing child protection and child welfare work offering personal services. Available online at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800015.NM. Last accessed on 27 October 2007.

⁸¹ The social workers interviewed did not differentiate between active and inactive cases, but all felt their case load to be far beyond their capacity.

situation when a child starts school is the source of all problems, because what they do is contact a representative of the child welfare agency, that – save for a few cases worthy of respect – is unable to handle the problems. So the next step is turning to professional services, or even to the public guardianship authority. The point is to get rid of these kinds of children, both Romani and non-Romani, and that is why child protection institutions are so overcrowded.”⁸²

Many of the basic care workers interviewed during research also noted that they are frequently informed of cases which they do not feel merit indication and their subsequent supervision. Basic care workers noted that the sources of these as yet “unnecessary” indications often came from schools, in particular, where the basic care workers felt that teachers attempt to shift the burden of “difficult children” to the Child Welfare Service.⁸³

Passive approach of social workers

Article 39 of the Child Protection Act, which outlines the duties of child welfare services, includes at paragraphs 2 and 3 that child welfare services shall “promote the physical and mental health and upbringing in a family environment of a child” and “prevent endangerment”, respectively.

In general, the approach to social work displayed by the basic care workers interviewed by the ERRC appeared to be quite passive with a focus on situational monitoring as opposed to a proactive preventative approach aiming to improve the conditions of a given child or family. While the overburden experienced by social workers and the lack of adequate resources made available for basic care work undoubtedly has an important impact on this, these did not appear to be the only obstacles to a proactive preventative approach by the social workers interviewed by the ERRC.

Some of the professionals interviewed expressed their responsibility to be that of determining the list of tasks families under their supervision must accomplish and then to monitor the family’s progress in the achievement of such (or at minimum, to monitor that the conditions do not deteriorate). At times, this passive approach appeared to stem from the opinion of the social worker that Romani families were actually in a better position compared to non-Roma and should be able to take better care of their children. When asked how they are

⁸² Statement by a children’s rights representative, Western Transdanubia, June 2007.

⁸³ ERRC interview with child welfare workers. Budapest (District 15), August 2007.

able to assist Romani families to avoid the removal of their children, one family help worker stated, for instance, “It isn’t true that Roma have problems related to material needs. They get lots of support from the government. They often don’t pay water; they just take it from town pumps. Their kids get free lunch at school and they get 10,000 HUF school support, etc.”⁸⁴

European Court of Human Rights on Child Protection

On 26 November 2006, the European Court of Human Rights (ECtHR) issued a judgment against the Czech government under Article 8 (right to family life) in the case *Wallova and Walla v. Czech Republic*. The case concerned the assignment of children to state institutions. According to the judgment, domestic courts admitted that effectively the only reason that the family could not care adequately for their children was the fact that the family was large (5 children) and that, due to the family’s poverty, they could not find an adequate house.

The ECtHR noted that, according to its jurisprudence, for a parent to be together with his/her child constitutes “a fundamental element of family life” (paragraph 68). The Court noted that the state interference in the instant case was grave, stating that the “breakup of a family is a very serious interference” and that such an interference should serve the child’s interests and be premised on weighted and solid considerations (paragraph 70). In the Court’s opinion, the problem was essentially one of lack of means and the authorities should have addressed it by adopting less onerous measures than the “total separation of the family” (paragraphs 72 and 73).

In its examination of the duties of social protection authorities, the Court found the role of such authorities to be “[...] precisely to help persons that face difficulties and who do not have the knowledge of how the system functions, provide them guidance when they are filling applications/framing their requests, advise them, among others, in relation to the different social benefits available to them, inform them of the possibilities in acquiring social housing or other measures in order to overcome their difficulties” (paragraph 74). In the instant case, however, the Court found that the authorities contented themselves with merely observing the family’s efforts to overcome the difficulties they faced and in the end, reacted by placing their children to state care. The stay of children in state care was then prolonged without the authorities regularly assessing whether the applicants had made any progress in their efforts to address the problems they faced (paragraph 76).

⁸⁴ ERRC interview with a family help worker. Alsozsolca, August 2007.

The Court noted that although the reasons the social protection authorities invoked for placing the children in state care were pertinent, they were not sufficient and that the authorities had not made any “serious efforts” in order to help the applicants overcome the obstacles they faced and be reunited with their children as soon as possible (paragraph 78).

Judgment available online at: <http://cmiskp.echr.coe.int/////tkp197/portal.asp?sessionSimilar=3589864&skin=hudoc-en&action=similar&portal=hbkm&Item=2&similar=frenchjudgement>. Last accessed on 20 September 2007.

When asked what kinds of support or programming would be necessary to aid their clients to improve their conditions and avoid situations of removal, many of the child welfare and family service workers interviewed were unable to provide any suggestions. Outside of Budapest, only 3 out of 7 child welfare or family help offices visited were reportedly running or planning a special assistance programme for their clients.⁸⁵ This fact is in itself problematic given the nature of their work. If the persons responsible for working with families to create and maintain conditions adequate for the development of the child are unable to determine what support families at risk would require, the families stand no chance of actually receiving help. Where programmes did exist, basic care workers noted that much more programming is actually necessary, especially local-level community development programmes in Romani communities, but that there was simply no funding available for such.⁸⁶ Several basic care workers also noted that information about exceptional or special funding and programmes by the government does not flow down to their office, where such information could prove extremely useful for families at risk and could make all the difference in ability of a child to remain in its natural family environment.

During the focus groups, participating professionals observed that the level of expertise required for handling the complex problems arising in child protection

⁸⁵ Sajoszentpeter, Pecs, and Alsozsolca. A family help worker from the Child Welfare Centre in Alsozsolca informed the ERRC that “We are planning to launch a programme “Sure Start” for parents with kids aged 0 – 6, together with the district nurse and the local schools. We’ll give lectures on hygiene and healthy living, life management and cooking. It will be 3 times per week. We want to make it like a club (rather than “educational” to make it attractive) and try to involve Roma. We want a Romani woman in the leadership to try to attract more Roma to come.” This programme and the aim of Romani involvement in leadership seemed to provide somewhat of a good model for co-operation amongst the various institutions and in terms of Romani participation. The original programme was developed in the United Kingdom. The Hungarian government has adapted the programme and, at the time of publication, there were 51 centres participating in the programme. See: <http://www.eselyegyenloseg.hu/main.php?folderID=16364>. Last accessed on 15 September 2007.

⁸⁶ ERRC interview with child welfare workers. Pecs, August 2007.

is extremely varied, which contributes to problems in this area. One participant claimed, for example, that one may become a child care representative with 28 different types of educational degrees. The variation between the diverse degrees reportedly involves qualitative differences in expertise which may result in insufficient knowledge for solving problems or handling them appropriately.

Romani children less vulnerable than non-Romani children

Several professionals participating in the focus group discussions, as well as many of those interviewed during field research stated that Romani children are removed from their family's care in more severe conditions compared to non-Romani children. Much of the discussion related to this opinion pointed to the fact that child protection workers view Romani children as less vulnerable compared to non-Romani children. Social workers interviewed by the ERRRC, however, noted that in some cases they are notified late of the need for intervention by professionals such as district nurses and paediatricians, so the children are in more severe conditions already when they come into contact with the family.⁸⁷

Amongst the justifications for such a position, members of the focus groups referred to the “stronger emotional ties” within Romani families compared to non-Romani families living under similar circumstances. The result of the supposedly stronger emotional ties within Romani families, in the opinion of some child protection workers, is parent-child relationships which are satisfactory enough to counter the effects of physical disadvantage. As a result, according to the focus group discussions, Romani children are at times left in situation of endangerment longer than non-Romani children who are apparently more vulnerable.

6.3 Romani Children Disproportionately Sentenced to a Life in the System with an Administrative Decision

The cumulative effects of the broad definition of “endangerment” in the Child Protection Act and its subjective interpretation by social workers, possible prejudice by social workers and the tendency of some to blame Roma almost entirely for their situation, and issues related to the capacity of basic child protection services in Hungary and the low-availability of preventative programmes, as noted above, result in a disproportionate number of Romani children in the state system – both the basic care and the professional care levels.

⁸⁷ ERRRC interviews with child welfare workers and family help workers. Budapest and Pecs. August 2007.

The placement of children in temporary or short-term care is done so on the basis of an administrative decision by the Guardianship Office, as court approval of temporary and short-term placement decisions is not required.⁸⁸ Children actually removed from their families and placed in state care are intended to be there on a short-term basis in the vast majority of cases. However, ERRC research indicates that the majority of children removed from their families are removed *de facto* long-term whilst their official status is not actually changed to that of long-term care, which actually does require a court order. Given the disproportionate number of Romani children in state care, they are impacted by this fact in greater numbers than non-Romani children.

The return of the child to its natural family is considered to be of highest importance once placed in short-term care. In only the most extreme instances of endangerment should removal of the parental right of guardianship become permanent, meaning placement in long-term care. Failing a solution to the situation of endangerment present in the natural family, the guardianship authority may seek to permanently remove parental guardianship rights in order to find the next most suitable solution for the child. In terms of hierarchy, adoption, placement with foster parents and finally long-term placement in a children's home are considered the next best solutions considering the interests of the child.⁸⁹

As of 2005, approximately 85% of children in professional care were under short-term protection, whilst in only about 10% of cases had the guardianship rights of the parents been permanently removed.⁹⁰ Child protection workers reportedly seek the permanent removal of parental rights faster for children between the ages of 0 and 3 than for children above the age of 3.⁹¹ The explanation offered for this is that children below the age of 3 are the most likely to be adopted, and child protection workers seek to find a permanent solution for children in this vulnerable age category the fastest. Above the age of 3, social workers reportedly attempt to give the parents more time to improve their situation in order to get their children back.

⁸⁸ Article 67(1) of the Child Protection Act states, "If provision for the physical, intellectual, emotional, and moral development of the child can not be ensured upon the approval of the parent, and such situation may endanger the development of the child, the notary of the local government or the guardianship office shall, depending on the extent of endangerment, take one of the measures set forth in paragraph (4) of Article 15." Article 15 includes taking children into temporary protective care.

⁸⁹ ERRC interviews with a reference. Social Political and Labour Issues Institute. Budapest. June and July 2007.

⁹⁰ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 43. Last accessed on 29 September 2007.

⁹¹ ERRC interviews with a reference. Social Political and Labour Issues Institute. Budapest. June and July 2007.

To illustrate what short-term care often means in reality, according to statistics by the Ministry of Labour and Social Affairs from 31 December 2005, there were 21,216 children and youth in professional care (foster care and children's homes, including those between the ages of 18 and 24 in after-care). Of those children:

- 5% (1,066 persons) had spent more than 17 years in professional care away from their families;
- 16.1% (3,416 persons) had spent between 10 and 17 years in professional care; and
- 22.7% (4,825 persons) had spent between 5 and 10 years in professional care.⁹²

According to a professional from a receiving centre in Pecs, "Our policy is to send the kid back to the family but only about 10 to 15% of the children go back to the families. Only about 10% of those children who go back to their families are Romani."⁹³

Romani parents unable to enforce their rights

In the process of removal, parents are able to object to the removal of their children from their care. However, according to interviews with child welfare workers and placement coordinators, it is unlikely that the objections of the parents will sway the suggestion of the professional team or decision of the guardianship office.⁹⁴ Parents can appeal the decision, however this information is often not communicated to the parents and the majority lack the financial means to go to court.

During focus group discussions, it was stressed that one problem in relation to Romani children in the child protection system is that Romani families are unable to enforce their interests. This was also apparent during in-depth discussions with Romani individuals and child protection workers. First, many Romani parents had low educational attainment levels, which influenced their ability to navigate a very complicated system.

This is compounded with what appeared to be an overwhelming lack of specific information provided by child protection to parents during interviews conducted with

⁹² Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 57. Last accessed on 29 September 2007. A further 36.9% (7,840 persons) had spent between 1 and 5 years in professional care and 19.2% (4,069 persons) had been in professional care for less than one year.

⁹³ ERRC interview with a child protection professional. Pecs, August 2007.

⁹⁴ ERRC interview with the head of a professional care institution. Budapest (District 8), July 2007.

Romani parents by the ERRC. Many of the persons interviewed reported that either they had been given only cursory (and, at time, conflicting) information or that no one in the child protection system had actually taken the time to explain the information well and ensure that everything was understood.⁹⁵ Even child protection workers themselves were found to lack adequate knowledge about the working of the system (except the narrow area they work in); it can hardly be expected that they can navigate their clients in the system and inform them about their rights. Finally, as there are almost no Roma working in a professional capacity in the child protection system, this creates a systemic bias against Roma. Child welfare workers and placement co-ordinators in Hungary are not immune to the prevailing attitudes in the country and may conduct their work under the lens of stereotype and prejudice, whether they recognise this or not, which undoubtedly affects their interaction with Romani clients.

Social workers tend to believe that Roma are not capable of change

As became apparent during interviews with child protection professionals, many of the people working in the child protection system in Hungary do not feel Roma are capable of change, particularly in some smaller towns and villages. This is extremely problematic with regard to children removed from the care of their parents in light of the fact that return to family is based on the opinion of and a decision by persons in these positions. In order for a child to return to his or her family, the conditions of the family must have been improved enough in the eye of the social worker such that the parents are able to provide an environment suitable for the secure development of the child.

Many of the child protection workers at both the basic and professional care levels interviewed during research indicated that they felt it impossible that a child return to their family at the end of the 30-day placement period, though this has happened in some cases.⁹⁶ To illustrate why, one family help worker from Ozd informed the ERRC,

“Generally what happens is that in the first few weeks the families will be busy making changes and trying to improve their conditions to get their kids back. They take loans to do this and try to change things immediately. They may also kick alcoholism temporarily. But they always revert to their old ways.”⁹⁷

⁹⁵ ERRC interviews with Mr R. and Ms B. (Alsoszolca) and Mr P. (Alsoszentmarton). August 2007.

⁹⁶ In accordance with the Child Protection Act, children are to be placed in a reception centre for up to 30 days while an expert committee comes to an agreement and makes a suggestion as to the child's placement, based on which the guardianship office makes a decision. The child is then placed accordingly (with their family, with foster parents or in a children's home).

⁹⁷ ERRC interview with a family help worker. Ozd, August 2007.

