

WRITTEN SUBMISSION

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING HUNGARY

For Consideration by the Committee on the Rights of the Child at 83 Session
(20 January - 7 February 2020)

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

The European Roma Rights Centre (hereinafter also referred to as the “ERRC”) hereby submits this ‘additional submission between the PSWG and the session’ concerning Hungary to the United Nations Committee on the Rights of the Child (hereinafter also referred to as “Committee”) for the consideration of the Committee on Consideration by the Committee on the Rights of the Child at 83 Session (20 Jan 2020 - 07 Feb 2020). The submission focuses on the situation of Romani children in Hungary, in particular on their overrepresentation in state care, segregation in education, and their vulnerability to trafficking.¹

GENERAL MEASURES OF IMPLEMENTATION (ARTS. 4, 42 AND 44 (6) OF THE CONVENTION)

COMPREHENSIVE POLICY AND STRATEGY

An estimated 36.1% of children aged 0-17 years old are at risk of poverty and social exclusion² and 30% of at-risk children are separated from their families for financial reasons. As the coalition *Opening Doors for Europe’s Children* stated, support services in the community remain severely under-resourced and are often non-existent, especially in rural, remote and poor areas where needs are the highest. Local authorities tend to refer clients to institutional care – under the financial authority of national Government – rather than invest in community-based services. In many instances, staff in the care homes are “underqualified, staff numbers fluctuate, supervision of staff is needed and the burnout rate is high. Given the low standard of care, children often run away. The prevalence of violence and substance abuse are also widespread.”³

It is clear from the data produced by the Fundamental Rights Agency that disproportionate numbers of Romani children are among the very poor. An overwhelming proportion of Roma – on average, 80 % in the nine Member States surveyed in 2016 – still live at risk of poverty. Moreover, an average of 27 % of Roma live in households where at least one person had to go to bed hungry at least once in the previous month; in some Member States, this proportion is even higher. A third of the Roma surveyed continue to live in housing that has no tap water inside the house; 38 % do not have a toilet, shower or bathroom inside their home – in stark contrast to the general population average recorded by Eurostat.

For Hungary, the rates of household members at risk of poverty were 15% for non-Roma and 75% for Roma. A disturbingly high share of the Roma population still lacks tap water in their dwellings. Although some progress was registered since 2011, the gap between Roma and the general population remained: Non-Roma 0%; Roma 33%. As for the highly-correlated rate of people living without toilet, shower, or bathroom inside the dwelling, the figures were 3% for the general population; and 38% for Roma. Other indicative data concerning the situation of young Roma in Hungary, included the prevalence of verbal harassment of Romani children while in school in the past 12 months which was 24%; the rates for young persons being neither in employment nor in education or training (NEET) were 11% for the general population and 51% for Roma. When FRA put these figures in a global context, the NEET rate for young Roma in Hungary is higher than Palestine (31.6 %); Bangladesh (28.9%); and Yemen (44.8%).⁴

1 The ERRC is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavored to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. More information is available at: www.errc.org.

2 Presentation of Dr. Zsuzsanna Györffy at the Child Rights Conference of the Ombudsman’s Office, 16 November, 2017, Budapest. Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/People_at_risk_of_poverty_or_social_exclusion.

3 Opening Doors for Europe’s Children, Hungary 2018 Factsheet. Available at: <https://www.openingdoors.eu/wp-content/uploads/2019/03/country-fiche-Hungary-2018.pdf>.

4 Fundamental Rights Agency, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, 2018. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-anti-gypsyism-barrier-roma-inclusion_en.pdf.

The most vulnerable children are those who live in families with parents of low level education, unemployment, single parent families and families with more children.⁵ The poverty risk of Romani children is extremely high, as poverty risk factors (such as severe unemployment, low education, large families, and place of residence) are seriously concentrated in the Romani population in Hungary. Other studies confirm that Romani children are disproportionately affected by extreme poverty, and are at high risk of intergenerational transmission of poverty, which is strongly related to their weak opportunities in the educational system.⁶

No data disaggregated by ethnicity is collected in Hungary which hinders the effective protection of rights of Romani children and the development of targeted policy measures. Data disaggregated by ethnicity, gender and other identities to disclose multiple and/or intersectional discrimination is missing preventing protection children with multiple and/or intersecting identities against discrimination. Limited efforts have been undertaken to collect data disaggregated by ethnicity in the field of education due to obligations to comply with the implementation of the European Court of Human Rights' *Horváth and Kiss v. Hungary* judgment.⁷ The Hungarian National Public Education Act was amended to enable the registration of data on ethnic origin subject to parental consent in the Integrated Follow-up System that holds data on children with special education needs. However, the system does not in practice collect ethnic data.⁸ A proxy used for Roma in education policy, the multiply disadvantaged status (*balmozottan hátrányos helyzetű*) was significantly modified in 2013.

