

## Child-Protection Systems – Hungarian Perspective

Nóra JAKAB – Márta BENYUSZ

### ABSTRACT

Child protection is aimed at promoting the upbringing of children in the family, preventing and eliminating their vulnerabilities and providing substitute protection for children leaving parental or other care. In Hungary, the framework for child protection is laid down by Act LXIV of 1991 on the proclamation of the Convention of 20 November 1989, the Fundamental Law of Hungary, Act V of 2013 on the Civil Code, Act III of 1993 on social administration and social benefits, Act XXXI of 1997 on the protection of children and the administration of guardianship (Gyvt.) and other regulations. According to the Central Statistical Office, a significant number of children benefit from the child protection care system. The legal significance of the Gyvt. is being the first complete and independent legal regulation of child protection in Hungary. Moreover, its significance for child protection is that it adds new institutions and transforms and systematises the child protection system. When drafting the legislation, the legislator considered that a child protection system based on special intervention by the authorities should always be preceded by a child welfare system based on voluntary benefits.

### KEYWORDS

principle, child protection benefit, child protection guardian, statistical data

### 1. Introduction

The national child protection system in Hungary is based on the following legislation: Act LXIV of 1991 on the proclamation of the Convention of 20 November 1989, the Fundamental Law of Hungary, Act V of 2013 on the Civil Code, Act III of 1993 on social

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administration and social benefits, Act XXXI of 1997 on the protection of children and the administration of guardianship (Gyvt.) and other regulations.<sup>1</sup>

Through Art. L) Subsection (1) of the Fundamental Law, Hungary protects the institution of marriage as the community of life between a man and a woman, based on voluntary consent, and the family as the basis for the survival of the nation. A family relationship is based on marriage and the parent–child relationship. Subsection (2) states that Hungary supports the adoption of children, while in Subsection (3), the protection of families is regulated by a cardinal law.

Art. XV Subsection (5) states that Hungary shall take special measures to protect families, children, women, the elderly and the disabled.

Art. XVI explicitly addresses the rights of the child, namely,

‘(1) Every child has the right to the protection and care necessary for his or her proper physical, mental and moral development.

(2) Parents have the right to choose the education to be given to their child.

(3) Parents have the duty to care for their minor child.

(4) Children of full age have the duty to care for their parents in need.’

1 The legislation on child protection also includes other pieces of legislation: Decree 49/2004 (V. 21.) of the EszCsM on the regional provision of care by a regional nurse midwife; Act LXXX of 2007 on the Right of Asylum; Act CXXV of 2009 on Hungarian Sign Language and the Use of Hungarian Sign Language; Act CLX of 2009 on the ratification and proclamation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; Act CLXI of 2009 on the Sale of Children, Child Prostitution, Act CXI of 2011 on the Commissioner for Fundamental Rights; Act CXLIII of 2011 on the promulgation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Act CXC of 2011 on National Public Education (Nkt.); Government Decree No 328/2011 (29.XII.) on the fees for basic child welfare services and specialised child protection services providing personal care and on the evidence that may be used to claim them; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011; Act II of 2012 on Administrative Offences, Administrative Offences Procedure and the Administrative Offences Registration System (Szabstv.); Act C of 2012 on the Criminal Code (Criminal Code); Act V of 2013 on the Civil Code (new Civil Code); Act XCII of 2015 on the proclamation of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and on the amendment of certain acts in connection therewith (Lanzarote Convention); Government Decree No. 41/2016 (9.III.) on the declaration of a crisis situation caused by mass immigration in the whole territory of Hungary and on the rules related to the declaration, existence and termination of the crisis situation; Act XX of 2017 amending certain laws related to the tightening of procedures in the border police area, Act XC of 2017 on Criminal Procedure (Be.); Government Decision No 1663/2017 (13.III.) on the strengthening of guardianship authorities and increasing the number of children’s representatives; IM Decree No 13/2018 (12.VI.) on the establishment, operation and control of the use of police premises for the performance of procedural acts requiring the participation of a person requiring special treatment; Government Decision 1125/2019 (13.III.) on measures necessary to increase the effectiveness of the fight against human trafficking; and 1295/2019 (27 May) Government Decision on the long-term concept for the years 2019–2036 on the replacement of places in social institutions providing care and assistance to persons with disabilities.