This sentiment was expressed by almost all of the basic and professional child protection workers interviewed by the ERRC. In fact, a number of the social workers interviewed by the ERRC indicated that they would require a much longer period of sustained visible change in a Romani family's situation before they would recommend that the child be permitted to return. The period most noted ranged from 6 months to 1 year: "I would need to see about 1 year sustained improvement before recommending replacement of a kid with their family."⁹⁸

Beyond this, child welfare and family help workers and the head of the child care homes visited by the ERRC all indicated that once placed in a temporary or short-term care setting, Romani children almost never return home. As one family help worker in Budapest noted, "Kids are rarely able to return to their families. [...] When housing is the reason, they never go back."⁹⁹ Another child welfare worker from Budapest noted that children are not able to make it back to their families because the problems are too serious for the family to improve and the criteria that they must meet are too difficult.¹⁰⁰

During focus group discussions, some professionals also indicated the belief that Roma are generally not capable of caring for children in an adequate manner. The following highlight from the discussions is illustrative of this point:

"Whilst in the case of non-Romani children [...] it is much easier to find a grandparent, a brother or sister, or a friend to help the adoption [of the child removed from parental care], this does not work so well with Roma children. This is probably because, first, the relatives are not any better than parents in dealing with children, and second, even if such an arrangement had been made, it is illusory since the child will never actually get there. I think it is much easier for the public guardianship authority to provide an escape for non-Romani children since before deciding to take someone in temporary care a lot of efforts are made to follow the principle of gradualness, prescribed by the law on child protection."¹⁰¹

At the same time, child welfare workers in Budapest noted that the reason Romani children can not be placed with relatives upon removal from their family is often connected with material concerns, whilst the families in question are

⁹⁸ ERRC interview with family help worker. Alsozsolca, August 2007.

⁹⁹ ERRC interview with family help worker. Budapest (District 21), August 2007.

¹⁰⁰ ERRC interview with a child welfare worker. Budapest (District 8), August 2007.

¹⁰¹ Statement by the head of a guardianship office in Western Transdanubia, June 2007.

not provided the supports made available by the government for foster parents providing a similar function.¹⁰²

Lack of support to families whose children have been removed

Under the Child Protection Act, social workers at the basic care level are responsible for working with families whose children have been taken away to improve their conditions such that the children can return to home.¹⁰³ The specific responsibilities of the child welfare service in this regard include:

- Co-operating with the social worker in the regional professional child protection service, the service that operates the foster parent network, or/and the children's home to support the family to enable them to create the conditions upon which the child can get back to the family and to maintain the relationship with the child;
- Visiting children placed in short or long-term care within two months and maintaining continuous contact with the social worker in the children's home, the service that operates the foster parent network and/or the regional professional child protection service;
- Supporting the family to: a) recover the relationship between parent and child and the maintenance of their contact in a person-to-person helping relation with them; b) access information to improve the parents' parental, fostering and household management skills; c) improve the housing conditions, bringing the equipment and the furnishing of their home to an acceptable level; d) assist and support the family to get social and other kind of help and assist them in taking care of their official errands; e) initiate co-operation with non-profit organisations and volunteers to help the family.¹⁰⁴

However, as already noted earlier in this report (Section 6.2.4), social workers at the basic care level have extremely overburdened case loads and

¹⁰² ERRC interview with a child welfare worker. Budapest (District 7), August 2007.

¹⁰³ Article 39(5(a)) of the Child Protection Act states, "The duty of child welfare services, in order to return the child previously deprived of his or her family, is to: a) provide family support – with the co-operation of the institute providing home or professional protective child services in the district – to establish or improve the conditions of upbringing the child within the family, and re-establish the relationship between the parents and the child."

¹⁰⁴ Article 23 of Decree 15/1998 (IV.30) by the Ministry of People's Welfare about the tasks and the conditions of the operations of institutions and individuals doing child protection and child welfare work offering personal services. Available online at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800015.NM. Last accessed on 27 October 2007.

in only very rare cases offer any kind of special support programmes to the families they work with.

Whilst some of the basic care workers interviewed by the ERRC indicated that they regularly met (approximately monthly) with the parents of removed children in their area, this was merely a check-in exercise to see if anything had changed. However, several child welfare workers indicated that, in general, this service fell last amongst their priorities due to lack of time and/or the belief that there is little hope that the family will be able to improve its situation enough for the child to actually return home.¹⁰⁵ Some also noted that amongst these families, there were some with whom they hardly ever met. Basic care workers again stressed the fact, for the most part, that they did not know where to direct families to get the assistance they needed to actually be able to improve their situation. Financing for programming was noted to be a problem, and aside from the list of benefits regularly available in Hungary, the basic care workers appeared to lack knowledge of special regional or national assistance programmes made available by the government.¹⁰⁶

Romani families give up hope of getting their children back

ERRC research indicated that another factor contributing to Romani children remaining in state care long-term related to the child's family giving up hope. Child protection workers noted that, when the point of removal of the child from the family is reached, there is very little hope of the child getting back to the family. After a short while, contact with some families is reportedly lost. In addition, many child protection workers indicated that, once they have removed a child from the family, the family loses trust in the worker.

Romani parents interviewed by the ERRC expressed a profound hopelessness during interviews in the summer of 2007. Several families were unhappy because they had been told that their children could return after 30 days if they improved their conditions according to the criteria of the child welfare workers. The parents had reportedly organised the improvements despite their poor economic situation, and nearly 2 months had already passed, with their children still stuck in temporary care pending placement. Very little information had been provided to the parents, especially concerning the low success rate vis-à-vis children returning home at the end of the 30-day temporary placement period or that even if they improved their conditions it was still very possible that the children would not come home

¹⁰⁵ ERRC interview with child welfare workers. Budapest (District 7), Pecs. August 2007.

¹⁰⁶ Such as housing support or other social programmes made available from time to time.

immediately. The parents interviewed were distressed because they did not know what was happening, although they had visited the child welfare and guardianship offices to try to get information about when their children could return home. The parents interviewed by the ERRC were fast losing hope of getting their children back and felt that they were not treated fairly because they had made the improvements demanded and still did not have their children.¹⁰⁷ It was becoming questionable in their minds what all the effort had been for.

Romani children become acclimatised to the conditions in care

During the focus group discussions, child protection professionals noted that another difficulty in placing Romani children back with their natural family results from their adaptation to the hygienic and comfort conditions, as well as the financial security provided by foster parents or child care homes. The conditions in the substitute setting are often said to be in contrast to the conditions in which the natural family lives. This issue was also raised during in-depth interviews. As one family help worker noted, “The family-type children’s home system is problematic because once Romani children enter this, they do not want to go home to their natural parents because of the conditions in which they live. In the end, the home workers end up taking the place of their parents.”¹⁰⁸

This sentiment was echoed by several of the Romani children living in child care homes interviewed by the ERRC. For example:

- M. and V., teenaged Romani siblings who had been living in a children’s home in Alsozsolca for 6 years, told the ERRC that they do not like going home to visit their family because they feel better in the home due to the conditions and because they have better opportunities living in the home.¹⁰⁹
- L., an 18-year-old Romani boy who had been living in a children’s home in Budapest long-term, stated that although he visited his family almost every day, he did not want to live with his family because he had a different plan for his future than his family.¹¹⁰

Focus group members also indicated that the refusal of Romani children to return to their families may in part arise from the negative views and prejudices

¹⁰⁷ For example, ERRC interviews with Mr R., Ms L. and Ms B. Alsozsolca, August 2007.

¹⁰⁸ ERRC interview with family help worker. Budapest (District 21), August 2007.

¹⁰⁹ ERRC interviews with Miss M. and Miss V. Alsozsolca, July 2007.

¹¹⁰ ERRC interview with Mr L. Budapest, July 2007.

about Roma that the child learns in the state home. They further noted that the child may even have internalised such sentiments during their time living in a non-Romani environment. As noted by the child protection professionals taking part in the focus group discussions, Romani children face developing feelings of self-hatred and a negative self identity during their adolescent years in children's homes if not properly prepared for the tension between their situation in the home and that of their family and background.¹¹¹ For example, one specialised educator referred to a Romani boy that the educator was working with who apparently hates Roma and one guardianship office worker referred to the shock experienced by Romani children in his care after returning from family visits due to different hygiene and comfort conditions.¹¹² J., who was raised by non-Romani foster parents for years and was living in a children's home in Szigetvar at the time of research, told the ERRC that he did not keep in touch with his family and that he did not care about them because they have a totally different "mentality" and he does not identify with that.¹¹³

Lack of supervision and co-operation between basic and professional level services

One major problem noted during ERRC research is the overwhelming lack of co-operation between child protection workers at the basic care level and the professional care level. In addition, the supervision and evaluation of child protection workers is lacking in terms of seriousness and results.

Where co-operation between the care levels was noted, this was quite superficial in nature and seemingly in accordance with the minimum requirements established. For example, basic care workers provided information for use in professional level placement assessments and professional care workers and basic care workers at times met during visits conducted by professional level social workers to the area from which the child came. These acts represent the minimum that child protection workers must do, and co-operation did not appear to extend beyond this.

Child protection workers from both levels of service indicated a bad flow of information from relevant workers in the other service level. For example, several child welfare workers noted that professional level services at times invited them

¹¹¹ See also ERRC interview with the deputy director of a children's home. Budapest (District 18), July 2007.

¹¹² Statements by a guardianship office worker and a specialised educator with the Regional Child Protection Services. Central Hungary, May 2007.

¹¹³ ERRC interview with J. Szigetvar, August 2007.

to participate in child placement meetings on the morning in question which makes their attendance quite difficult due to their heavy schedules.¹¹⁴

The final result

The end result of all of the above is that Romani children are more likely than non-Romani children to end up in state care. Once in the state care setting, they are almost certainly there until they reach the age of 18, and some stay on in state care until the age of 24 in after-care, at which time they are formally and finally required to leave the state system. Therefore, a disproportionate number of Romani children has grown up without the care and support of their family and, in all likelihood, has lost ties with their natural family, basically leaving them without very much of a support network upon re-entrance to the “real” world.

Many of the children and institutional heads interviewed during research indicated that the children have very little contact with their family once they enter the home. The longer the children had been in the homes, the less likely they were to be in contact with their parents. In fact, an alarming number of the children interviewed, 24 out of 120 (20%), stated that they no longer had any contact with their parents at all. In this category, of those children who knew how long they had been living in state care, each had been living in a children’s home for 7 years or more. Of those children:

- 54.2% were Romani;
- 25% were half-Romani; and
- 20.8% were non-Romani.

Whilst workers in the homes are supposed to facilitate contact between the children and their parents, this seemed to fall rather low on the list priorities in some institutions. In the majority of children’s homes visited by the ERRC, the institutional heads emphasised the efforts made by employees to enable contact between the children and their families. For example, stress was placed on attempts to ensure visits by the children to their families during visits by home representatives to the area the child came from. On the other hand, many of the children interviewed were not of the opinion that the home employees did very much to assist them in maintaining contact with their families. Many of the home representatives interviewed stated that after some time passes, the parents generally do not try to maintain contact with the children. At the same time,

¹¹⁴ ERRC interview with a family help worker. Ozd, August 2007.

many indicated that as the child approaches the age of 18, the parents suddenly begin to show an interest in the child again, which they attributed to designs for the money accumulated for the child upon their exit from the state home.¹¹⁵ None of the social workers interviewed by the ERRC acknowledged that the high levels of poverty experienced by Roma may affect the ability of parents to maintain contact with their children.

A disproportionate number of Romani children leaving the state system after many years are therefore likely to have a very limited support network available to them. During research in 2007, the ERRC met with numerous Romani individuals who had grown up in state care and who now had families of their own.¹¹⁶ The children of a good portion of these individuals were themselves under the protection of basic care services and were therefore threatened with possible removal. One Romani woman who had grown up in state care interviewed in August 2007 had just the month before had her 4 children taken from her care.¹¹⁷ Ms B., with whom the ERRC met in May 2007, grew up in state care for 16 years. At the time of the interview, her child was also under special protection of the basic care service.¹¹⁸ Life in the child protection system therefore assumes a cyclical nature, with Romani children of the same family ending up in care from one generation to the next. As one child welfare worker in Budapest noted, “It is an alarming sign that we often work with kids whose parents also grew up in institutionalised care. It looks as if this problem was bequeathed. I think that more harmonised work between the basic care and professional care would be needed. At this point there are mutual accusations.”¹¹⁹

Further, the ethnic identity of the child becomes a rather questionable point in the discussion, as the child in state care is effectively raised by non-Roma and in conditions very different from those of their family setting. As summarised by one focus group member:

“[...]children] lose their connections with Roma [...] especially when entering a child care home or a foster family at a young age. In the latter case, maintaining contact is even more problematic because foster families work against natural

¹¹⁵ A certain amount of money is regularly placed in a bank account for the child and given to them upon reaching the age of 18.

¹¹⁶ In fact, it was noted during the focus group discussions that Romani girls also get pregnant while in short-term care by men living outside the homes. The girls, in effect, become single mothers.

¹¹⁷ ERRC interview with Ms L. Alsozsolca, August 2007.

¹¹⁸ ERRC interview with Ms B. Budapest, May 2007.

¹¹⁹ ERRC interview with Ms E.V. Budapest (District 7), August 2007.

families. Regardless of how hard we try to explain to them the importance of identity and contact, the relationship with the natural family becomes loose because it is troublesome. The rate of resuming care by the original family is practically down to zero, which indicates probably the largest deficiency of the child protection law [...]. Like when the child says “No, I don’t want to go home, I hate Gypsies, I’m not a Gypsy.” Against all the outward characteristics – defying descriptions and legal definition – that suggest that he/she actually is, the child comes to protest this after having been raised in a different kind of family for the past 5-10 years. Deep inside, the child is very much attached to the parents and at some point during adolescence he or she will rebel against the child care home or the foster family [...] and at this point we cannot solve these problems. Being unable to categorise him- or herself in one way or another, the child ends up feeling in a vacuum. It is even worse when one grows up in an environment where ideally one does not face being perceived as Romani due to his/her looks. While not considering himself/herself to be Romani, his/her visible characteristics would give him/her away. The child needs, or has the right, to be prepared for this unexpected event in order to develop defence mechanisms and be able to cope with it”¹²⁰

Considering everything, it can be argued, and was discussed within the focus groups by child protection professionals, that the very way in which the system works results in abuse of the rights of Romani children. In the current system, wherein the conditions of temporary care are not clearly specified and decision-making about the child’s future drags on and parents do not receive adequate support to improve their conditions and keep or reclaim their children, responsibility for the deterioration of the relationship of the child and the natural family lies with the child protection system itself. As a result of the current system, many familial ties are severed irreparably and children have little support from the system in returning to their family. There is also no support to those children leaving the state system upon reaching the age of majority. While true of all children, professionals participating in the focus group discussions considered this to affect Romani children in particular given their disadvantaged position and their disproportionate representation in the child protection system.

