

LIST OF ISSUES

BY THE EUROPEAN ROMA RIGHTS CENTRE AND ROSA PARKS FOUNDATION,
CONCERNING HUNGARY

For Consideration by the Committee on the Rights of the Child at the pre-
sessional Working Group of the 80th session (4 June 2018 - 8 June 2018)



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

The European Roma Rights Centre (hereinafter also referred to as the “ERRC”)¹ and the Rosa Parks Foundation (hereinafter referred to as the RPF)² hereby submit this list of issues 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 the pre-session of the Working Group prior to reporting. 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.

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

COMPREHENSIVE POLICY AND STRATEGY

According to UNICEF research child poverty in Hungary and the risk of being in poverty has been increasing and has worsened since the financial crises. The ratio of children living in poverty has increased by 5.8 % between 2007 and 2014. By 2014 it was 4 % higher than the European average.³ 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.⁴ 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. Estimates show that 35% of Romani children were living below the poverty line in 2005, which increased to about 80% by 2012. 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 system⁵ It has been highlighted in several NGO reports that counterproductive mainstream social policies contributed to the increase of child poverty since 2010. Significant cuts in the social allowances and the termination of important welfare provisions (e.g. support for kindergarten attendance for multiple disadvantaged children, debt management and housing maintenance subsidy) resulted in the highest reduction of welfare expenditures in the region⁶, which have contributed to further increase of child poverty since 2010. The Government has made no systemic efforts to make child protection services accessible for children in vulnerable situations. The capacities of the child protection system have not been increased, although the National Social Inclusion Strategy (NSIS II) acknowledged in 2011 and confirmed again in 2014, that child welfare and child protection services are not accessible in the most deprived small localities and that interventions are needed in several settlements to create these service.⁷ 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.

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

1 The ERRC is a Roma-led an 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 The RPF is a small grassroots NGO based in Budapest, which aims to promote equal rights to education for vulnerable children in Hungary and it particularly targets segregation of Roma children in schools. More information is available in Hungarian at: www.rosaparks.hu

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

4 *Ibid.*

5 *Ibid.* Page 134.

6 Public social spending in per cent of GDP increased in all OECD countries with the exception of Hungary from 2007-08 to 2012-13 and cut of social spending after the economic crisis was the highest in the region. See: http://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2014_soc_glance-2014-en.

7 NSIS II (2014) p. 78. http://www.kormany.hu/download/1/9c/20000/Magyar%20NTFS%20II%20_2%20mell%20_NTFS%20II.pdf.

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*⁸ judgment. 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.⁹ A proxy used for Roma in education policy, the multiply disadvantaged status (*halmozottan hátrányos helyzet*) has been 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 have 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.

Questions for the Government:

- What measures have been taken and are planned to be taken in order to reduce child poverty, in particular with regard to the (extreme) poverty of Romani children?
- What measures have been taken and are planned to be taken in order to strengthen families living in poverty, in particular Romani families to provide equal access to education, the employment market, adequate housing, health and other services?
- What measures have been taken to collect data disaggregated by ethnicity, gender, etc. in order to map and provide protection to vulnerable children and children with multiple and/or intersecting identities?

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 channeled 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.

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.

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

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

Questions for the Government:

- What targeted measures have been implemented to strengthen the situation of Romani children and to combat structural racial discrimination against Roma?
- How has the impact of these measure been assessed? What was the result of the impact assessment, and what additional measure were taken as a consequence of the impact assessment?
- What measures have been implemented to combat multiple and/or intersectional forms of discrimination affecting Romani girls?

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.¹⁰ 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.¹¹

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.¹² 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.

The most recent research conducted for the ERRC by The Chance for Children Public Benefit Association (*Gyerekesély Közhatalmi Egyesület*) in Nógrád County, Hungary once again confirmed that Romani children are vastly overrepresented in the care system.¹³ 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.

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

11 *Ibid.*

12 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>.

13 The English language summary of that research is available here: <http://www.errc.org/cms/upload/file/romani-children-in-state-care-in-nograd-county-hungary.pdf>.

- 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".
- 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 colourblind, 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.

The findings of the above research was basically confirmed by the Ombudsman (Commissioner of Fundamental Rights) in a very recent report that concluded the findings of a nationwide examination of the practice of the child protection services.¹⁴

Questions for the government:

- What measures has the Government taken to or what steps does the Government intend to take to provide community based prevention and early intervention services to avoid institutionalisation of children?
- What measures has the government taken or what steps does the government intend to take to address the dysfunction in the child care system that results in such a hugely disproportionate number of children of Romani origin ending up in state care?
- How does the government intend to address the prejudicial attitudes of childcare professionals towards Roma that results in direct and indirect discrimination, and decisions to take children away from their biological families?
- Hungary's Child Protection Act stipulates that children cannot be removed from their family solely for material reasons. It is clear from the research and the report of the Ombudsman that poverty (which disproportionately affects Roma) clearly plays a decisive role in a large number of decisions. What steps will the Hungarian government take to ensure the responsible authorities provide social supports and assistance to keep families together?