According to Art. XVIII,

‘(1) The employment of children shall be prohibited, except in cases not endangering their physical, mental or moral development and provided for by law.

(2) Hungary shall take special measures to ensure the protection of young persons and parents at the workplace.’

According to Art. XXX,

‘(1) Everyone shall contribute to the common necessities according to his/her capacity to meet those necessities and according to his/her share in the economy.

(2) The contribution to the common necessities shall be determined by taking into account the expenses of bringing up children in the case of those bringing up children.’

Data collected by the Central Statistical Office on minors at risk until 2015 and data from child welfare services from 2013 until 2022 show that this statement covers disadvantaged and identified severely disadvantaged children and adults aged 0–24 years. In 2022, 84,152 persons were identified as disadvantaged and 85,045 persons were identified as severely disadvantaged, the number decreasing from 2019 onwards. Moreover, minors registered without father numbered 7,578, decreasing since 2019, and minors under guardianship 34,076, increasing since 2013. There were also 56,790 minors under guardianship, the number having levelled off since 2013, and 4,606 minors in receipt of child support in advance, whose number has been decreasing since 2013, as well as 28,678 minors in shelters, increasing steadily since 2000, and 4,864 children in family benefit suspension, decreasing steadily since 2013.<sup>2</sup>

## 2. What Is the Core Aim of the National Child Protection System?

Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship (Gyvt.) (Act IX of 2002 and Act IV of 2003, as amended) defines child protection as follows: child protection is an activity aimed at promoting the upbringing of children in the family, preventing and eliminating their vulnerability and providing substitute protection for children leaving parental care or other care.<sup>3</sup> The following subdivision of child protection – according to its purpose – follows from the legal definition. General child protection means supporting the upbringing of children in the family and preventing them from becoming vulnerable. This preventive action is mainly

2 Central Statistical Office Data, nd. The analysis of child protection system data is complicated by cross-sectoral data collection problems. The databases of the public education and social sectors are difficult to compare, and the statistics on the effectiveness of formal child welfare measures are missing. For more details on this, see: Lux and Sebhelyi, 2019, p. 10.

3 Art. 14 of Gyvt.

carried out within a network of educational, health and social institutions (sometimes with the involvement of NGOs) and is based on complex cooperation between various sectors. Special child protection guarantees special protection for orphans, abandoned children and children at risk (who may be delinquent). The full care of children who have been abandoned or who take priority is provided by the so-called institutional child protection. Specialised territorial child protection services, children’s and residential care homes, professional foster parents, family and aftercare services and reformatories play key roles in this process.<sup>4</sup>

The purpose of the Act is to ensure that the state, local authorities and natural and legal persons responsible for the protection of children, by means of specific benefits and measures, namely: help protect children’s rights and interests; facilitate the fulfilment of parental responsibilities, or, if this is not possible, make up for the lack of parental care; ensure the prevention and elimination of children’s vulnerability; and help young adults (aged 18–24) leaving the child protection system integrate into society.

To this end, the law sets out: the fundamental rights and duties of children and the protection of their rights; the child protection system (benefits and public authority