6.4 The Question of Ethnic Identity in Adoption Processes

In Hungary, ethnic identity clearly plays a big role when it comes to adoption procedures. According to the Ministry of Labour and Social Affairs, in 2005, 773 adoptions were authorised. Of these, 695 children were adopted by Hungarian citizens

¹²⁰ Statement by a family care representative, Northern Great Plain. June 2007.

who remained in Hungary whilst 78 children were adopted internationally. According to experts in the field, it is generally true that about 800 adoptions take place in Hungary per year, with up to 100 of those being international. Also as of 31 December 2005, 1,058 applications for adoption were submitted by prospective parents in 2005 and 1,469 parents determined to be suitable were waiting to adopt.¹²¹

According to the same datasheet, 2,036 children determined to be suitable were awaiting adoption. However, of these, only 156 were less than 3 years old, the primary target of potential adopters in Hungary. An additional 691 were listed as disabled and 1,192 over 10 years of age. Adoption workers in Hungary with whom the ERRC spoke during 2007 stated repeatedly that children with any form of disability and children over the age of 10 are very unlikely to be adopted by Hungarian parents.¹²²

As can be inferred from the above, the “supply” of children awaiting adoption is much greater than the “demand” by prospective adoptive parents. Given the greater supply of children in comparison to the demand by prospective adoptive parents, not all children suitable for adoption will actually be adopted in Hungary, at least in the short-term. This does not bode particularly well for Romani children determined to be suitable for adoption. In its March 2006 Concluding Observations on Hungary, the Committee on the Rights of the Child noted, with concern, “the high number of Roma children who are maintained in institutions even though some of them might benefit from adoption.”¹²³

As indicated earlier in this report, the number of Romani children in the state care setting is disproportionately high compared to their portion of the child population in Hungary. It may be the case that Romani children also constitute a disproportionate number of the children awaiting adoption, although there is currently no official information available on this. However, given that approximately 90% of children are adopted in Hungary, presumably by a majority of ethnic Hungarian parents, Romani children are at a disadvantage compared to non-Romani children awaiting adoption due to prevailing prejudice and discrimination against Roma in the country.

Focus groups discussions conducted in preparation for this report with professionals, foster parents and adoptive parents support the point above, as

¹²¹ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 47. Last accessed on 29 September 2007.

¹²² ERRC interview with an adoption services employee. Miskolc, July 2007.

¹²³ Committee on the Rights of the Child. 17 March 2006. Concluding observations: Hungary. Available online at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.HUN.CO.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.HUN.CO.2.En?OpenDocument). Last accessed on 27 October 2007.

well as past difficult experiences regarding the probability of Romani children finding adoptive parents.

The complexities of adoption itself – for example, the failure by the family and the environment to accept the child, the lack of knowledge about the child’s legacy and challenges to raising a non-natural child – were unanimously recognised by the participants. Professionals and parents took for granted during the discussions that a lot depends on the acceptance of the child by the broader family and the neighbouring individuals, since the attitudes and actions of prospective adoptive parents is greatly influenced by their environment. The power of prejudice, held by either the potential parents or their environment, and the difficulties in changing them were also emphasised. As one adoptive mother stated during a discussion about the adoption of Roman children, “I think adoption is a huge challenge in itself, requiring a lot of energy. So I’m not sure we would have been able to make this extra effort.”¹²⁴

The discussions with foster and adoptive parents and child protection professionals indicated that only cursory efforts, if any, are made by adoption workers to address these issues in the process of preparing prospective adoptive parents, whilst the fact that most children are likely to cope with such problems receives even less attention. This is understood by experts in the field to flow from the lack of training and preparation of adoption workers and other child protection professionals to deal with these issues on their own and who can therefore not be expected to be fully capable of preparing others to deal with these issues.

There has been an ongoing debate in Hungary on several issues viewed as problematic concerning the adoption of Romani children. From the point of view of this report, some of the most important points under debate include:

- How can the apparent conflict between relevant provisions of the Child Protection Act and the Data Protection Act be resolved?
- What must the Hungarian government do to ensure respect for and promotion of the child’s right to ethnic belonging?
- Should prospective adoptive parents be able to state preferences with regard to the ethnic origin of their adoptive child?
- How should adoption workers in Hungary respond to this?

This section of the report attempts to provide guidance to Hungarian law and policy makers in identifying solutions to these problematic points.

¹²⁴ Statement by an adoptive mother. Central Hungary, July 2007.

6.4.1 Ethnicity, Adoption and the Law

Article 7(2) of the Child Protection Act states that a child who, for any reason, is deprived of their family, “has the right – in an adoptive family or another form of care replacing the family – to protection substituting parental care or that of other relatives.” Of particular relevance is Article 7(3), which states, “in the course of substitute care of the child, their freedom of conscience and religion must be respected, and consideration must be given to their [the child’s] national, ethnic and cultural affiliation.”

Article 2 of the Data Protection Act states that data concerning racial origin, affiliation to national and ethnic minorities and health conditions, amongst others, are protected special data. At the same time, Article 3 of the Act stipulates that special data can only be handled if the person concerned gives their consent, or if this is prescribed by law or other rule of law of appropriate level. Data concerning the ethnic affiliation of a child is not included amongst the kinds of data that child protection workers are authorised to handle, although child protection authorities are authorised to handle data concerning health conditions.¹²⁵

As outlined earlier, there is currently some discrepancy in Hungarian law as to who is actually able to declare the ethnic origin of a child. Under the Minorities Act, a declaration of ethnic belonging is the exclusive right of the individual.¹²⁶ In accordance with the Hungarian Civil Code, the legal representative may make a declaration on behalf of an incapable minor and the agreement or retrospective consent of the legal representative is required for the declaration of a minor of diminished capacity to be valid.¹²⁷

Hungarian law also establishes that, in general, the guardian of children under state care may be the foster parent or the director of the children’s home.¹²⁸ If one were to strictly apply current Hungarian legal provisions, the guardian, being the child’s legal representative and exercising the supervisory rights of the parent, may therefore make any declaration to which a parent would be entitled. This provision, however, is clearly at odds with internationally and domestically accepted norms of self-identification regarding ethnic belonging. This apparent oversight in the law should be amended such that the rights

¹²⁵ Article 135(2) of the Child Protection Act.

¹²⁶ Article 7 of the Minorities Act.

¹²⁷ Article 12 of the Hungarian Civil Code. Article 12/A (1) defines a minor of diminished capacity as “A minor is of diminished capacity if he or she has reached the age of fourteen years and is not incompetent.”

¹²⁸ Section 98(2) of the Marriage, Family and Guardianship Act.

of legal guardians are limited to tasks specifically defined in law, and not including the right to make declarations about the often perceived ethnicity of children under their supervision.

However, considering that the entire child protection system is based on the supreme notion of the best interests of the child, recording data during the process of institutionalisation and handling data during decision-making pertaining to the child's interests during adoption or while living in a children's home (for example, decisions regarding education) with a view to giving an advantage to Romani children should constitute a legitimate aim, under the definition of the Data Protection Act. In this case, it would be in the interests of Romani children that the Child Protection Act be amended to legally empower child protection authorities to gather and handle ethnic data in order to ensure their rights as outlined in Article 7(3) of the Child Protection Act above.

6.4.2 Promoting Declarations of Ethnicity

According to Article 7 of the Minorities Act, "No-one is obliged to make a statement concerning the issue of which minority one belongs to – excluding the exception given in paragraph 2." Given current levels of racism and discrimination against Roma in Hungary, it is not surprising that many Roma are reluctant to openly declare their ethnicity – particularly in a public service-type setting. During focus group discussions, most of the professionals indicated that parents are reluctant to identify themselves as Romani. For example:

- "I attended several placement assessment meetings where the parents refused to declare their Romani identity. They were black all over, yet they did not consider themselves Romani."¹²⁹
- [...] when the parent [i.e. the parent is repeating the question previously asked by the child protection worker] asks if anybody dares to say anything about it [...] the response is "I don't feel like saying anything in this regard."¹³⁰
- "Very frequently the parents are reluctant to make any statements [about ethnicity] for fear of labelling their child."¹³¹

¹²⁹ Statement by the head of a children's home. Central Transdanubia, June 2007.

¹³⁰ Statement by a consultant to the public guardianship office. Northern Hungary, June 2007.

¹³¹ Statement by a specialised kindergarten educator from a child protection office. Central Hungary. May 2007.

The professionals participating in the focus groups believed this to reflect the awareness of Romani parents of the disadvantaged position in which this may place their child.

The Hungarian government and its representatives in the child protection system have a responsibility to create an environment in which Romani parents and children feel confident in declaring their ethnic origin. This is particularly important at the time of taking Romani children into state care and preparing them for adoption given the absence of the natural family and their influences and offerings. Declarations of identity are necessary in order to observe and implement the Hungarian law, which among other declares:

“It is the right of children in short-term or long-term care to receive, in particular, full care offering permanence and emotional security and appropriate education in line with their age, health conditions, development and other needs and taking into account their national, ethnic and religious affiliation [...].”¹³²

Some professionals participating in the focus groups indicated that child protection workers do make some efforts to secure information regarding the ethnicity of the child:

- “Guardians try to assist them [parents perceived to be Romani] in making that kind of statement.”¹³³
- “I kind of feel professionals are taking another approach to this issue now. Previously, this question was included in the information sheets No’s 4 and 5. However, the parent was not obliged to give an answer. There has been some progress in this regard, since this matter actually became a subject of discussion at placement assessment meetings. I think we should definitely talk more about this.”¹³⁴

Original parents reportedly have difficulties in understanding the question and why it is asked. However, there is no information on how widespread efforts to gather this information are, or exactly how the efforts would actually aid Romani parents in feeling confident enough to declare the ethnicity of the child. There is also no information about what kinds of information are provided to parents – in terms of the potential uses of the information and benefits from

¹³² Article 9(1) of the Child Protection Act.

¹³³ Statement by consultant to the public guardianship office. Northern Great Plain, June 2007

¹³⁴ Statement by an expert at a child protection office. Central Hungary, May 2007.

making such a declaration – to enable them to make informed choices with regard to declarations of ethnicity. Such efforts would, however, fall in line with accepted practices in other countries, for example the United States, where there is a more open approach to the usage of ethnic data.

6.4.3 When Potential Adopters Do Not Want a Romani Child

One area of great difficulty in this discussion relates to anti-Romani sentiment in Hungary and how this influences adoption patterns and practices in the country. One major question relates to ethnic Hungarian parents who may not want to adopt a Romani child. On numerous occasions, concerns have been raised by Romani activists that adoptive parents are able to state their preferences with respect to the ethnicity of the child they want to adopt.¹³⁵ Of greater concern has been the understanding that adoption workers are able to facilitate this choice although they are currently legally prohibited from doing so.

The provision of information about children to potential adoptive partners is done in the form of data sheets.¹³⁶ As stated earlier, the data sheets first introduced in 1998 contained clear questions regarding the ethnic origin or religious affiliation of children entering state care. The data sheets were, however, changed after 2002. Information about the national, ethnic or religious needs of the child may only be provided at point 5 of the current data sheet on children suitable for adoption if such information was made available by the parent.¹³⁷

According to the decree in force, the forms filled out by potential adopters do not include any specific space for noting expectations with regard to the child's ethnic origin. The form does, however, contain questions such as "What other expectations do you have concerning the child?" or "What could be a disqualifying factor?" Potential adoptive parents are able to use this space to note their requirements for the child.

Most of the professionals participating in the focus group discussions agreed that currently in Hungary it is possible for prospective adoptive parents to choose

¹³⁵ For example, following a civil complaint in 2002, the Minorities Ombudsman and the Data Protection Ombudsman conducted a joint investigation into these issues.

¹³⁶ In accordance with Government Decree 235/1997. (XII.17) on the personal data handled by the guardianship authorities, the regional child protection professional services, the child welfare services and bodies and persons offering individual care.

¹³⁷ A) and B) concerning adoption on the XIII data sheet in appendix I of Government Decree 235/1997 (XII.17) on the personal data handled by the guardianship authorities, the regional child protection professional services, the child welfare services and bodies and persons offering individual care.

not to adopt Roma children, or children with mental or physical disabilities. According to some focus group participants, this is possible because potential adopters are at times given information regarding the ethnicity of the child:

- “Obviously, we take down everything about the child and attach a photo to this description before giving him or her to adoptive parents. I think we evidently have to make a note regarding the ethnic origin as well.”¹³⁸
- “There are no guarantees. When we know the child has Romani blood, we don’t hide this; we deliver all the information we have about the original families to the adoptive ones.”¹³⁹

Contrary to this statement, however, the adoption workers interviewed by the ERRC indicated very clearly that they do not refer to the ethnicity of the child in the data sheet of the child given to potential adopters.¹⁴⁰ However, it was clearly noted that the older the children get, the more obvious the physical characteristics commonly associated with Roma, such as dark skin tone, hair and eyes, become. In these cases, adoption workers felt that they are unable to “hide” the ethnic origin of the child from potential adopters.¹⁴¹

It is not illegal for prospective adoptive parents to indicate that they would not want to adopt children from disadvantaged groups, such as Romani children or mentally disabled children. Another focus group member stated, “It cannot be forbidden, even though we are not allowed to keep track about this, and nor are child protection agencies supposed to ask for the adoptive parents’ statement. However, nothing prevents them [potential adoptive parents] from making objections in this regard.”¹⁴² The adoption workers and other child protection professionals interviewed by the ERRC during the summer of 2007 confirmed this. A consultant on adoption matters in Budapest noted it is possible for parents to state restrictions on the kind of child they would like, and that “the majority of parents state that they don’t want Roma in their notes.”¹⁴³ Adoption workers indicated that this is often more subtle than an outright statement saying “no Romani children”. Rather, prospective adopters often list physical traits, such as blond hair, blue eyes and light skin colour, which are not often associated with Roma.

¹³⁸ Statement by the head of a children’s home. Central Transdanubia, June 2007.

¹³⁹ Statement by a consultant on adoption matters. Central Transdanubia, June 2007.

¹⁴⁰ ERRC interviews with adoption workers in Budapest and Miskolc, July 2007.

¹⁴¹ ERRC interview with the head of the adoption centre. Miskolc, July 2007.

¹⁴² Statement by the head of a public guardianship office. Western Transdanubia, June 2007.

¹⁴³ ERRC interview with a consultant on adoption matters. Budapest, July 2007.