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

TRAFFICKING OF ROMANI CHILDREN

While data on trafficking in human beings are not disaggregated by ethnicity, Roma are overrepresented amongst victims of trafficking in Hungary. Deep and dimensional poverty, discrimination and segregation are the main factors that render Roma to become vulnerable to trafficking.¹⁵ According to experts, the majority of children victims of trafficking, especially for the purpose of sexual exploitation come from state care institutions because the high rates of runaways that put children at high risk of abuse, exploitation and trafficking.¹⁶ In Hungary, various ERRC

14 The report No. AJB-2026/2017 of 12 December 2017 is available in Hungarian at: https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+anyagi+okb%C3%B3l+gyermekv%C3%A9delmi+szakell%C3%A1t%C3%A1sba+ker%C3%BCl%C3%A9s+vizsg%C3%A1lat%C3%A1r%C3%B3l+2026_2017/5de6d64a-83bb-ac08-3d5f-69fb69ea106b?version=1.0&inheritRedirect=true.

15 Child trafficking among vulnerable Roma communities, Center for the Study of Democracy, 2015, at http://childtrafficking.eu/wp-content/uploads/2014/04/CONFRONT_NEW_WEB.pdf, page 15.

16 *Ibid.*, page 18.

research found Romani children to be overrepresented among children living in State care (see above paras. 4-6.), which in turn increases their likelihood of falling victim to trafficking. Romani girls living in state care are especially vulnerable to abuse, sexual exploitation and trafficking.¹⁷ In terms of protection and assistance, there is no specialized assistance for child victims of trafficking in Hungary.¹⁸

Questions for the government:

- What steps has the government taken, or does the government intend to take to combat trafficking of children, in particular to Romani children?
- What steps has the government taken, or does the government intend to take to combat trafficking for sexual exploitation of Romani children in state care?
- What steps has the government taken, or does the government intend to take to provide protection and assistance to children victims of trafficking?

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.¹⁹ 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.”²⁰ 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 enroll their children. According to the law,²¹ 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

17 Breaking the Silence: Trafficking in Romani Communities, European Roma Rights Centre, 2011, at: <http://www.errc.org/article/breaking-the-silence-trafficking-in-romani-communities/3846>, page 52.

18 *Ibid.*, 41.

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

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

21 Public Education Act, 31.§ (2) b.

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.

Despite the ruling of the European Court of Human Rights in *Horváth and Kiss v. Hungary* in 2013, Romani children are continued to be channeled to special schools in Hungary. The Hungarian government has failed to date to implement the Court's judgment.²²

Romani girls are in particularly vulnerable position in accessing equal and quality education in Hungary. According to report released by the European Parliament, the rates of Romani children attending schools are, 'throughout the country, considerably lower than those of other children, particularly where girls are concerned'. The high dropout rates of Romani girls are related to school segregation, early marriage and early childbearing, requiring integrated policies as stressed by various NGOs.²³

On 26 May 2016, the European Commission launched an infringement procedure against Hungary over the segregation of Roma children in schools. The Commission sent a warning letter to Hungary calling on the government to bring Hungarian legislation on equal treatment and education in line with EU directives on racial equality. The commission has expressed concern over Hungarian legislation and administrative practices on several counts, as it found that Roma children are placed in segregated special needs classes in disproportionately high numbers in Hungary, as well segregation of Roma children in separate classes and schools within the mainstream education system has further increased and the state has failed to provide effective remedies for Roma children having been segregated. The statement said that the aim of the procedure was to ensure that Roma children can take part in high-quality education under the same conditions as other children, as this determines their participation in work opportunities which is necessary for the full social integration of the Roma population.

Questions for the government:

- What steps has the government taken, or does the government intend to take to comply with its obligation under international, European and national law to ensure that Romani children can take part in high-quality education under the same conditions as other children?
- What steps has the Government taken to prevent white-flight to private and church schools and to ensure private and church schools equally take part in the education of Roma and socially disadvantaged children?
- What steps has the government taken, or does the government intend to take to provide statistics and information disaggregated by ethnicity on the conduct and outcomes of the testing methods and standards of the examination process used for assessing pupils intellectual abilities?
- What steps has the government taken, or does the government intend to take to provide inclusive education for all children?
- What steps has the government taken, or does the government intend to take to prevent the intersectional discrimination of Romani girls and to ensure their access to education?
- What steps has the government taken, or does the government intend to take to address the lack of disaggregated ethnic and gender data which precludes any possibility of assessing whether the measures taken have had an impact and are capable of preventing similar violations?

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

23 European Parliament: *Empowerment of Romani Women within the European Framework of National Roma Inclusion Strategies, Country Report on Hungary*, 2013, p. 26.