4 Rózsás, 2004, pp. 140–141; Rózsás, 2008, p. 14. Historically, the first written record of child protection in Hungary is found in King Stephen’s Act I, which established the protection of widows and orphans. In the Middle Ages, church shelters provided adequate care for the elderly, the sick, and orphans. The first orphanages were founded in the 18th century. The first – and until 1997 the only – uniform child protection law was adopted in 1901. This law, drafted by Széll Kálmán (then Prime Minister), not only established children’s shelters but also created a form of foster care. The basic idea behind the law was family education based on the establishment of so-called colonies. Settlements were established in municipalities for children taken into state care. From shelters, children were placed with foster parents living in the settlements. Then, the families were visited by settlement supervisors who checked on treatment and conditions. After the Second World War, churches and social organisations focused their relief efforts on poor children orphaned during the war. In 1950, the system, which had been based mainly on foster care, was abolished and replaced by infant homes (usually in rural manor houses). The Family Law Act, which came into force in 1952, abolished the concept of the abandoned child and replaced it with the term “looked-after child”, replaced abandonment with vulnerability, and extended the period of care to 18 years. In 1957, the Fóti Children’s City, which became a symbol of “socialist child protection”, was established, where children could be raised with their siblings between the ages of 3 and 18 years without changing institutions. In 1963, the Institute for the Protection of Children and Youth was founded, and large foster homes – not for child protection purposes – were established. In the second half of the 20th century, there was no separate legislation on child protection. The basic provisions for child and youth protection were incorporated into law by the 1974 amendment to the Act of the First Act of the Protection of Children and Young Persons, which only provided a framework for the measures to be taken by the authorities, while detailed rules were laid down by a separate government decree. The provisions relating to state care were introduced in the 1986 amendment to the Act. From the late 1980s onwards, child protection in the broader sense was adopted as opposed to child protection by the authorities. Social organisations, foundations and churches, and other civic initiatives are now providing preventive action and family care and protection. Herczog, 1997, pp. 9 and 27; Nemes, 1996, pp. 69–71.

measures); the bodies responsible for child protection; and the organisation and tasks of the administration of guardianship.

The guardianship authority, as well as the child protection and guardianship procedure are governed by a government decree.

### **3. The Guiding Principles of the National Child Protection System (e.g. Realisation of Children’s Rights, Non-Discrimination, Best Interest of The Child, Cooperation, Separation of Services and Measures of Authority)**

The child protection system is based on the following named and unnamed principles, derived from the Child Protection Act.

*Serving the best interests of the child:* local authorities, guardianship authorities, courts, police, prosecutors’ offices, metropolitan and county government offices acting as probation services (hereinafter, “probation services”) and other organisations and persons acting in the best interests of the child shall act in the application of the law, considering the best interests of the child and ensuring his or her rights recognised by law.<sup>5</sup>

*The principle of family autonomy and the principle of remaining in the family:* the organisations and persons involved cooperate with the family and promote the child’s upbringing in the family, as defined by the law.<sup>6</sup>

*The principle of appropriateness:* the care to help the child to grow up in a family should be provided in a way that is adapted to the situation and needs of the child and his or her family. The safety, care, education and healthy personal development of a child who has been removed from his or her family for whatever reason should be ensured.<sup>7</sup>

*The principle of least coercion, voluntariness:* access to statutory benefits is usually voluntary. A parent or other legal representative of a child may be obliged to claim a benefit only in the cases specified by law.<sup>8</sup>

*Non-discrimination and non-abuse of benefits:* the requirement of equal treatment in the protection of children must be respected.<sup>9</sup>

*Guaranteeing the right to self-identity:* under the child protection system, the state protects children’s right to self-identity according to their sex at birth.

*The protection of the child’s personal and property interests* (and the performance of guardianship duties) is ensured by guardianship offices.

5 Art. 2 para. 1 of Gyvt. This principle is the most disputed and most difficult to interpret (and many even consider it unenforceable and unenforceable), yet the most important principle that permeates the law as a whole. Rózsás, 2004, pp. 141–142.