In addition, focus group members stated that should it be forbidden to choose whether or not to adopt a child they consider to be Romani, many prospective adoptive parents would simply refuse children they perceive as Romani on some other ground.

Best interests of the child

This point of discussion raises serious concerns with regard to the best interests of Romani children, and children from other disadvantaged groups, in the process of adoption. There are fiercely opposing opinions on this discussion. On the one hand, it is believed that potential adoptive parents should not be permitted to indicate preferences with regard to the ethnicity of the child and make decisions on the basis of such. On the other, children's rights advocates would argue that it is potentially extremely detrimental to the well-being and development of the child to disallow this.

During the focus group discussions, child protection professionals in Hungary agreed that the child's interests would not be served by giving them to parents who do not want them. As one professional stated, "The child is sure to feel immediately that he is unwanted in the family."¹⁴⁴ The act of placing Romani children in a possibly racist environment also raises serious concerns with regard to the safety of the child and his or her physical, mental, emotional and intellectual development.

In addition, in the process of matching children suitable for adoption with potential parents, the interests of the child must be the paramount consideration. A consultant to a public guardianship office, for example, stated, "[...] when we know or assume, based on outward appearance or name, that the child is Romani, we do not offer him or her to prospective adopters who don't want them [Romani children]."¹⁴⁵ Adoption workers and other child professionals interviewed during field research noted that a child who is placed in the situation wherein he or she meets potential parents and is rejected because the parents for whatever reason do not feel capable of raising the child, possibly repeatedly, is likely to suffer serious psychological damage, which will have long-lasting effects.

Whilst the best interests of the child are the paramount consideration in this discussion, potential adoptive parents should not be denied the ability to state

¹⁴⁴ Statement by a social worker at a guardianship office. Northern Great Plain, June 2007.

¹⁴⁵ Statement by a consultant to the public guardianship office. Southern Great Plain, June 2007.

their preferences with regard to the ethnic identity of the child or to make choices on the basis of their stated preference. As one child protection professional stated in the focus group, “I do not think ethnic origin should be suppressed.”¹⁴⁶

However, the Hungarian adoption system as it currently functions is in need to serious reform in order to ensure that both the best interests of the child are accounted for and that Romani children deemed suitable for adoption do not spend their lives in an institutional setting because suitable adoptive parents could not be identified.

International practice from countries with longer histories of dealing with these issues also appears to favour the declaration and utilisation of information pertaining to ethnic identity in adoption processes. For example, in the United Kingdom, the collection of ethnic identity appears necessary in order to meet requirements under the Adoption and Children Act 2002.¹⁴⁷ Professionals participating in the focus group discussions and the adoption workers interviewed by the ERRC during field research agreed with this general approach, as it would enable the adoption of Romani children by Romani parents, or generally by any parents wishing to adopt a Romani child.

- “The optimal solution would be to find a place for the child in his or her own environment, and get them adopted there.”¹⁴⁸
- “We should keep track of it since the adoptive parent might want a Romani child whose needs are different.”¹⁴⁹
- “I also have a client who says she would like to adopt a Romani child because she lives in a community that only accepts Romani children. There are cases like that, too.”¹⁵⁰

According to adoption workers, there are Romani parents seeking adoption although their exact proportion of parents seeking adoption is unknown. It is, however, believed that they represent a disproportionately low portion of parents seeking adoption. There are also reportedly potential adoptive Romani parents who have indicated a preference for a Romani child.

¹⁴⁶ Statement by a specialised kindergarten educator from a child protection office. Central Hungary, May 2007.

¹⁴⁷ See Section 7.3 of this report for more information.

¹⁴⁸ Statement by a clerk with a public guardianship office. Central Hungary, May 2007.

¹⁴⁹ Statement by a social worker with the child welfare service. Central Hungary, May 2007.

¹⁵⁰ Statement by a consultant on adoption matters. Northern Hungary, June 2007.

Adoption lists are reportedly made in order of application by the parents and it should not in theory be possible that a parent stating a preference for a Romani child could move up in the queue. However, adoption consultants stated that those parents may indirectly get a child faster as they will have the opportunity to meet those children rejected by others (perhaps due to perceived ethnicity).¹⁵¹ Indirectly, this implies that whilst adoption workers may struggle to maintain an ethnically-blind approach, there is some consideration for the ethnicity of children suitable for adoption.

A shift in the approach of Hungarian law-makers to allow for the collection and use of data concerning ethnic background in institutionalisation and adoption processes, would help greatly in facilitating the best placements for all children, including those at a disadvantage such as Romani children, as they would make their way faster to parents interested and willing to take them. This shift would also be in line with the practices in other countries, such as the United States, where attempts are made to match children suitable for adoption with a particular racial or ethnic background with adopters of the same background. It should be stressed however, that under American law, racial or ethnic background should not in any way delay the placement of a child with a suitable adoptive family.¹⁵²

It is also important for adoptive parents – regardless of their ethnic background – to know the ethnic background of the child to be able to provide them with an upbringing suitable for their full development. As one professional, also a foster parent, remarked, “I think not marking it [ethnicity] is a bit hypocritical. As far as practice is concerned, my child is partly Romani. Though we’ve never seen him, I know the father was Romani. We saw the mother a couple of times though, and the child [...] definitely needs to know where he comes from.”¹⁵³

6.4.4 Actions Required to Ensure Respect for the Child’s Best Interests

Part of the discussion with the professional focus groups in Hungary related to with whom the responsibility rested for increasing the acceptance of Romani children by potential adopters. These discussions were quite difficult and amongst the participating professionals, no real consensus was reached.

However, it is clear that it is the responsibility of the state to take actions to promote equal opportunities, ethnic tolerance and acceptance, and to combat

¹⁵¹ ERRC interview with a consultant on adoption matters. Budapest, July 2007.

¹⁵² See Section 7.1 of this report for more information.

¹⁵³ Statement by a clerk at a public guardianship office. Central Hungary, May 2007.

the effects of racism and prejudice which today permeate Hungarian society. As such, as representatives of the state, it is also the responsibility of child protection workers to take up this responsibility. With regard to the adoption of Romani children, this would relate in great part to combating the prejudices and fears that potential adopters may hold and fostering an attitude of acceptance for Romani children. The national government must provide clear guidelines and training along these lines for adoption workers and other relevant child protection workers in order to address these issues with potential adoptive parents.

Various professionals participating in the research for this report indicated that neither they nor parents are prepared adequately to deal with the resulting trauma and sense of loss that adopted children may face, particularly in their adolescent years, which may take on an even more complex nature when questions related to ethnicity and acceptance come into play. Even the most well-meaning parents may be unable to cope. As one child's rights representative related:

“I just met a child raised by a teacher couple who were aware of the Romani origin of the child, yet they were unable to become attuned to that identity or to that way of thinking, disposition and attitude. As the little girl's identity burst out, this created such tremendous pressure on the couple that they finally got separated. Although they still love each other and their attachment is really strong, they could not deal with the increasing tension.”¹⁵⁴

Beyond coping with the complicated and at times negative relationships arising from mixed ethnicity adoptions, potential adoptive parents must also come to terms with the racist or stereotypical beliefs and perceptions they may themselves hold – whether they know they have these or not. For example, focus group members referred to the following types of cases:

- “[...] they [potential adopters] are also afraid that the genetic inheritance carried by a child who was born in the Romani culture may be impossible to accommodate in the life of a Hungarian family.”¹⁵⁵
- “That Roma are different in certain respects is a part of the common knowledge of the broader society, accepted even by professionals.”¹⁵⁶

¹⁵⁴ Statement by a child's rights representative. Central Hungary, May 2007.

¹⁵⁵ Statement by a district nurse. Western Transdanubia, June 2007.

¹⁵⁶ Statement by a social worker with the public guardianship office. Western Transdanubia, June 2007.

Training for adoptive parents

Under the current system in Hungary, potential adoptive parents are required to undergo 21 hours of training in the process of determining their suitability. There is almost unanimous agreement amongst experts that this amount of training is not enough to adequately prepare parents for the difficulties associated with adoptive relationships, let alone address concerns regarding ethnicity and acceptance.

Some experts participating in the focus group studies indicated that at the training they conducted, they have brought in parents who previously adopted a Romani child:

“We always invite families that have already adopted children to participate in preparatory trainings. Apparently, when we invite a family that has adopted a Romani child, prospective adopters are likely to realise that a Romani child is also a child, and they become more accepting. When inviting an elder child, this affects participants usually in a way to defer the age of the child at adoption.”¹⁵⁷

This example provides an illustration of the influence of positive examples and appropriate information to potentially changing negative, stereotypical and prejudiced attitudes or helping to alleviate other fears of potential adopters. Whilst the issue is certainly more complicated than this, and any solutions to these questions require long-term and systematic programmes and actions, even small steps are important.

Training of adoption and child protection workers

Many of the adoption and other child protection professionals that participated in the research for this report indicated that they were unprepared to deal with questions concerning ethnicity in adoption and child protection settings generally.

In addition, adoption and child protection professionals also tend to hold the prejudices and stereotypes internalised by potential adopters and the rest of society. Child protection workers, especially those from more isolated parts of Hungary, who may in their position feel a sense of superiority with regard to their clients, many of whom are likely Romani as indicated above, may hold even more extreme attitudes than the general population. During

¹⁵⁷ Statement by an adoption expert. Central Transdanubia, June 2007.

an interview with a notary in Borsod-Abauj-Zemplen County, for example, frequent references were made to “the pre-civilisation, tribal way of living and behaving” and deviancy of Roma.¹⁵⁸

Cultural awareness and communication training, professional training for dealing with problems stemming from ethnic identity, and anti-racism and anti-discrimination training must be further developed in Hungary and made mandatory for all members of the child protection system in order to begin reversing the current situation of Romani children vis-à-vis the system. Whilst equal opportunities and anti-discrimination training is currently available through the Social Political and Labour Issues Institute, this training is not mandatory for all child protection workers. Nor is it currently fundable from government support available to every child protection worker for the mandatory professional training and development they must undergo.¹⁵⁹

Follow-up, monitoring and analysis of adoptive families

There is little research available on the success and failures of adoptions in Hungary, or on the success of adopted children later in life, on the basis of which good programmes could be developed. In the existing adoption system in Hungary, there is also a gapping lack of post-adoption services and supports available to adoptive families. Adoptive families are often alone in their attempts to struggle with the problems that arise as a result of their adoptive relationship.

Given that adoptions are authorised in order to ensure achievement of the principle of the “best interests of the child”, adoptive families should be supported in a comprehensive manner to achieve the highest attainable level of life and development for the child. In addition, the state should monitor the situation of adoptive families to determine if the match is successful and that the child has been placed in a family suitable to its full development.

One last point worthy of mention here relates to cancelling adoptions. According to Article 57 of the Act on Marriage, the Family and Guardianship, adoptive parents are legally entitled to apply to the court to cancel the adoption and return the adopted child to state care (if both the parents and the child agree, the guardianship office can cancel the adoption). Paragraph 1 states: “Adoption is annulled by the court if either the adopting parent, or the adopted child showed such behaviour, which makes the

¹⁵⁸ ERRC interview with a notary in Borsod-Abauj-Zemplen County. July 2007.

¹⁵⁹ ERRC interview with the person responsible for equal opportunities and anti-discrimination training, Social Political and Labour Issues Institute. Budapest, July 2007.

maintaining of the adoption unbearable for the other party, or if the adoption doesn't fulfil its aim and function of society." There are a number of cancelled adoptions in Hungary each year: In 2005, the most recent year for which data is available, there were 19 cancelled adoptions, wherein the adopted child is returned to state care.¹⁶⁰

This point of law – that adoptive parents are entitled to decide that the relationship did not work out and cancel the adoption – is absurd in a system which is supposedly based on the foundation of the best interests of the child. There was consensus amongst the focus group members as well as other professionals interviewed by the ERRC that this provision is untenable. In addition, there appears to be an ethnic component in this discussion, although there is no official data as to the ethnicity of children returned to the child protection system due to cancelled adoptions:

"[...] officially, we are not supposed to keep track of how many Romani children were brought back. The demand for Romani children is already lower, as it has been stated already. When it comes to cancelling adoption, parents are probably more inclined to refer to behaviour problems in cases where the child is Romani."¹⁶¹

Adoptive families should deal with problems within the family through the same means as natural families, utilising the tools available through the child protection system in order to overcome their problems. With the provision of more and better training in the pre-adoption phase, and adequate services and support for adoptive families post-adoption, these kinds of cases would be less likely to happen, avoiding much pain and suffering and psychological damage for all parties concerned. On the basis of the support provided and the monitoring undertaken, the Hungarian government would also be much better placed to amend or develop new policies and programmes with regard to adoption, and in particular, the adoption of children from disadvantaged groups.

6.5 Disproportionate Categorisation of Romani Children in State Care as Mentally Disabled

From the outset of research towards this report, the ERRC was concerned that Romani children in the state care system are disproportionately categorised as mentally disabled, possibly as a result of incorrect diagnosis. The implications

¹⁶⁰ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 13. Last accessed on 29 September 2007.

¹⁶¹ Statement by a child's rights representative. Western Transdanubia, June 2007.

of incorrectly being categorised as mentally disabled on the future lives of the children concerned are extremely worrying.

The Hungarian child protection system categorises children in professional care according to 3 groupings: 1. Special (“Speciális”); 2. Unique (“Különleges”); and 3. Normal (“Normális”). Children falling into the category Special are those children who suffer from serious psychological, integration or behavioural problems or drug or other addictions. Children falling into the category Unique include those children who:

- Are under the age of 3;
- Have a permanent illness; or
- Are physically or mentally disabled (including children with special learning needs – this must have been determined by an expert educational committee for children of school age).¹⁶²

According to the Ministry of Labour and Social Affairs, as of 31 December 2005, out of 17,456 children under 18 in the professional care system:

- 5,616 (32.2%) children were categorised as Unique;
- 585 (3.4%) children were categorised as Special;
- 3,424 (19.6% of the total, or 61% of those children categorised as Unique) were diagnosed with a mental disability;
- 7,831 (44.9% or 11,255 (64.5%) if mental disability is treated together with Unique) children categorised as Normal.¹⁶³

The professionals participating in the focus group discussions unanimously agreed that Romani children were an absolute majority amongst those children labelled with disability amongst the institutionalised children in Hungary. By way of illustration, in response to a question about whether or not Romani children are disproportionately categorised as having a special learning need or mental disability, one focus group member reported that, “Unfortunately it’s a general phenomenon. I see that in our case, for example, a very high proportion of the Romani kids who come to us have been classified as having mild mental disabilities. In my view, in many cases this is not justified.”¹⁶⁴

¹⁶² ERRC interview a reference within the Regional Professional Child Protection Service. Miskolc, July 2007.