In 2013, the definition of multiply disadvantaged children in the Child Protection Act was modified, and were added further conditions to the eligibility criteria (unemployed status of the parents, or inappropriate living conditions e.g. in segregated settlement) While NGOs and experts on the field have warned the Government that “it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the category of disadvantaged; the scope of services available will therefore be narrowed”, their concerns were disregarded. Ever since the amendment, the number of children in Hungary qualifying for the multiply disadvantaged status has significantly dropped, while integration policies are still targeting them. As a consequence, the amendment created an obstacle for efficient and accountable implementation of the integrated education programmes and hindered assessment of continuously increasing segregation in the Hungarian public education system.

Although the government strategy (NSIS II) in 2014 again acknowledged the need for the employment of full-time professionals in schools to provide social work and socio-pedagogical services to prevent drop-out and the risk of victimization of vulnerable children, these professional capacities have not been created in schools.

GENERAL PRINCIPLES (ARTS 2,3, 6 AND 12 OF THE CONVENTION)

DISCRIMINATION OF ROMANI CHILDREN

In its Concluding observations on the combined third, fourth and fifth periodic reports of Hungary (2014) para. 19., the Committee on the Rights of the Child expressed its concern “about the still-prevalent discriminatory attitude of the public against *children in marginalized and disadvantaged situations* — such as [...] children belonging to ethnic or religious minorities [...] — which has been exacerbated by the economic crisis and poverty.” Romani children continue to be discriminated in all spheres of life: they continue to be living in social and economic exclusion, in segregated and inadequate housing, they attend segregated schools, are often victims of misdiagnosis and channelled into special education, and are overrepresented amongst children in state care due to widespread discrimination and stereotypes against Roma. Romani girls are often face multiple and / or intersectional forms of discrimination, in particular in the field of education and sexual and reproductive healthcare. Romani girls are also overrepresented among victims of human trafficking.

5 Children of Austerity, UNICEF, at: https://www.unicef-irc.org/publications/pdf/Children_of_austerity.pdf, page 118.

6 *Ibid.*

7 Horváth and Kiss v Hungary, 2013, at: <http://hudoc.echr.coe.int/eng?i=001-116124>.

8 Data collection in the field of ethnicity, European Commission, 2017, page 27. At: http://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45791, page 27.

While the Hungarian government is aware of all of the above, there are no targeted policy measures taken against the discrimination of Romani children. The mainstream measures that aim to promote social inclusion lack any targeted focus on Roma and mainly consist of positive (affirmative) measures that fail to challenge the systematic nature of social exclusion and discrimination.

For those mainstream measures introduced under the auspices of the National Social Inclusion Strategy, the lack of impact assessment and monitoring makes it impossible to track and to measure their impact on Roma.

FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTS. 5, 9–11, 18 (1 AND 2), 20, 21, 25 AND 27 (4) OF THE CONVENTION)

SEPARATION FROM PARENTS - ROMANI CHILDREN IN STATE CARE

While for the last 30 years deinstitutionalisation has been part of the Hungarian child welfare and protection policy, children in Hungary are still entering too often to institutional care due to poverty and lack of community-based prevention and early intervention services. Kinship care is not supported properly, foster parents are not supervised and both foster carers and small group homes are frequently located in isolated communities. Staff are still following the old institutional culture, children are not heard and there is no adequate access to schools or services in accordance to children's diverse needs.⁹

The overrepresentation of Romani children in institutional care continues to be alarming and appears to be the result of indirect discrimination against Romani families, a lack of clear guidance in the child protection law and policy on family separation and various shortcomings in the operation of the child protection system, which disproportionately impact Romani families. Poverty-related material conditions remain one of the major reasons for the removal of Romani children from their home environment, despite an explicit ban on such actions in the Hungarian Child Protection Act. The perception that Romani families “deviate” from societal norms, compounded with negative stereotypes among some child welfare workers, also increases Romani children's chances of institutionalisation. The cumulative effects of poverty and marginalisation are often insurmountable barriers to the return of Romani children to their families once in state care.

Research conducted for the ERRC by The Chance for Children Public Benefit Association (*Gyerekesély Közhasznú Egyesület*) in Nógrád County, Hungary once again confirmed that Romani children are vastly overrepresented in the care system.¹⁰ The study also found that in most cases, taking children into care does not seem to have been justified. Interviews with key actors also revealed that prejudice plays a key role in making such decisions.