6 Art. 2 para. 2 of Gyvt.; Rózsás, 2004, pp. 141–142.

7 Art. 2 paras. 3–4 of Gyvt.; Rózsás, 2004, pp. 141–142.

8 Art. 3 para. 1 of Gyvt.; Rózsás, 2004, pp. 141–142.

9 Art. 3 para. 2 of Gyvt.; Rózsás, 2004, pp. 141–142.

The (unnamed) principles that can be derived from the law are:<sup>10</sup>

1. *Permanency planning*: the aim of child protection intervention is to address the fate of a child in care as early and permanently as possible. Three options can be considered as “permanent placement”: reintegration with the birth family, adoption and permanent foster care.<sup>11</sup>
2. *Preparing for reintegration into the family environment*: this principle includes the promotion of family relations and family care. It is primarily the duty of the institution or person providing substitute protection to the child to give effect to this principle.
3. *Special care adapted to needs*: in residential care, special care must be provided for children with disabilities, integration, behavioural or learning difficulties, or special needs according to their age.
4. *Priority of foster care*: children who are removed from their families should be placed in foster care in the first instance or in a children’s home or other residential institution if the first option is not possible.<sup>12</sup>
5. *A limited number of children in foster care and small children’s homes and a family environment*: a high number of children can cause excessive financial strain on some families, while a small number of children can reinforce the family environment.

#### **4. Who and in What Capacity Is Responsible for the Maintenance of the Child Protection System? (State, Municipality)**

In Hungary, the following bodies play important roles in the operation of the child protection system.

*Tasks of the municipal government*: the municipal government, in the capital city the district government and in the area directly administered by the capital municipality, the capital municipality is responsible for the establishment and operation of a local child protection system and the organisation of care for children living in its

10 Rózsás, 2004, p. 142.

11 Rózsás, 2008, p. 90.

12 An important change in the regulatory environment for child protection is that, from 1 January 2014, children under 12 years of age will be placed with a foster parent rather than in a children’s home. An exception to this rule is the co-housing of a child with a chronic illness or a disability, or a sibling, which can be considered discrimination. This legal requirement is not always implemented in practice. The time limits for placement were set according to age: children under three had to be placed in foster care by 31 December 2014, children between three and six by 31 December 2015 and children between six and 12 by 31 December 2016. A campaign was launched to recruit foster parents. Concerns about the appropriate care of children who come into the system have been raised because of immediate vulnerability. These children are placed in temporary care, with children under 12 in foster care, rather than in temporary residential care. However, foster carers do not receive adequate training or support for children placed in their temporary care. See on this point: Lux and Sebhelyi, 2019, p. 12.

area. The municipal government shall provide basic child welfare services, with the exception of services to improve children's chances and, if it is not obliged to provide such services, shall organise and mediate access to services available elsewhere.<sup>13</sup>

The body designated by Government decree to perform the *state's* maintenance functions shall provide care in the home, aftercare and specialised territorial child protection services as provided for in the Gyvt. An institution providing specialised territorial child protection services may be maintained only by the body designated by Government decree to perform the state's maintenance functions.<sup>14</sup>

*The Minister* is responsible for the sectoral management of child protection.<sup>15</sup>

*Any provider of child welfare and child protection services* may provide such services if the provider, institution or network (seats, premises) is registered in the register of providers by a final decision. The provision of certain child protection service activities may be entrusted by law to a public body exclusively.<sup>16</sup> Child protection is provided by a system of institutions covering the entire country, the two main bodies being the *Child Protection Service and the Guardianship Authority*. The network of the *Child Protection Specialist Service* is composed of the regional child protection services in the capital and in each county. The service is available to children in foster care, providing support to family members and the child and, if it is not possible to keep the child within the family, it also takes care of the removal and placement of the child. *Guardianship Service* decides on the removal of the child from the family, placement with the other parent and review of the temporary placement. When necessary, it appoints a guardian and monitors the contact between the child and the relative entitled to contact, the payment of maintenance, among others. In addition to placement and protection issues, it also decides on financial and in-kind benefits and helps clarify the child's family status.