¹⁶³ Information available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 43. Last accessed on 29 September 2007.

¹⁶⁴ Statement by a child protection professional. Northern Hungary, June 2007.

During ERRC field research in the summer of 2007, the heads of institutions interviewed and children residing in children's homes provided information on the categorisation of Romani children in state care as Special or Unique. The information gathered strongly supports the opinion expressed by the professionals participating in the focus group discussions. As indicated earlier in this report, Romani children accounted for 48 out of 120 (40%) children interviewed by the ERRC. Of those children, 75.6% of the children responding to educational questions indicated that they attended special needs schooling. According to the definition above of Unique above, this indicates that a disproportionate number of Romani children are categorised as Unique within the professional child protection system.

6.5.1 Incorrect Diagnosis

Professionals in each of the 7 focus group discussions conducted expressed that the categorisation of children as mildly mentally disabled is not well-founded in a significant proportion of cases. The idea that many children are incorrectly diagnosed as mentally disabled was considered to be obvious by a great number of the focus group members; dissent was relatively low. This was held to be true for children who have been raised in professional care since birth as well as for children who were diagnosed (most likely by an educational assessment committee at the time of entering school) as mildly mentally disabled before they entered professional care.

The incorrect diagnosis of children as mentally disabled or as having special learning needs may result from various factors. These factors may range from somewhat benign issues which may disproportionately and indirectly affect Romani children unequally to malignant forces such as racism against Roma which influence decision-making in this area.

Biased expert assessment committees and education workers

In Hungary, children are most frequently diagnosed with special learning needs or as mentally disabled of varying degrees by an expert assessment committee at the time of entering school. Children are sent for assessment at the request of schools and kindergartens. The prejudices and stereotypes held by the staff of schools and kindergartens lead to an over-representation of Romani children amongst the children being sent for learning needs assessment and selected for placement in special schools.¹⁶⁵

¹⁶⁵ Roma Education Fund. 2006. Advancing Education of Roma in Hungary: Country Assessment and the Roma Education Fund's Strategic Direction. Budapest, p. 32. Available online at: <http://romaeducationfund.hu/>. Last accessed on 17 September 2007.

In addition to the over-representation of Romani children amongst those sent for testing, factors which lead to the greater proportion of Romani children amongst those children diagnosed with a special learning need or mental disability and placed in a special school setting include the use of inadequate measures to assess the abilities of children from minority or poor family backgrounds.

Rejection by Educators

Professional members of the focus groups were of the opinion that when children from disadvantaged backgrounds, possibly disadvantaged on multiple grounds and especially poor Romani children, enter school, teachers and other educational workers are ill-prepared to address their special needs. As a result, teachers and other educational workers reportedly feel powerless and reject the pupil in need of extra assistance. These children are often sent for special needs testing by expert committees and end up in special education programmes for the mentally disabled. From here, these children are also on track for ending up in the professional child care system.

Statement by a children's rights representative.
Western Transdanubia, June 2007.

Focus group members also expressed concern during research about the negative influence of financial considerations in the diagnosis of children as having special learning needs. It was indicated by members of the focus groups that expert assessors find it to be in interests of their employment to have a high number of children falling within the special learning needs or mentally disabled category in Hungary. For example, according to one professional:

“[...] a special needs child is a child who has been classified as such by the prescribed board, full stop. That's the exact definition of a special needs child, and from then on the whole thing is only about, sorry I don't want to be cynical but I have to be, the members of the board collecting their fee.”¹⁶⁶

Discriminatory execution of the assessment by expert committees was also alluded to by members of the focus groups. The head of a children's home participating in the focus group discussions recalled one case wherein after the director moved a Romani child in their care to the local mainstream school, the teachers were unable to cope with the child who was much older

¹⁶⁶ Statement by a development teacher with the Regional Child Protection Professional Service. Central Hungary, May 2007.

than the other students. The director therefore decided to enrol the pupil in another special school, for which a new expert committee assessment was reportedly required. According to the director, “[The child] went in front of the board and then my psychologist colleague – who was there, not me, with the children – said they went over everything with the children, they took away the papers and they saw “Lakatos, Lakatos” [Lakatos is generally perceived to be a Romani family name in Hungary]. Three-quarters of an hour later it [the decision classifying the student as having a mild mental disability] was ready, and they were waiting outside.”

The inference of this story is that expert assessment of children whose outward characteristics match those commonly related to Roma – for example dark skin tone or family name – is negatively predetermined on the basis of the child’s ethnicity as perceived by the expert committee.

The results of the above oftentimes lead, in the opinion of child protection workers in Hungary, to the incorrect diagnosis of children as mentally disabled or with special learning needs. One guardianship professional stated:

“I regularly go to a children’s home where they teach children who are mildly mentally disabled. I am not a specialist teacher of disabled children, so I am not in a position to judge, but often, according to the guardians, the children there have behavioural problems rather than being mildly mentally disabled.”¹⁶⁷

There have also been allegations of expert assessment committees classifying children as disabled or having special learning needs at the request of persons outside the process. As affirmed by a child’s rights representative:

“I have encountered one case when for 4 years a child was classified as having special learning needs and then after 4 years was diagnosed with unique learning needs. So that the guardian would remain the same, and they [the child protection service] phoned [the expert assessment board members], and said, “you know, four years ago there was that opinion which qualified the case as special learning needs. So, we need to refer to that again and request that [...]” So, you know what I’m talking about. That’s all I have to say about the expert boards.”¹⁶⁸

¹⁶⁷ Statement by a guardianship care counsellor. Central Transdanubia, June 2007.

¹⁶⁸ Statement by a child’s rights representative. Western Transdanubia, June 2007.

Lack of pre-school education

According to ERRC research, one of the reasons that Romani children are disproportionately classified as mentally disabled/with special learning needs includes the prevailing absence of Romani children from pre-school classes. The focus group members expressed that as a logical result of the total lack of or insufficient attendance of pre-school programmes by Romani children, they are more likely to be rejected by educational institutions and end up in professional child care.

Emotional under-development

Experts in the area of child protection purport that one of the main contributing factors to the categorisation of children with special learning needs or mental disabilities in Hungary relates to the emotional under-development of the child. This is noted to be particularly relevant with regard to children under the age of 3 living in a professional care setting due to the non-nurturing, institutional environment in which they are raised. As one focus group participant stated, “I have problems with how mental ability is assessed, because those children are also diagnosed as mildly mentally disabled who quite simply are just behind in terms of teaching or are emotionally under-developed in some respect.”¹⁶⁹

Biased child protection workers

A further disadvantage for Romani children in state care when it comes to testing and classification regarding special learning needs and mental disability relate to their representation by their guardians and the feeling of responsibility of guardians in this regard. As indicated during this and past research by the ERRC on the disproportionate labelling of Romani children as mentally disabled in education, natural parents and foster parents are naturally more interested in challenging decisions which label their children as mentally disabled or having a special learning need than state-appointed guardians, who have a more formal relationship with the child.

As illustrated during a discussion about the case of one Romani child labelled as mentally disabled during a focus group, when asked by facilitators why the guardian allowed the child to be classified as disabled, the director (and guardian) indicated that the decision was made by the expert committee and that

¹⁶⁹ Statement by a guardianship official. Central Hungary, May 2007.

the director was not responsible.¹⁷⁰ There had apparently been no attempt by the guardian to contest the decision of the committee.

As indicated earlier in this report, members of the child protection system are not free of the anti-Romani prejudices and stereotypes that are held of a large segment of the Hungarian population. These internalised beliefs colour and influence the treatment of Romani children in the state system by the predominantly non-Romani team of child protection professional in Hungary.

In accordance with the opinions of child protection professionals participating in the focus group discussions, a significant proportion of those children diagnosed as having some form of special learning need are classified incorrectly as such on the basis of non-objective criteria and factors including prejudice, institutional interests, the lack of appropriate conditions for the ideal solution or the lack of appropriate attention to the case, rather than on the basis of the real condition and needs of the child. The natural effect of this is that the proportion of Romani children in state care classified as having a mental disability or a special learning need is intolerably high.

6.5.2 Children Under 3 in the Professional Care System

As of 31 December 2005, out of 473 children below the age of 3 in professional care, 49 (10.4%) had been diagnosed as disabled.¹⁷¹ Romani children can be assumed to be disproportionately represented in this age group given their overall over-representation amongst children in the state child care system. During ERRC visits to receiving centres and homes for children below the age of 3, there indeed appeared to be an over-representation of Romani children present.

The classification of children who enter professional care at the time of birth or shortly thereafter, as having a special learning need or other disability is greatly influenced by the child's experiences in their first few years. The institutional framework in a given county is quite prominent in the determination of the future of children entering state care at these young ages.

Regional inequalities regarding the structure and make-up of the child protection system and other factors which are independent of the condition and

¹⁷⁰ Statement by the head of a children's home, Central Hungary, May 2007.

¹⁷¹ Information from the 2004/2005 school year, available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 63. Last accessed on 29 September 2007.

abilities of the child and possibly at odds with these factor very unfavourably for Romani children in terms of being labelled mentally disabled or special learning needs. In those counties with few homes for babies or available places, for example, increased efforts are made to place children below the age of 3 with foster or adoptive parents. This is in accordance with the general practice in the country of facilitating the adoption of children below the age of 3 as quickly as possible in order to reduce the trauma experienced by the child, which “virtually determines the child.”¹⁷² According to the same professional:

“The problems arise if a child spends one or two years inside in the care home and they remove the child from there, because it has already acquired under-development due to the lack of family environment or disability status. Then the professional has problems deciding whether it’s a disability or simply under-development, and from then onwards [...] we can’t find a foster parent [because they do not want to take children with disabilities], and then [the child will have to stay in a] children’s home. That’s fundamental.”¹⁷³

Long-term placement of a child in a home for babies and, subsequently, a children’s home, is associated with the increased probability that the child will experience under-development. Professionals are in agreement that the under-development of children in state care is frequently the result of the lack of a family environment and resulting appropriate care, nurturing and socialisation. Such children are consequently more likely to be diagnosed as having special learning needs or a mental disability.

Members of the professional working groups further acknowledged that the placement of Romani children in a professional care institution and their perceived identity as Roma situate Romani children in such a disadvantaged position that being labelled as having a mental disability or a special learning need is almost certain. The following quote from one focus group is illustrative of this observation by child protection workers: “From this point of view, he is multiply disadvantaged, because he is growing up in a children’s home, a child protection institution, and is of Roma origin too, and I think the chance of him being sent to such a place is much greater.”¹⁷⁴

¹⁷² Statement by a child protection worker. North Alfold, June 2007.

¹⁷³ Statement by a child protection professional. Northern Great Plain, June 2007.

¹⁷⁴ Statement by a child’s rights representative. Western Transdanubia, June 2007.

6.5.3 Education and Romani Children Over the Age of 3 in the Professional Care System

Those children above the age of 3 entering the professional child care system in Hungary who are categorised as having special learning needs or mental disabilities were, in general, raised by their birth families. These children are overwhelmingly categorised as mentally disabled or as having a special learning need by expert educational assessment committees after entering school and before entering the professional child care system. According to the professionals participating in the focus group discussions, this is the result of extreme poverty and other barriers to the equal education of Romani children.

Amongst the focus groups, various members also expressed that the diagnosis of Romani children with mental disabilities or special learning needs results also from deficiencies in the basic care service outlined in Section 6.2.4 of this report. The lack of professional capacity at the basic care level and resulting lack of support for Romani families, and racism and intolerance of Roma by majority society and social workers in local government institutions, in particular were noted. One member of an expert education assessment board noted, “If the family could really be helped so that they can give something to the child, which is simply expected from a Hungarian family today, then that would be the best for the child. [...] It’s very difficult to support these families when it should be the task of primary care [pointing to the responsibility of the basic child welfare service].”¹⁷⁵

Despite the fact that child protection workers are supposed to protect and ensure the best interests of the child, those children who should undergo regular assessment of their “mental” or learning capacities following their initial categorisation by expert assessment committees are unlikely to find strong advocates amongst state-appointed guardians for the change of their classification in case of mis-categorisation. These children are therefore sentenced to a substandard education which will not provide them any real opportunities once they leave the state system. The segregation of Romani children in education is widely acknowledged to be pervasive in Hungary. Hungary’s system of remedial special schools for children with developmental disabilities has been used for about half a century as a repository for Romani children whom the regular primary schools could not or did not want to educate. Official statistics from 1993, the last year in which the state collected ethnically-disaggregated data, reveal that almost half of all children following the remedial special school programme for children with developmental disabilities were Romani. Follow-up research indicates that the over-representation of Romani children in such schools and classes over the following years remained stable.

¹⁷⁵ Statement by an expert assessment board member. Northern Hungary, June 2007.

Confusion Resulting From Different Terminology in the Child Protection System and the Education System

The Hungarian education system currently uses the concept “special learning needs” to identify those children with learning or developmental difficulties. The same children are categorised as “unique” in the child protection system. According to a guardianship counsellor from Western Transdanubia, “[...] in child protection there are special and unique needs, and what in the education system is special – restricted in learning – means unique in the child protection system.” Experts have voiced concern that the use of different categories by the child protection system and the education system may lead to distinct problems for children in state care.

Professional focus group discussions highlighted that the differing use of definitions and categorisation may impede co-operation and the harmonisation of activities between the child protection system and the education system in Hungary. Some professionals noted that when professionals from the 2 systems use the same terms they may not be referring to the same thing. The correct interpretation of a child’s diagnosis may, in these circumstances, be uncertain and inappropriate decisions may be made regarding the care, support and development of the child.