Key findings of the research include the following:

- Although they make up under 20% of Nógrád county's population, Romani children make up over 80% of those in care. The data gathered in the research showed a strong correlation between deep poverty, severe deprivation, and the entry of children into the care system.
- Even though, in line with the basic principles of Hungary's Child Protection Act, children cannot be removed from their family solely for material reasons, the poverty of the affected families was clearly a significant reason for most removals. In many cases, removal could have been prevented by providing comprehensive support and appropriate services to impoverished families.
- The characteristics of the affected families, in terms of ethnic origin and number of children, also indicate that deep poverty and severe material deprivation strongly correlate with the placement of children in State care. The children of Romani families are at an extremely high risk of poverty and are strongly overrepresented within the county's professional child protection service. Two thirds of the families have at least one of the examined “social problems” and one fifth of the families are “severely deprived”.

⁹ Opening Doors for Europe's Children, Hungary Factsheet, available at: <http://www.openingdoors.eu/wp-content/uploads/2016/12/hungary-1.12.pdf>.

¹⁰ European Roma Rights Centre, *Life Sentence: Romani Children in State Care in Hungary*, 2011, <http://www.errc.org/reports-and-advocacy-submissions/life-sentence-romani-children-in-state-care-in-hungary/3953>.

- The main justifications given for removing Romani children from their families were neglect, endangerment, and “parental unsuitability”. The vast majority of children in care – most of whom maintain strong contact with their parents – never return home. Thus, the main issue is not bad relationships between parents and children, but rather environmental circumstances (insufficient income, lack of employment, unsuitable housing conditions, and lack of services) that cannot be mitigated by the families’ efforts alone.
- The system is officially colour-blind, and professionals do not believe there is any need for official recognition of the child’s ethnic identity. Yet in interviews, they frequently attributed the removal of children to reasons they see as connected with the children’s “Romani origin”, such as lack of understanding, distrust, non-cooperative behaviour of parents. It is clear that ethnicity plays a massive role, with significant consequences for many of the county’s Romani families.

VIOLENCE AGAINST CHILDREN (ARTS. 19, 24 (3), 28 (2), 34, 37 (A) AND 39 OF THE CONVENTION)

TRAFFICKING OF ROMANI CHILDREN

As in other countries, data on trafficking in human beings is marred by several deficiencies, challenging significantly any discussion based on quantitative empirical knowledge. The report *Child Trafficking among Vulnerable Roma Communities*, identified the most significant shortcoming of official data on child trafficking is that it reflects only cases of registered victims, as typically provided through the registry of victims identified in criminal proceedings. The report described such data as not only uninformative, but also misleading in terms of reflecting the actual size of the phenomenon: “Where it is available, the difference between identified and presumed victims is alarming of the numbers of children who may have not accessed assistance.”¹¹ As the ERRC stated in its 2011 report:

“The failure to collect data disaggregated by ethnicity in the field of anti-trafficking constitutes a major barrier to tracing this human rights violation and consequently to developing appropriate policies on prevention and victim assistance.”¹²

While data on trafficking in human beings are not disaggregated by ethnicity, Roma are overrepresented amongst victims of trafficking in Hungary. A complex of inter-dependant socio-economic factors makes Roma especially vulnerable. Other factors such as history of physical and sexual abuse and previous involvement in prostitution, growing up in state institutions and dysfunctional family background also increase the chance of children falling prey to trafficking exploitation.

The *Child Trafficking* report found that a significant factor of vulnerability to sexual exploitation of boys detected in all countries of origin is growing up in state care. The lack of adequate care and attention toward children growing up in so called “institutions” or “orphanages” leads to development of high-risk behaviour at an early age:

“Physical and sexual abuse corrode any self-protection mechanisms that a child needs to develop in order to avoid exploitation. Children are thus lured into prostitution and many cases of abuse of children living in state care by paedophiles have been recorded.”

The report identified some key features concerning Hungary:

- The majority of child victims of trafficking, especially for purpose of sexual exploitation, come from institutions, because the high rates of runaways that put children at high risk of abuse, exploitation and trafficking.
- In Hungary, “hidden prostitution” of underage males is reported as increasing the risk of child trafficking. Young boys and girls are used for prostitution and they are taken directly to clients by their pimps, thus avoiding the visibility of street prostitution.