## 5. How Is a Child at Risk Defined (Disadvantaged and Cumulatively Disadvantaged Situation)?

The special protection of the state and the local authority is based on the existence of a threat to the *physical, mental, emotional, moral development of the child, whether material, environmental, behavioural or health-related*.<sup>17</sup> According to the explanatory memorandum of the Gyvt., the purpose of the Act is to prevent and eliminate the vulnerability of children, support the family and provide substitute protection.<sup>18</sup> Child protection begins when certain problems (cf. endangerment) are classified so that their solution cannot be left to the family. One of the fundamental questions of social policy (and child protection) is in what cases the state can intervene in family

13 Art. 94 paras 1–2 of Gyvt.

14 Art. 95 of Gyvt.

15 Art. 101 para. 1 of Gyvt.

16 Art. 98 para. 1 of Gyvt.

17 Rózsás, 2008, p. 19.

18 *Ibid.*, p. 81.

autonomy. The actions of the state create a legal relationship under public law. The distinction is made between service and official action. Voluntary access to child welfare services creates a public law relationship in which neither the parent nor the child is liable. The obligation is rather on the side of the service provider (child welfare service), which must use the appropriate means at its disposal (financial or in-kind support or personal care) to try to solve the problem, that is, to *eliminate the risk* (this is the content of the legal relationship).<sup>19</sup>

*According to the Gyvt., endangerment is a condition resulting from conduct, omission or circumstance – by the child or another person – which hinders or prevents the child’s physical, mental, emotional or moral development.*<sup>20</sup>

In 2014, the main reasons given by child welfare services for the 140,000 or so vulnerable minors they saw were 62% environmental, 18% behavioural, 14% material and 6% health related, while 5% of minors were at risk due to abuse and 17% due to neglect. Within environmental problems, parenting problems (21%), parental and family lifestyle (21%) and family conflict (13%) were the leading causes of vulnerability. Considering the cumulative number of problems reported, in almost all cases, the underlying problems were compounded by other types of vulnerability. Therefore, on average, professionals recorded three problems per child, most often related to family conflict or housing.<sup>21</sup>

*According to the Gyvt., the crisis situation of a pregnant mother is a family, environmental, social or societal situation or a condition resulting from these, which causes physical or psychological distress or social impossibility for the pregnant mother and thereby endangers the healthy birth of the child; within this, a crisis situation of a pregnant mother who conceals her pregnancy is if she declares that she intends to keep her condition secret from her environment and relatives.*<sup>22</sup>

*Vulnerability is formulated in the case of individual benefits such as the body of representatives establishes an exceptional child protection allowance if the family caring for the child is experiencing temporary problems in maintaining its subsistence or has fallen into an exceptional situation that threatens its subsistence. Exceptional assistance is granted to children (families) whose care cannot be provided for in any other way or need financial support because of occasional additional expenses (e.g. return of the child to the family, illness, schooling, keeping the child of a mother in crisis).*<sup>23</sup>

*Temporary placement:* the notary, guardianship office or another so-called referral body (border police, police, prosecutor’s office, court, prison officer) temporarily places a child if he or she is left without supervision or if his or her *development is seriously endangered by his or her family environment or by the child himself or herself*. Reasons for endangerment: serious endangerment is defined as the abuse or neglect of a child

19 Ibid., p. 14.

20 Art. 5 para. 1 point n) of Gyvt.

21 Central Statistical Office Data, 2016, p. 2.

22 Art. 5 para. 1 point o) Gyvt.

23 Rózsás, 2004, pp. 142–143.

which places his or her life in imminent danger or which may cause substantial and irreparable harm to his or her physical, mental, emotional or moral development.<sup>24</sup>

*Temporary foster placement:* a child is placed in temporary foster care by the child welfare agency if the child's development is threatened by the family environment and cannot be eliminated by basic services or protective placement.<sup>25</sup>

The child has the right to be brought up in his or her own family environment, which ensures his or her physical, mental, emotional and moral development, as well as a healthy upbringing and well-being. This right is ensured by the provision that the child has the right to be assisted in his or her upbringing in his or her own family, to develop his or her personality, to avoid situations that threaten his or her development, to integrate into society and to lead an independent life.<sup>26</sup> The right to be brought up in the family is further guaranteed by the fact that the child may be separated from his or her parents or other relatives only in his or her own best interest in the cases and the manner provided for by law. *The practice and approach to child protection prior to the change of regime made it necessary to lay down in law that children should not be separated from their families solely on the grounds of financial vulnerability.*<sup>27</sup>