According to preliminary data for the 2006/2007 school year published by the Hungarian Statistical Office, 5.4% of school age children in Hungary attend classes for children with special learning needs/mental disabilities, either in separate or integrated classes.¹⁷⁶

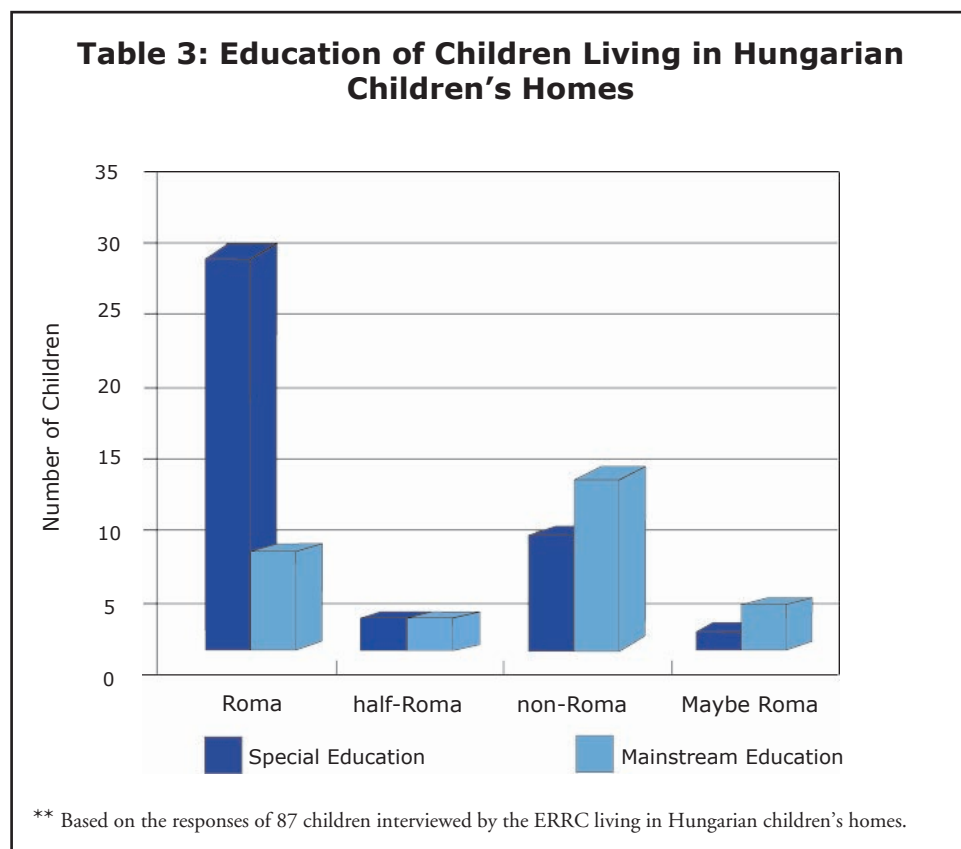
According to a study published in 2003, “Roughly one-fifth [20%] of Roma children of school age attend special school or remedial classes.”¹⁷⁷ Regional disparities have been noted, and in the extreme case, “A survey conducted in Borsod-Abauj-Zemlen in 1998 showed that more than 94% of the children who attended special curricula schools were Roma in the county.”¹⁷⁸

¹⁷⁶ Information available at: <http://portal.ksh.hu/pls/ksh/docs/hun/xftp/idoszaki/oktat/okt0607.pdf>. Last accessed on 23 September 2007.

¹⁷⁷ Kemeny, Istvan and Bela Janky. 2003. Roma Population of Hungary 1971 – 2003. Available online at: http://www.mtaki.hu/docs/kemeny_istvan_ed_roma_of_hungary/istvan_kemeny_bela_janky_roma_population_of_hungary_1971_2003.pdf, p. 166. Last accessed on 15 September 2007.

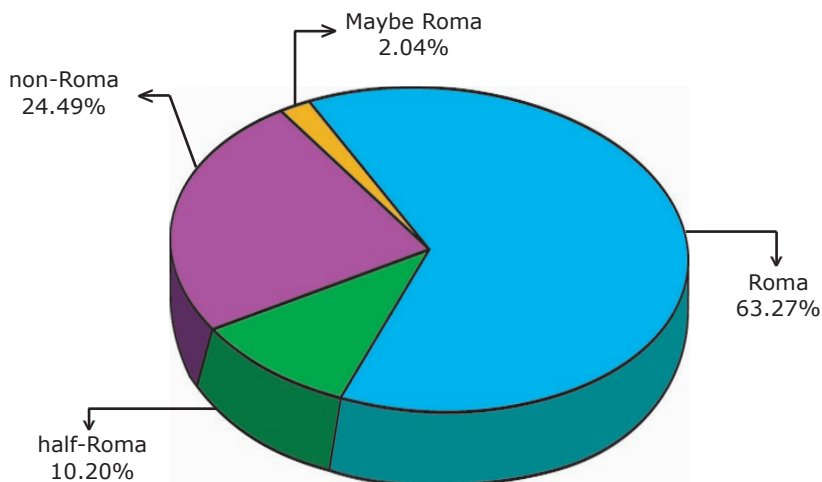
¹⁷⁸ Information available on the website of the Ministry of Education and Culture. Available at: <http://www.okm.gov.hu/main.php?folderID=125&articleID=142&ctag=articlelist&iid=1>. Last accessed on 25 September 2007.

According to ERRC field research, this pattern is mirrored amongst those children in the Hungarian child protection system: Comparing this to the situation of the Romani children living in the children’s homes visited by the ERRC, 75.6% of the Romani children that responded to questions related to education indicated that they were attending a special needs learning programme. The corresponding figures for the remainder of the children that responded to education questions were 50% of half-Roma, 44.4% of non-Roma and 11.1% of those children who stated that they may have Romani heritage.



Of the total number of children enrolled in a special needs education programme, 63.27% were Romani, 10.2% were half-Romani, 24.49% were non-Romani and 2.04% stated that they may have a Romani background.

Table 4: Ethnic Breakdown of Special Education Representation in Hungarian Children's Homes

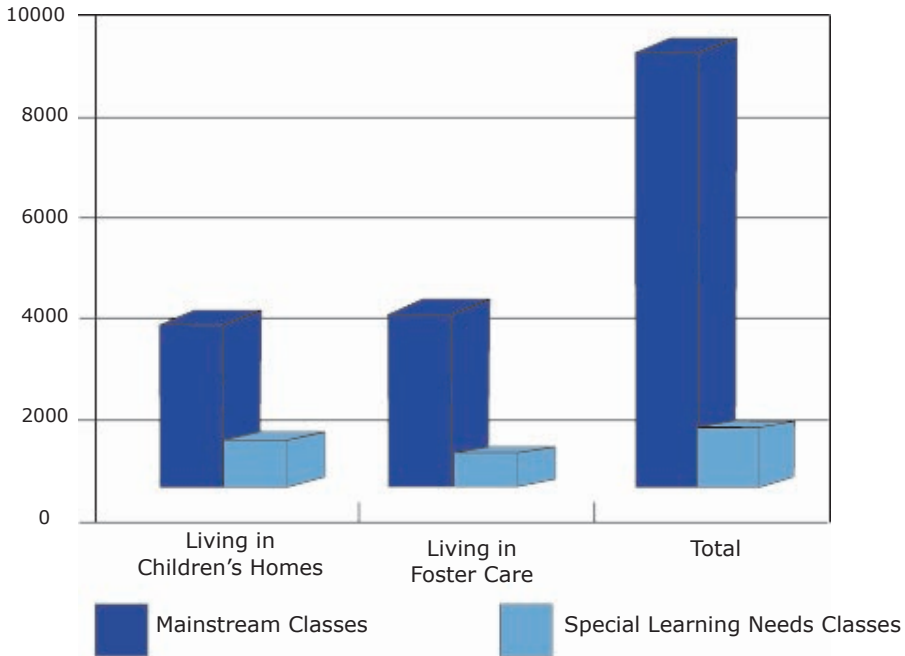


** Based on the responses of 49 children interviewed by the ERRRC enrolled in special education.

The available statistics also support the position noted above that public guardians and children's home workers are less likely to strongly advocate and protect the rights of children in their care when it comes to the categorisation of children as mentally disabled or having special learning needs. According to the most recent information available (2005), roughly twice as many children attending elementary school from children's homes were attending special schools as those children placed with foster parents: While on average 25.2% of children in professional care attend special classes, 33.7% of the children living in children's homes attended special classes and 17.2% of children living in foster care.¹⁷⁹

¹⁷⁹ Information from the 2004/2005 school year, available at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>, p. 58. Last accessed on 29 September 2007. However, it should be noted that the percentage of children from homes attending special schools had dropped from 38.8% in 2001. For children in foster care, the corresponding figure was 19.6% in 2001.

Table 5: Comparison of Children in Professional Care Attending Mainstream and Special Learning Needs Classes



** Based on statistics published in 2005 by the Hungarian government. Available online at: <http://www.szmm.gov.hu/download.php?ctag=download&docID=14102>.

Indeed, it was noted in the focus groups that foster parents are more likely to actually represent the child's interests. In the experience of some members of the focus groups, foster parents are more likely to attend the expert board assessments and to advocate that the child not end up in or to be transferred out of a special learning needs or mentally disabled category.¹⁸⁰

Professionals in Hungary agree that once children are placed in a special school setting, it is a rare exception that they make it back into a normal educational environment. This is true for both those children still living in their family environment and those children living in professional care. In addition to the often insurmountable barriers to education attainment placed before a child going for several years through a modified curriculum in a special class, teachers

¹⁸⁰ Statement by a guardianship counsellor with the Regional Child Professional Protection Service, Central Hungary, May 2007.

are reportedly prejudiced against children who have been in special needs programmes and do not want to accept them into their classes:

“The problem is that, just as being Romani brands a child, it does the same, regardless of whether the child is Romani or non-Romani, if they have been before the expert board. When it comes to retransferring, schools dislike even the thought that the child was ever following a non-standard syllabus [...] despite the fact that the child is only in the second year, and the first examination probably wasn’t fair, they still don’t want the child.¹⁸¹

The implications of the categorisation of Romani children in the professional care system as having special learning needs or mental disabilities are enormous. It almost solidifies their life in an institutional setting. According to adoption workers in Hungary, the vast majority of potential adopters in Hungary are not willing to adopt disabled children,¹⁸² so these children, being both Romani and disabled have almost zero chance of finding an adoptive family in Hungary as a solution to their parentless situation.¹⁸³

There is also no guarantee that the child will receive the care, attention and development that they need to increase their chances in life. For those children and for those children who have been placed in this category before entering professional care, their educational career and future employment opportunities are severely diminished. Children educated in a special needs setting are very unlikely to attend college or university, and therefore have low employment opportunities.

6.6 Structural Problems in the Child Protection System and Their Impact on Romani Children

The research conducted in preparation for this report revealed several causes for concern with respect to the position of Romani children in relation to the structure of the Hungarian child protection system. The major area of concern relates to the separation of child protection services between basic care services and professional care services.

¹⁸¹ Statement by a special educator. North Alfold, June 2007.

¹⁸² ERRC interviews with adoption workers in Miskolc and Budapest, July 2007.

¹⁸³ They may, however, find an adoptive family from outside Hungary, as couples seeking to adopt children from countries such as the United States or Italy are more likely to accept these children. ERRC interview with an adoption services employee. Miskolc, July 2007.

Under the current system of child protection in Hungary, basic care services fall under the responsibility of the system of local governments, whilst professional care services fall under the responsibility of the system of county level governments plus the City of Budapest government. This separation refers to both financial responsibility and to organisational, implementation and management responsibility.

Basic care services

As can be expected, the available budgets of local governments are much smaller in comparison to that of government offices at the county and national level. Without exception, the social workers and other professionals working at the basic care level interviewed during the course of research noted that the funding available for their work was insufficient. Funds were reported to be lacking for items ranging from office space and equipment to programming needs to staffing and training requirements.¹⁸⁴

There is additionally a great variation between local governments in terms of the amount of income of the respective government. Therefore, the level of funding available for basic care services is uneven across the country or even within a very short distance. This is most certain to impact negatively Roma as the local governments in those regions of Hungary with large Romani populations and high levels of unemployment accordingly have smaller budgets with which to work.

Whilst Romani representation in local government structures is believed to be low in Hungary, this means that Roma largely fall outside the sphere of influence when it comes to decision-making concerning financial matters in their areas. Given primarily non-Romani local governmental actors who live in a climate of pervasive anti-Romani sentiment, who may hold such attitudes themselves and whose positions are based on election by a local populace who also likely holds anti-Romani beliefs, there is a distinct likelihood that funding for services (such as basic care services) which many feel target mainly Roma fall rather low on the list of budgetary priorities. Various child protection workers at this level indicated that it would be better for basic care services to be independent of local government structures and funding.¹⁸⁵

This is extremely problematic because funding is lacking for service at precisely the point which should be the focus of the child protection system to eliminate the

¹⁸⁴ For example, ERRC interviews with basic care workers in Megyaszó, Budapest, Alsószolca, Ózd, Pécs, Siklósnyárfalu and Sellye. August 2007.

¹⁸⁵ For example, ERRC interviews with basic care workers in Budapest and Pécs. August 2007.

need to remove children from the care of their families – the basic care level. It is set out in law that the best interests of the child constitute the paramount consideration in the affairs of children. It is similarly set out that it is the entitlement of the child “to grow up in his or her own family environment” and to “obtain assistance in his or her upbringing within his or her own family, developing his or her personality, avoiding situations endangering his or her development, his or her social integration as well as the establishment of his or her own independent life.”¹⁸⁶

In light of this, a substantial and effective preventative support programme is required at the basic care level. These basic entitlements of children and guiding points of law are not reflected in the financial construction of the child protection system. Instead, a disproportionate amount of government funding is channelled to professional care facilities, services and professionals, which are only necessary after children have already been removed from their families.

Professional care services

Professional care workers with whom the ERRC spoke also noted that the funding available for their work was insufficient. Funds were reported to be lacking for items ranging from material needs provision and leisure activities for the children in care to staffing and training requirements.¹⁸⁷

A representative of the Borsod-Abauj-Zemplen county government also raised concern about the variations of income between county governments and, subsequently, the money available for child protection programming. Whilst the national government contributes to the professional care system on a per child basis, the amount given per child is uniform across the country. This financing must fund costs related to the child (such as clothing, food, pocket money, etc) as well as costs related to the professional and institutional environment in which the child lives (i.e. salaries of professionals employed within the system, maintenance on the homes, etc.). Those counties in less favourable economic circumstances are therefore in a weakened position in terms of their ability to raise the matching funds for the national subsidy as well as their ability to provide any extra services and activities for the children.¹⁸⁸

¹⁸⁶ Article 6(1&2) of the Child Protection Act.

¹⁸⁷ ERRC interviews with child protection workers in Miskolc, Tornanadaska and Pecs. July 2007.

¹⁸⁸ Reference was made by various children’s home workers about the relatively favourable position of children living in Budapest compared to elsewhere in the country given that the local governments in Budapest have much bigger budgets. ERRC interview with a reference with the Regional Professional Child Protection Service. Miskolc, July 2007.