11 Center for the Study of Democracy, *Child Trafficking among Vulnerable Roma Communities: Results of Country Studies in Austria, Bulgaria, Greece, Italy, Hungary, Romania and Slovakia*, 2015. Available at: <https://www.menshandelweb.nl/system/files/documents/18%20apr%202016/Child%20trafficking%20among%20vulnerable%20Roma.pdf>.

12 ERRC, *Breaking the silence: Trafficking in Romani communities*, 2011. At: <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf> p. 32.

- Substance abuse was found to be closely related to vulnerability to sexual exploitation. The Hungarian research team found evidence of widespread drug use in all kinds of exploitation and child trafficking, as a cause, or as a consequence: “children fall victim for they are drug users and need their daily dose, or they are forced to take drugs while being exploited and trafficked.”
- In addition, research in Slovakia and Hungary revealed that boys offering sexual services often suffer from various mental health disorders which are caused by a combination of factors such as unexplained and mainly undiagnosed mental health conditions, poor parenting, child abuse, sexual exploitation and other factors including abject poverty and gross material deprivation.

EDUCATION, LEISURE AND CULTURAL ACTIVITIES (ARTS. 28 AND 29 OF THE CONVENTION)

SCHOOL SEGREGATION OF ROMANI PUPILS

School segregation of Romani children shows no signs of abating, and approximately 45% of Roma children attend schools or classes in Hungary where all or the majority of their classmates are also Roma. In 2014, 381 primary and secondary schools have been officially reported to have 50% or more Roma among their students.¹³ According to the Roma inclusion index of 2015, “While literacy is not a problem and preschool inclusion has been significantly improved, the situation of Roma in education in all areas is worsening. Gaps are increasing and percentages of Roma not completing different levels of education are very high. At the same time school segregation is increasing and the only available data for special education indicate overrepresentation of Roma.”¹⁴

No specific measure had been adopted to decrease segregation of Romani children based on these strategies; combating racial segregation is neither a priority nor a long-term goal for the Hungarian government. Mainstream education policies adopted since 2010 however have significantly worsened the opportunities of Roma children in education and increased the gap between Roma and non-Roma children (see in particular the decrease of the compulsory school age) Rather the central authority responsible for schools since 2013 expressed its position towards integration in a lawsuit on segregation of Romani children, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools.

While there is no comprehensive analysis available on how private schools (including church schools) can contribute to or trigger segregated education, experience gathered from studies conducted in a particular region and of NGOs indicate that the level of segregation has gained momentum, particularly due to the rising numbers of church schools. On places where “*white flight*” was perceived earlier, that is middle-class families take their children to schools with lower number of “problematic”/Roma students, a newly-founded church school becomes the place where these families aim to enrol their children.

According to the law, church schools are exempt from compulsory enrolling students who reside within the district of the local kindergarten/school. As a result, they can pick and choose students, *e.g.* based on “commitment to a church or denomination”, whereas state run schools cannot. Since church schools receive three times more funding from the state than state schools and these schools enjoy greater flexibility in designing own curriculum and education program, they are very attractive to middle class parents. This also contributes greatly to the extreme selectivity of the Hungarian public education, that is schools (and kindergartens with better reputation) drain students of families with higher status.

Taking advantage of the legal status that exempted them from the law, the church-maintained school segregation of Roma students in several cases, and these cases ended in lengthy lawsuits. However, a modification of the law came into force in July 2017, as by then enrolment to schools for the 2017-2018 school year was finished, so it can only have an impact as of 2018-19 school year; stating that “The organisation of education

13 Bernard Rorke, Segregation in Hungary: the long road to infringement. *ERRC News*, 30 May 2016. Available at: <http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>.

14 Roma inclusion index, Decads of Roma Inclusion Secretariat Foundation, p. 15, , available at: <https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>.

based on religious or other ideological conviction according to the definition of Article (2) may not lead to unlawful segregation based on features set out in §8 points b)-e).”

The modification is a step forward in the fight against school segregation. However, it remains an open question how the church, having maintained schools that have been exempt from the law for so long and proven very adept in segregating Roma children, will meet the requirement of the modified law, whether they keep up segregation on the grounds of some other privilege, or they will show willingness to implement effective desegregation measures. The Civil Monitor concluded:

“While individual education programmes towards eliminating disadvantages – like tanoda projects, e-learning and tutoring activities, afternoon clubs, other extracurricular education programmes – are very important and well-regarded, they are not able to mitigate the social damages caused by the selection mechanisms of the education system. Segregation practices/mechanisms in the education system will exist until the central government’s education system implements complex and targeted policies to eliminate segregation in the whole education system (irrespective of the school maintaining organisations: state, church or foundation).”¹⁵