According to the Gyvt., a child entitled to regular child protection benefits and one that has reached the age of majority is *disadvantaged* if one of the following circumstances applies: a) low level of education of the parent or the adoptive guardian, if both parents raising the child together, the parent raising the child alone or the adoptive guardian can be voluntarily declared to have at most a primary level of education at the time of applying for regular child protection benefits; b) low employment status of the parent or the adoptive guardian, if either of the parents raising the child or the adoptive guardian can be found to be entitled to benefits for the active population under the Social Act at the time of applying for regular child protection benefits or to have been registered as a jobseeker for at least 12 months during the 16 months preceding the date of application for the regular child protection benefits; c) the child's unsatisfactory housing environment or housing conditions, if it is established that the child lives in a housing environment declared as segregated in the integrated settlement development strategy for the settlement; in semi-segregated, uncomfortable or emergency housing; or in housing conditions where the conditions necessary for his or her healthy development are limited.

*Persons with multiple disadvantages are a) children entitled to regular child protection benefits and children who have reached the age of majority for whom at least two of the circumstances defined by points (a)–(c) above apply, b) children in foster care and c) young adults in aftercare and with student status.*

The guardianship authority shall determine the existence of a disadvantaged or severely disadvantaged situation of a child or a child who has reached the age of

24 Ibid.

25 Ibid.

26 Art. 6 paras. 1–2 of Gyvt.

27 Ibid., Art. 7 para. 1.

majority, upon application and, at the same time, it assesses the entitlement to regular child protection benefits by a separate decision for the same period as the entitlement to regular child protection benefits.<sup>28</sup>

*Government Decree No 149/1997 (IX.10.) on child protection and guardianship procedures regulates the form in which an application for the establishment of the existence of a disadvantaged or cumulatively disadvantaged situation must be submitted.*<sup>29</sup>

*The notary of the municipal government shall determine the existence of a disadvantaged or severely disadvantaged situation of a child or a child who has reached the age of majority as follows: a) for parents, foster parents and foster carers with low educational attainment, the voluntary declaration of educational attainment of both parents raising the child together, of parents raising the child alone and of foster carers; b) in case of low employment, data from the register kept by the Social Benefits Act or, in the absence of entitlement to benefits, a certificate from the public employment service confirming the registration of either of the parents raising the child or the foster carer as a jobseeker; c) the definition of segregation in the settlement development plan for the municipality or, failing this, the housing environment or housing conditions, on the basis of an environmental study carried out or obtained, or an environmental study carried out in the computerised system „Protecting our children” not older than six months, carried out under the same title.*<sup>30</sup>

The assessment of the living environment or housing conditions is carried out based on an environmental assessment according to the form provided for this purpose by the Minister for Children and Youth Protection. The form shall be published on the government portal and the notary of the municipality shall ensure it is published on the website of the municipality.<sup>31</sup>

## 6. What Is the Definition of Necessary Intervention?

The contradictions between the provisions of the international convention(s) and domestic practice led to the creation of Act XXI of 1997 on the Protection of Children and Guardianship Administration (Gyvt.) The Act was (finally) voted by Parliament on 22 April 1997 and entered into force on 1 November 1997. The legal significance of the Act lies in that it is the first complete and independent legal regulation of child protection in Hungary. Its significance for child protection is that it adds new institutions, transforming and systematising child protection. When drafting the legislation, the legislator had in mind that a child protection system based on special intervention by the authorities should always be preceded by a child welfare system based on voluntary benefits.<sup>32</sup> One important principle of the Gyvt. is the principle of least coercion

28 Ibid., Art. 67/A paras. 1–3.

29 Art. 83/A para 1 of Government Decree 149/1997 (IX.10.).

30 Ibid., Art. 83/A para. 2.

31 Ibid., Art. 83/A para 2a.

32 Rózsás, 2008, p. 87; see also: Domszky, 1997.

(voluntariness), according to which the use of the benefits provided for by the legislation is generally voluntary. A child's parent or other legal representative can only be obliged to claim a benefit in the cases specified by law. Official intervention in the life is only allowed if it is unavoidable in the best interests of the child.