Conflict between the basic/professional care split and the interests of the child

During numerous interviews with professionals at the basic and professional care levels, it was noted that the seemingly arbitrary separation of services at the basic care and professional care levels creates conflicts with the principle of the best interests of the child. First, this split in the services was noted by every professional interviewed to negatively impact their ability to perform their work.¹⁸⁹ Basic care workers stated that they lack information from the professional care level about what is happening with the children removed from their areas and are thus hindered in their ability to follow-up properly with the family. Professional care workers noted that they do not get enough information from the basic care level about progress in the family (although in tracking this, professionals at this level are supposed to visit the family 3 times yearly).

Integrating these services would be important to improving the flow of information and the functioning of the system. It would bring within one setting the full range of professionals, who would be able to coordinate their services better and to assist each other as needed. This would greatly improve the quality of service provided to endangered families.

Second, because the basic and professional care services fall under two separate budgets (local and county level) there is also concern that the interests of the child become secondary to the financial interests of the various governmental levels. It can be seen to be more beneficial financially for the both the local government and the county government if children are placed under professional care (i.e. removed from their parents) because it transfers the “burden” of financing the services for the child from the local government to the county level (which is financially responsible for professional services and receives funding from the national government on a per child basis). At the same time, “problematic elements” are removed from the local government area.

This point was raised by numerous workers at the basic level, all of whom thought that basic care provision should not be included in the budgetary responsibility of the local government. During discussions about their Romani clients, child welfare workers also noted that, being under the responsibility of the local government, they had at times felt pressure to recommend removal of the child against their better judgment.¹⁹⁰

¹⁸⁹ For example, ERRC interview with a child welfare worker. Budapest (District 8). August 2007.

¹⁹⁰ ERRC interviews with child welfare workers in Budapest, August 2007.

In addition to merging the basic and professional child protection services into one independent system with its own budget, it would also be important to shift funding made available from the national government to a service-based, as opposed to a normative, structure.

Segregation in homes for children with special needs

Within the children’s home system in Hungary, separate homes exist for children categorised to be Special or Unique, although not all children in these categories live in specially classified homes.¹⁹¹ According to the regulations in place, children categorised as having a disability are counted as more than one person place in the allocation of available spaces in “normal” children’s homes in Hungary.¹⁹² Therefore, according to the professionals participating in the focus group discussions, attempts are made to place all special needs children in homes specifically for children with special or unique needs. This is reportedly often in response to the lack of available places in regular children’s homes and the need to make space for all children in the professional care system. According to one professional focus group member:

“A special learning needs child occupies the place of two children. We are squeezed for places. We have to consider that if there is space in the special children’s home, and there is a special learning needs child in a normal children’s home who is occupying two places, then unfortunately we are forced to send the child to the special children’s home, because if a normal needs child arrives they can’t go to the special home. Here the principle of integration is totally breached; it doesn’t work.¹⁹³”

Given the disproportionately high number of Romani children categorised as Unique in the professional care system noted earlier, Romani children therefore tend to be segregated within the children’s home system in Hungary. This fact was witnessed by the ERRC during field research in 2007. Further, there is additionally segregation within the county system in some places, as special needs homes have all been placed in one area. In Borsod-Abauj-Zemplen County

¹⁹¹ ERRC interview with a reference with the Regional Professional Child Protection Service. Miskolc, July 2007

¹⁹² See Article 128/A of Decree 15/1998 (IV.30) by the Ministry of People’s Welfare about the tasks and the conditions of the operations of institutions and individuals doing child protection and child welfare work offering personal services. Available online at: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800015.NM. Last accessed on 27 October 2007.

¹⁹³ Statement by a guardianship care counsellor. Central Transdanubia, June 2007.

for example, the children's home system has been divided into regions within the county. Within this regional division, the majority of the homes for children with special needs have been placed in the northernmost region of the county, near the Slovak border; which is also the poorest.¹⁹⁴

Finally, there are also children's homes in Hungary which are linked to special schools for the mentally disabled, wherein a large number of the children residing there have been categorised as having some form of disability. In line with their disproportionate categorisation as mentally disabled or as having a special learning need, Romani children are also over-represented amongst those children living in children's homes for those categorised as "Unique".

¹⁹⁴ ERRC interview with a reference with the Regional Professional Child Protection Service. Nagybarca, July 2007.

7. GOOD PRACTICES FROM OTHER COUNTRIES

It is generally true that ethnic, minority and religious affiliation receive greater emphasis in the child protection and adoption systems in countries like England, the United States and Canada. Some important lessons can be drawn from the experience of these countries in order to begin reducing the number of Romani children in professional state care in Hungary.

7.1 The United States

The history and genesis of child protection and adoption goes decades back in the United States. Throughout the history of adoption in the U.S., the acceptance, permissibility and impacts of transracial adoptions¹⁹⁵ have been a fundamental point of debate. The majority of prospective adoptive parents are from the majority white society, while approximately half of the children suitable for adoption are non-white. From the 1950s, the adoption of black children by white parents was quite widespread and garnered significant support,¹⁹⁶ however, by the 1970s, the National Association of Black Social Workers (NABSW) issued a statement in which it referred to transracial adoptions as cultural genocide.¹⁹⁷ By the early 1990's the NABSW had moderated its position, proclaiming that transracial adoptions should only be allowed in instances where evidence exists that the same race placement was unsuccessful.¹⁹⁸

American law has by and large followed these changes. In 1994, the American government passed the Multiethnic Placement Act (MEPA), as amended in 1996 by the Inter-Ethnic Adoption Provisions (MEPA-IEP), in response to delays in the adoption of non-white children and other issues regarding transracial adoption, in order to facilitate the movement of children permanently stuck in the American child protection system.¹⁹⁹ The MEPA provided that children could not be discriminated against in adoption processes on the basis of their race or ethnicity and that:

¹⁹⁵ Transracial adoption refers primarily to the adoption of a child belonging to a certain race by parents of a different race.

¹⁹⁶ The adoption of Korean and Chinese children has also been widespread in the U.S. in the past.

¹⁹⁷ See: <http://www.nabsw.org/mserver/PreservingFamilies.aspx?menuContext=757>. Last accessed on 26 September 2007.

¹⁹⁸ McManus, Maureen. Issues in Transracial Adoption. Available online at: <http://userpages.umbc.edu/~mmcman1/>. Last accessed on 26 September 2007.

¹⁹⁹ The MEPA-IEP does not apply to the fostering or adoption of Native American children, who fall under the remit of the 1978 Indian Child Welfare Act, which states that children descended from Indian ancestors "shall only be placed in foster or adoptive homes which reflect the values of Indian culture."

- Placement could not be denied or delayed on the sole basis of race, colour or national origin of the potential parent or child; and
- Adoption agencies must consider the child’s cultural, ethnic and racial background and the capacity of foster or adoptive parents to deal with this.

The MEPA aimed to “facilitate the recruitment and retention of foster and adoptive parents who can meet the distinctive needs of children awaiting placement.” In order to achieve its goals, the MEPA-IEP:²⁰⁰

- Prohibited states and entities involved in foster care or adoption placements, which receive federal financial assistance, from delaying or denying a child’s foster care or adoptive placement on the basis of the child’s or the prospective parent’s race, colour, or national origin;
- Prohibited states and entities from denying any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent’s or the child’s race, colour, or national origin; and
- Required states to diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes in order to remain eligible for federal assistance for their child welfare programmes.

7.2 Canada

In Canada, child protection and adoption services fall under the scope of provincial legislation. The Province of Ontario will be explored for the purposes of this report. In May 1999, the Ontario legislature unanimously passed significant changes to Ontario’s child protection laws. The changes entered into effect on 31 March 2000. Under the amended Child and Family Services Act, child protection workers were provided clear guidelines for assessing children in need of protective custody, for creating permanency plans for children more expediently and for restricting the rights of adults to gain access to children in custody unless deemed beneficial to the child.²⁰¹

²⁰⁰ Hollinger, Professor Joan Heifetz. 1998. A Guide to The Multiethnic Placement Act of 1994 As Amended by the Interethnic Adoption Provisions of 1996. Available online at: <http://www.acf.hhs.gov/programs/cb/pubs/mepa94/index.htm>. Last accessed on 26 September 2007.

²⁰¹ Adoption.com. 2000. Reports spur changes in Ontario’s child protection laws. Available online at: <http://library.adoption.com/child-welfare/reports-spur-changes-in-ontarios-child-protection-law/article/5527/1.html>. Last accessed on 26 September 2007.

One important feature of the amended Child and Family Services Act is a shortening of the length of time that a child may remain in short-term care without a permanent solution to their situation. Before the amendment, children could remain in state care without a permanent plan for up to 24 consecutive months, and time was set back to zero every time a child left and re-entered care. Under the amended law, the prescribed period for children under 6 years of age was shortened to a cumulative 12 month period. For all other children, the planning timeline was changed to a cumulative 24 month period, which is not extendable.

Amendments to the law also provided guidance to courts for establishing and terminating access orders based on children's best interests. The amended law specifies that all children, but particularly those under the age of 6, should be reunified with their birth family or freed for adoption sooner to ensure a permanent solution faster.

7.3 England

The English child protection system, upon which the Hungarian child protection system is modelled, was amended in 2002 with the Adoption and Children Act 2002,²⁰² which came into force entirely on 30 December 2005. The law was adopted in order to address the fact that of the approximately 60,000 children in the English child protection system only about 3,000 were adopted each year. It aims to develop a faster and more effective adoption system. In England, it has long been recognised that children of black or ethnic minority groups are over-represented amongst children in need.²⁰³ In addition, a large number of these children have been categorised as having some form of disability. The future and development of these children was noted to be problematic due to the perceived challenges by potential adopters.

With the Adoption and Children Act 2002, a special support system was introduced to encourage the adoption of children falling into these categories. The system now offers professional and material assistance to adoptive parents, as required by the special needs of the children.²⁰⁴

²⁰² Available online at: <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>. Last accessed on 27 September 2007.

²⁰³ Department for Education and Skills. The Children Act Report 2002. Available online at: <http://www.dfes.gov.uk/publications/childrenactreport/docs/DfES-Childrens%20Act.pdf>. Last accessed on 26 September 2007.

²⁰⁴ See: <http://www.nagalro.com/docs/Seen>. Last accessed on 26 September 2007.

The National Adoption Standards for England are meant to ensure that the best interests of the child are upheld in the course of the adoption. The Standards outline that everything must be done to ensure that the child enter a family whose ethnic origin, cultural background, religion and mother language fundamentally corresponds to that of the child. Organisations or agencies responsible for adoption are tasked with drawing up strategies with the aim of recruiting more new adopters, paying particular attention to families of various minority origins and cultural backgrounds.²⁰⁵ The period of identifying an appropriate adoptive family according to the background of the child is, as in the U.S., time limited to ensure that adoption is not delayed on this basis alone. In light of this, keeping records with regard to the ethnic origin of the child is necessary.

²⁰⁵ Department of Health. 2001. National Adoption Standards for England. Available online at: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006621. Last accessed on 25 September 2007.

8. RECOMMENDATIONS FOR ACTION BY THE HUNGARIAN GOVERNMENT

On the basis of discussions with many child protection professionals in Hungary and other research conducted on the situation of Romani children in the Hungarian child protection system, the ERRC urges the Hungarian government to adopt the following recommendations. It is the intention of the ERRC that the preceding proposals provide a roadmap for action by all relevant actors to ensure the equal treatment and equalisation of Romani children compared to non-Romani children in the Hungarian child protection system.

8.1 Systemic Reform

Law and Policy Reform:

1. Amend the Child Protection Act to require a court order authorising the removal of children from their family for placement in short-term professional care.
 - The Hungarian government should adequately train judges to deal with these matters.
2. Amend data protection provisions of the Child Protection Act to legally empower child protection authorities to handle data regarding the ethnic origin of the child or family for a clearly defined, specific purpose to ensure placement and programming decision-making in order to achieve the legitimate aim of safeguarding the best interests of and ensuring the full development of the child. Detailed rules must be developed for handling data, in accordance with data protection legislation.
3. Harmonise terminology and categories related to similar or same conditions and situations between the Child Protection Act and various other Hungarian laws, in order to reduce confusion and ensure the smooth functioning and complementarity of the independent structures. Concretely:
 - Harmonise terminology related to special needs learning and mental disability in the Act on Public Education with the classification system for children in the professional care system in Hungary.
 - Harmonise definitions concerning endangerment within the Child Protection Act and the Act on Marriage, the Family and Guardianship.

4. Amend the Hungarian Child Protection Act to include clear limitations on the period – no longer than 3 years – in which children removed from their families may remain in short-term care.
5. Ratify Protocol 12 to the European Convention on Human Rights. Ratify the 1996 Revised European Social Charter, and sign up, in particular, to Article 17 – The right of children and young persons to social, legal and economic protection. Ratify also the Additional Protocol (to the Social Charter) of 1995 providing for a system of collective complaints.
6. Amend Article 57 the Act on Marriage, the Family and Guardianship so as to eliminate the possibility of adoptive parents to cancel an adoption; adoptive families should use child protection services in the same manner as natural families.
7. Amend the Act on Marriage, the Family and Guardianship to prescribe a period for identifying an appropriate adoptive family according to the needs and, where appropriate, background of the child (ethnic or other), which is time limited to ensure that adoption is not delayed on this basis alone. Beyond this, a list of tasks should be developed explicating what needs to be done during the adoption process and for the performance of which child protection workers can be held accountable.
8. Amend laws on housing and eviction to harmonise them with Article 7 of the Child Protection Act to ensure that no child is removed from their families due to homelessness resulting from eviction.
9. Amend the existing provisions of the Act on Equal Treatment and Promotion of Equal Opportunities to ensure that *all* public employers, regardless of their size, be required to develop an equal opportunities policy. Every public office should be required to have an ethnically proportionate workforce. In order to achieve this, all public offices should be required by law to undertake a review of the ethnic composition of its workforce and subsequently record, monitor and report annually the results to the Equal Treatment Authority, which must be empowered to review the contents. Methodological guidelines and adequate resources should be made available for the achievement of this.
 - The Hungarian government should also urge all private employers to adopt and implement equal opportunities policies and increase the number of Roma amongst their staff and provide the necessary resources to realise this.
10. Mainstream Romani concerns in all policy-making, programming and target-setting relevant to the situation of Romani children in the child protection system.

11. On the basis of the data disaggregated by ethnicity, sex and other relevant factors gathered, the Hungarian government should develop locally-oriented community development programmes to reduce the numbers of families and children considered at risk of extreme poverty and other forms of endangerment, as well as the disproportionate representation of Romani children in the child protection system.
12. Objectives, benchmarks and indicators, monitoring and evaluation systems must be developed for assessing the impact of policies and programmes developed as well as the need for their adjustment as required in order to prevent the separation of Romani children from their families on the basis of material needs.
13. The Hungarian government should create the position of Children's Ombudsman to protect the rights of children.