Despite the ruling of the European Court of Human Rights in *Horváth and Kiss v. Hungary* in 2013, Romani children continue to be channelled to special schools in Hungary. The Hungarian government has failed to date to implement the Court’s judgment.¹⁶ The extent of local litigation challenging segregation practices, the constant appeals against court judgments and the foot-dragging by the authorities clearly demonstrate the depths of resistance from the government to meet its ‘positive obligation to undo a history of segregation’ as stipulated in the *Horváth and Kiss* judgment.¹⁷

In a recent case, Romani families in the town of Gyöngyöspata whose children were forced to learn in segregated settings between 2004 and 2014 won a decisive victory that puts a price tag on segregation. On 18 September, 2019, the Debrecen Court of Appeal upheld the first instance judgement of Eger Regional Court and concluded that the Hungarian state is required to pay compensation to Roma children who have been segregated from their peers for years in school. Romani children were not allowed to visit the first floor of their school, and instead were forced to stay on the ground floor where facilities such as toilets were worse or absent.¹⁸

The widening inequality and persistence of segregation in education is summed up in this assessment from the latest 2019 Roma Civil Monitor:

The Hungarian educational system today is not only not able to compensate for the disadvantages arising from a child’s social background, but it is actually reinforcing them through the selection and segregation mechanisms present at all levels of public education. The latest research results on ethnic segregation show that the level of segregation in schools is primarily determined by student mobility and the proportion of Roma students. It is an important correlation to note that with a given proportion of Roma residents and a given education policy environment the greater mobility of higher status students coincides with even higher rates of segregation in school.

15 Centre for Policy Studies, CEU, *Civil society monitoring report on implementation of the national Roma integration strategy in Hungary*, European Commission, 2018. At: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-hungary-2017-eprint-fin.pdf>.

16 See: *Horváth and Kiss v Hungary*, Execution of Judgments, Last exam of the Committee of Ministers, December 2017, at: [http://hudoc.exec.coe.int/eng #{}%22EXEIdentifier%22:\[%22004-10905%22\]}](http://hudoc.exec.coe.int/eng #{}%22EXEIdentifier%22:[%22004-10905%22]}).

17 See for example from the Roma Civil Monitor p. 73: “On 14 February 2019, a second instance judgement was passed in Hungary in a segregation court case that lasted for more than ten years. The court case was opened by the Chance For Children Foundation (CFCF) against the education authority on the grounds of violating the criteria of equal treatment. The case concerned 28 segregated schools. In its ruling of first instance in April 2018, the Metropolitan Court of Budapest ordered the Ministry of Human Capacities (EMMI) to instruct the managing authority not to launch a first grade in the following school-year, and to set out the school admission district borders with respect to the prohibition of admission to first grade; and furthermore also ordered the Ministry to draw up an anti-segregation plan within three months with the involvement of experts. The ruling stated that EMMI is to pay a public interest fine of 158.000 EUR (50 million HUF), which is to be used to finance the monitoring by civil society organisations of the implementation of desegregation programmes for a period of five years.³⁴⁸ The Ministry of Human Capacities appealed the ruling. As per the ruling of second instance on 14 February 2019, the court again ruled in favour of the CFCF and stated that the Ministry is to be held responsible for the segregated education of Roma children. At the same time, it gives cause for concern that the second instance decision did not address the prohibition of launching a first grade in the schools concerned, just as it also failed to address the requirement of re-defining the district boundaries.”

18 Vivien Brassói, *School Segregation Comes at a Price: Hungarian Appeal Court Confirms Authorities Must Pay Compensation* *ERRC News*, 23 September 2019. At: <http://www.errc.org/news/school-segregation-comes-at-a-price-hungarian-appeal-court-confirms-authorities-must-pay-compensation>.

Having had no assigned compulsory school districts, church-maintained primary schools have previously contributed to heightening segregation in education. The role of church-maintained schools in heightening segregation has increased significantly (thanks to the increase in the ratio of church-maintained schools – the ratio of church-maintained schools increased by 68 per cent between 2010 and 2014 – as well as to the government's measures that favour church-maintained institutions)

In 2016, the proportion of Roma students in every 7th primary school site was above 50 per cent, while in another 9.7 per cent of schools the proportion of Roma students was 30-50 per cent. The latest research results show that the gap between Roma and non-Roma society is growing dramatically as a result of segregated education.¹⁹

19 Centre for Policy Studies, CEU, Civil society monitoring report on implementation of the national Roma integration strategy in Hungary: Assessing the progress in four key policy areas of the strategy, European Commission 2019. At: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-2-hungary-2018-eprint-fin-2.pdf>.