It is also important to note that the guardianship authority is not only responsible for child protection (official) tasks but also for safeguarding the personal and property interests of incapacitated and incapacitated children and wards.

'Public authority measures can be divided into two categories, according to the grounds and the means used. A first category includes, as a protective measure, the taking into care of a child to prevent the removal of the child from the family. If the preventive (protective) measures do not lead to the removal of the child from the family, the second group of measures includes placement, temporary placement, temporary fostering, permanent fostering, foster care and aftercare.'<sup>33</sup>

Pursuant to Art. 82 para. 5 of *Government Decree 149/1997 (IX.10.) on Child Protection and Guardianship Procedure*, the guardianship office shall take measures falling within the scope of child protection care, with the exception of the determination of disadvantaged and severely disadvantaged situations, if: the elimination of the risk cannot be ensured with the cooperation of the parent; the child does not have a parent who is able and entitled to exercise parental authority and the child is not in danger of harm even if a guardian is appointed; the care of the child in his or her own family is not ensured due to the health condition, justified absence or other family reasons of the parent; the child's vulnerability is primarily due to neglect, but there are reasonable grounds to believe that the child's needs can be provided for in a family environment through the targeted use of the family allowance, in particular the parent(s) providing for the child's daycare, nursery, school meals, food, clothing and developmental equipment (toys) and the development of the child's abilities.

According to Subsection (6), a parent shall be considered uncooperative if, despite reasonable assistance and warning: fails to take the necessary measures in the best interests of the child; does not contribute to or otherwise prevent the child from receiving child welfare or other social, health or public education services appropriate to the child's circumstances (hereinafter, "basic services").

According to Subsection (7), in the selection of measures falling within the scope of child protection care, account shall be taken of: the nature, cause and extent of the vulnerability; the child's personality; the child's family circumstances; the expected impact of the measure; the right of the child to be brought up in his or her own family environment.

The following table shows the reasons for the inclusion in the protection scheme.

33 Rózsás, 2008, p. 114.

**Table 1.** Registered minors in protection, 31 December<sup>34</sup>  
**25.1.1.16. Registered minors in protection, 31 December**

Year	Minors protected for environmental reasons	Minors protected for reasons of behaviour attributable to parent	Minors protected for reasons of behaviour attributable to child	Minors protected for reasons of child abuse	Total protected minors	Per thousand inhabitants of appropriate age protected minors
2000	2,672	5,572	3,513	–	11,757	
2001	3,263	6,528	3,501	–	13,292	6.5
2002	4,259	7,233	3,835	–	15,327	7.6
2003	4,367	8,354	4,354	–	17,075	8.6
2004	4,371	9,105	4,259	–	17,735	9.1
2005	4,656	9,605	4,552	–	18,813	9.8
2006	5,048	8,924	4,792	398	19,162	10.1
2007	4,876	9,091	5,207	507	19,681	10.5
2008	5,046	9,694	6,031	452	21,223	11.4
2009	5,507	9,475	6,505	451	21,938	12.0
2010	6,548	9,371	7,687	421	24,027	13.4
2011	10,075	9,557	9,395	444	29,451	16.6
2012	8,800	8,670	7,879	406	25,755	14.7
2013	4,096	7,394	9,574	335	21,399	12.3
2014	4,571	8,295	9,611	407	22,884	13.3
2015	4,776	8,553	9,580	412	23,321	13.6
2016	4,777	9,712	10,503	431	25,423	14.8
2017	5,154	11,074	11,593	486	28,307	16.5
2018	5,376	11,080	12,098	460	29,014	17.0
2019	5,077	10,651	12,652	450	28,830	16.9
2020	5,264	11,396	10,093	390	27,143	15.9
2021	5,440	11,649	9,751	389	27,229	16.0
2022	5,186	11,900	11,112	480	28,678	16.8