Systemic Restructuring:

1. Merge Basic Child Welfare Services and Professional Child Protection Services to form one comprehensive child protection service for families and children in Hungary.
2. Recommendations for the removal of a child from their family should be made by a professionalised authority, which is independent of local governments, solely on the basis of professional considerations and with a view to the child's best interest.
3. Disallow inter-county division of the system of children's homes which in some cases segregate children's homes for children categorised as Unique or Special in some regions/counties.
4. Enable children's homes to provide services for the individual needs of children in an integrated environment and end the segregation of children in special categories in children's homes and schools.
5. Actively engage NGOs in child protection work, and adequately fund their involvement in child protection matters.
6. Strengthen the interest representation of child protection and child welfare workers to ensure that they are able to effectively represent the interests of their clients without interference or reprisal from their employer.

Budgetary Considerations:

1. Fund Basic Child Welfare Services on a targeted service provision basis in order to increase funding for this service to an adequate level.
2. The Hungarian child protection system must primarily focus its aims and finances on the system of prevention at the basic care level, as opposed to the current focus on the provision of professional child protection services. This must be reflected in terms of the human, financial and programmatic resources available in order to reduce the number of children in the state care system overall in Hungary.
3. Introduce cost-sharing by all levels of government for children in Professional Child Protection Services, coupled with good monitoring and professional supervision, to ensure that financial considerations do not influence decisions regarding removal of children from their families.
4. The national government should create a scaled system of financing for professional child protection services which reflects the differing financial capacities of the various regional/county authorities.
5. The national and county governments must provide monthly information bulletins to child protection workers, primarily those in the basic care service, regarding all special support programmes and funds available which would minimise levels of child endangerment in Hungary.
6. The Hungarian government should develop and adopt a system of incentives for child protection services and agencies with demonstrated results in improving preventative services and reducing the levels of children actually in need of/moved into temporary, short-term and long-term professional care.

Non-Discrimination, Equal Treatment and Romani Participation:

1. Anti-discrimination and equal opportunities training must be made compulsory for all child protection workers. The government should show real support for non-discrimination and equal treatment principles by incorporating anti-discrimination and equal opportunities training within the framework of required ongoing training child protection workers must pursue. Anti-discrimination and equal opportunities training should be fully-funded by the national government to ensure it is accessible to all members of the child protection system.
2. School curriculum for social workers and other professionals implicated in the system of child protection should be adjusted to include anti-discrimination and equal opportunities components.

3. Social workers found to be undertaking their work in a discriminatory manner should be subjected to disciplinary action, through the effective functioning of independent complaint mechanisms. Families and children should be fully informed of their rights and supported to file complaints in suspected cases of discrimination.
4. Special measures to increase the number of Romani individuals working within the Hungarian child protection system, and in particular, in smaller towns and villages, should be required and implemented with a view to ensuring equitable representation of Roma within the child protection system.
5. Particular attention should be paid to the employment of Romani workers in professional positions within the child protection framework. Strong efforts should be made to promote Romani workers currently employed professionally into positions of management, through professional training and development support, to ensure representation in decision-making.
6. Gather and handle ethnically disaggregated data for clearly defined, specific purposes. This includes making use of the data concerning ethnicity currently gathered from parents and children in the datasheets and personal development forms filled out at the time of placement of the child in short-term care.
7. The Hungarian government should develop digestible information for parents and children regarding the voluntary nature of providing information on ethnic origin, the possible uses of the information and the benefits to the family and child of making declarations of ethnicity in the context of child protection matters.
8. Child protection workers should pay due attention to the transmission of this information to and consideration by all parents and children.
9. Government support for special measures in the areas of employment, education and vocational training for Romani adults and children, access to health care and access to adequate housing is particularly important to avoid child endangerment and removal. Programming along these lines should clearly account for disadvantages resulting from ethnic background.
 - The Hungarian government should systematically organise long-term employment-oriented education and vocational training programmes for Romani adults, with a view to increasing their employability.
 - The Hungarian government must design and implement effective programmes, including functional loans programmes and develop micro-credit projects to enable persons lacking financial security to start small enterprises.

10. The Hungarian government should review and amend its current approach and matters related to the Romani ethnic minority in an open and transparent manner. Ethnic belonging is an integral component of a person's being and as such should be treated accordingly in all law and policy making and implementation. Public officials should stop shying away from questions of ethnicity.

Systematic Monitoring and Evaluation:

1. Complete the development and adopt standards for the child protection system, integrating and developing the monitoring techniques currently in use, including:
 - Implementing guidelines for all relevant law and policy;
 - Job performance standards;
 - Detailed instructions for assessing endangerment;
 - Guidelines for planning and conducting investigations;
 - Complex guidelines and standards for decision-making pertaining to the removal of children from parental supervision;
 - Comprehensive guidelines for co-operation between the various levels of service;
 - Comprehensive guidelines for the provision of care for children in temporary, short-term and long-term care;
 - Guidelines for the provision of after-service for children and facilitating their transition out of the child protection system.
2. Establish and implement comprehensive annual assessments of individuals and institutions with regard to their performance of their duties, with clear actions to be undertaken in cases of bad performance.

8.2 Regarding the Disproportionate Institutionalisation of Romani Children

1. The Hungarian government should develop a set of objective criteria by which to define “endangerment”, accounting for all aspects of parental and familial contribution to the development of the child (not only material concerns), against which the competent authorities can make

- objective recommendations and decisions regarding the removal of children from their families.
2. Child welfare workers should have clear guidelines as to when they can intervene in the life of a family and how to respect the dignity and autonomy of the family and motivate parents as equal partners. Associated services should also have clear guidelines which are in harmony with those related to child protection workers.
 3. Families should be given the opportunity to participate in various trainings and support programmes, including during pregnancy, to help avoid the removal of their children from their care.
 4. All child welfare workers and professional child protection workers should undergo anti-discrimination, cultural awareness and tolerance training on a continuous basis.
 5. All child welfare workers and professional child protection professionals should undertake case management and assessment meetings in collaboration with neutral parties from another location.
 6. Adequately resource basic child welfare services in order to provide effective, child-centred prevention programmes through:
 - Increasing the number of child protection workers at this level of care.
 - Reducing the number of families and children per social worker in order to increase the effectiveness of social workers' prevention work.
 - Increasing, especially in smaller towns and villages, the professional support available to improve the success of basic social work in preventing the removal of children from their families, including psychologists, lawyers, abuse counsellors, etc.
 - Providing information about special national and regional support programmes for families in the area of employment, training, education, housing, health, etc.,
 7. In accordance with Article 25 of the Convention on the Rights of the Child, ensure *effective* periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement, including the conditions of the family and their adequate support.
 8. In accordance with the current law and with the support of district nurses and other professionals, child welfare workers should contact families earlier in cases of real need in order to begin addressing endangerment concerns at the earliest stage possible to avoid removal, and be held accountable for failure to execute their responsibilities adequately.

9. Professional child protection workers and child welfare workers should co-operate better, through the provision of information and joint family visits, in order to ensure the maintenance of relationships and contact between Romani children in state care and their families.
10. Professional child protection workers should create an environment in which Romani children feel confident to declare openly their ethnicity.
11. Professional child protection workers must develop programmes and supports to enable the full development of the child's ethnic identity.
12. Professional child protection workers must work more with external institutions, such as schools, (un)employment and public housing offices, to reduce the negatives impact of discrimination outside the home setting upon Romani and non-Romani children living in children's homes.
13. The Hungarian government should ensure that no family is made homeless as a result of forced eviction through an increase in its stock of social, temporary or emergency housing.
14. Child protection workers must provide parents whose children were removed from their care all relevant information regarding their legal rights and the avenues available for appeal.

8.3 Regarding Adoption

1. The Hungarian government should ensure that the principle of equal treatment, on grounds specified in the Act on Equal Treatment and Promotion of Equal Opportunities, is central in the process of adoption.
2. The Hungarian government should require adoption centres to actively recruit more Romani adoptive and foster parents in Hungary, through various incentives and supports made available to adoptive families.
3. The Hungarian government should improve and increase pre-adoption training requirements for potential adopters, and include a significant focus on non-discrimination and diversity training, the child-centred approach to adoption, and interaction between previous adoptive families with potential adopters during the sessions, particularly those families who have adopted marginalised children, in order to promote the adoption of children from disadvantaged backgrounds such as Romani children or disabled children. This includes reviewing and evaluating the materials used in pre-adoption trainings and increased training for the professionals conducting these sessions.

4. Following the provision of adequate training to potential adopters, the Hungarian government should empower adoption workers to provide information to potential adopters on the ethnic background, (dis)ability and health conditions, etc. of a child suitable for adoption in order to ensure that any placement is made in line with the principle of the best interests of the child.
5. All children should be provided with similar information about the prospective adoptive parents, as well as the reason they want to adopt, in order to enable them to make informed and appropriate decisions.
6. According to their age, children should be provided information about the adoption process, their own past and birth family and about the kinds of support they will have available to them if they enter an adoptive family.
7. Adoptive families should be provided with substantial post-adoption support and assistance – psychological, financial and other – in order to cope with the strains inherent with adoptive family situations, where required and appropriate.
8. The Hungarian government should monitor adoptive families on a mandatory basis in order to assess support needs.
9. The length of adoption processes for Romani children and the number of families met by Romani children prior to adoption should be equalised with the experiences of non-Romani children and minimised to reduce trauma experienced by children due to possible repeated rejections.
10. The Hungarian government should introduce a system of “family tale-books” for children in professional care to help the full development of institutionalised children by assisting them in learning about their origins. The development of the family tale-book should begin at the point at which each child enters the professional care system and should contain stories, photos and other documents that the child would normally acquire from his or her family.
11. All adoption and foster care centres should establish placement teams responsible for recruitment and coordination in order to prevent Romani children remaining in state institutions indefinitely in order to overcome the current discrepancies between the rates of adoption of Romani and non-Romani children.

8.4 Regarding Disproportionate Categorisation of Romani Children in State Care as Mentally Disabled

1. The Hungarian government should develop and adopt clear and strict guidelines and procedures to accurately identify disability versus under-development, in order to avoid the mis-categorisation of children living in professional care as mentally disabled.
2. Continue to make steps to eliminate the mis-categorisation of Romani children as mentally disabled or having a special learning need.
3. Conduct an in-depth examination of the reasons for the unacceptably high proportion of children categorised as mentally disabled in state care and elaborate actions to counter this phenomenon.
4. Provide performance requirements to guardians with regard to responsibilities for representing the interests of children, including in the area of education, to avoid their mis-categorisation as mentally disabled or having a special learning need, safeguarding the legality of the examinations and their supervision.
5. Provide continuous professional training to child protection professionals and foster parents to enable them to effectively represent the educational interests of children in state care.
6. Give priority to children living in state care in the provision of special educational support for multiply disadvantaged children.

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10. ANNEXES

10.1 Map of the regional division of Hungary



10.2 Breakdown of focus groups composition

<i>Regions</i>	<i>Northern Great Plain</i>	<i>Western Transdanubia</i>	<i>Central Hungary</i>	<i>Central Transdanubia</i>	<i>Northern Hungary</i>	<i>Southern Transdanubia</i>	<i>Southern Great Plain</i>
Profession/Office							
Regional Professional Child Protection Service	4	2	6	3	6	2	4
Social Policy and Labour Institute			1				
Police			1			1	
Guardianship Agency		1	2				
Child Welfare Agency and Family Help Centre	4	1	1			2	1
Child's Rights Representative	1	1	1			1	1
Office of Justice (Social Worker or Supervisor)		1	1			1	
Child Care Home	2		2	1		1	3
District Nurse	1	1					1
Specialised Educator	1	1		1	1		
Foster Parent Network					1		
Kindergarten Educator						1	
Total	13	8	15	5	8	9	10

10.3 List of the institutions and professionals visited during field research

Institutions and Offices Visited by the ERRC During Field Research		
Basic Care	Professional Care	
Place	Place	Service
<i>Borsod-Abaúj-Zemplén County</i>		
Ózd Child Welfare Centre and Regional Child Welfare Institute	Miskolc	Receiving centre and children's home
Alsószolca Regional Child Welfare Care Centre	Tornadaská	Children's homes
Sajószentpéter Regional Social Centre Family Help and Child Welfare Service	Nagybarca	Receiving centre and children's homes
Harangod Regional (Megyaszo) Child Welfare and Family Help Service	Alsószolca	Children's homes
	Sajóoros	Children's homes
<i>Budapest/Pest County</i>		
Budapest 7th District Child Welfare Centre	Budapest	Receiving centre and children's homes (Districts 15, 20, 21)
Budapest 8th District Child Welfare and Family Help Centre	Pilis	Children's homes
Budapest 15th District Child and Youth Welfare Centre	Vác	Children's home
Budapest 21st District Child Welfare and Family Help Centre		
<i>Baranya County</i>		
Sellye Child Welfare and Family Help Centre	Pécs	Receiving centre and children's home
Beremend Child Welfare and Family Help Centre (Siklosnagyszőlő)	Majs	Children's home
Pécs Family Help and Child Welfare Service	Sellye	Children's home
	Szigetvár	Children's home

NOTES



The European Roma Rights Centre (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves, in particular, strategic litigation, international advocacy, research and policy development, and training of Romani activists. The ERRC has consultative status with the Council of Europe, as well as the Economic and Social Council of the United Nations. In 2007, the ERRC received the Max van der Stoep award for its long-term commitment to combating discrimination against Roma.

Romani children are overwhelmingly over-represented in the Hungarian child protection system. Amongst the sample of children in professional care institutions interviewed by the ERRC, 40% were of Romani origin and 18% were half-Romani; 58% in total. According to reasonable estimates, Romani children account for only 13% of the child population in Hungary. This can largely be noted to be the result of the impacts of historical and current racism and discrimination against Roma and the resulting vulnerable socio-economic position of a large percentage of Roma in Hungary. However, there are also widely voiced concerns about the manner in which the Hungarian child protection system functions. For example, it has been noted by experts in the field that deficiencies in the Hungarian child protection legal system enable child protection workers and public officials to work in a manner not fully respectful of fundamental rights of Romani and other excluded children; through, for example, the broad definition of endangerment and its application which results in children being removed from their families for material reasons, though this is banned by law.

This report examines the findings and implications of research on Romani children in the Hungarian child protection system, explores the applicability of good practices from other countries and provides a series of recommendations for future actions by the Hungarian Government.



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