34 Source: Cenral Statistical Office Data, n.d.a.

## 7. Structure of the Child Protection System

Child protection is an activity aimed at promoting the upbringing of children in the family, preventing and removing children from vulnerability and providing substitute protection for children leaving parental care or other care. Child protection is ensured through the provision of basic child welfare services and specialised child protection services; in cash, in kind and personal care; as well as through measures taken by the authorities.<sup>35</sup>

### ***7.1. Monetary and In-Kind Benefits (e.g. Regular Child Protection Discount, Child Feeding, Advance Payment of Child Support, Home Building Support)***

Benefits in cash and in kind include: regular child protection benefits; child feeding; advance payment of child support; home building support.<sup>36</sup>

### ***7.2. Basic Child Welfare Services Within the Framework of Personal Care (e.g. Child Welfare Services, Daycare for Children, Temporary Care of Children, Children's Opportunity-Enhancing Services)***

The basic child welfare services covered by personal care are: child welfare services; daycare for children; temporary care of children; children's opportunity-enhancing services.<sup>37</sup>

### ***7.3. Special Child Welfare Services Within the Framework of Personal Care (e.g. Care Provided at Home, After-Care Care, Regional Child Protection Specialist Service)***

Specialised child protection services under the personal care framework are: care provided at home; after-care care; regional child protection specialist service.<sup>38</sup>

35 Art. 14 paras. 1-2 of Gyvt.

36 Ibid., Art. 15 para. 1.

37 Ibid., Art. 15 para. 2.

38 Ibid., Art. 15 para. 3.

**Table 2.** Young people in specialised child protection<sup>39</sup>

Year	Receiving special care					Total minors	18 years and older	Total	Of which minors with special educational needs
	0–2 years old	3–5 years old	6–13 years old	14–17 years old	Total				
2010	1,459	1,894	7,615	6,824	17,792	3,626	21,418	3,803	
2011	1,524	1,975	7,713	7,075	18,287	3,162	21,449	3,873	
2012	1,690	2,006	7,824	6,944	18,464	3,070	21,534	3,755	
2013	1,916	1,997	7,972	6,789	18,674	2,954	21,628	3,932	
2014	2,178	2,136	8,337	7,484	20,135	2,985	23,120	3,874	
2015	2,045	2,290	8,558	7,378	20,271	2,873	23,144	3,644	
2016	2,347	2,512	8,671	7,021	20,551	2,590	23,141	3,937	
2017	2,442	2,611	8,956	6,939	20,948	2,417	23,365	4,234	
2018	2,579	2,640	9,195	6,796	21,210	2,324	23,534	4,460	
2019	2,560	2,820	8,944	6,552	20,876	2,214	23,090	4,390	
2020	2,556	2,727	9,069	6,391	20,743	2,191	22,934	4,480	
2021	2,690	2,877	9,076	6,398	21,041	2,286	23,327	4,491	
2022	2,721	2,825	9,237	6,392	21,175	2,298	23,473	4,433	

39 Source: Cenral Statistical Office Data, n.d.b.

#### 7.4. Authority Measures

Measures taken by public authorities under the framework of child protection: the determination of the existence of a disadvantaged or severely disadvantaged situation; taking into protection; family reunification; temporary placement; fostering; ordering educational supervision; ordering aftercare; ordering aftercare; ordering preventive detention.<sup>40</sup>

The system of child protection includes the care of juveniles who have been remanded by the court to a correctional institution or who have been arrested. Juvenile correctional education is governed by a separate law.<sup>41</sup>

Custody cases in 2022 in the country:

1. Declared disadvantaged children: 84,152;
2. Total number of children declared to be severely disadvantaged: 85,045;
3. Minors in need of protection: 28,678;
4. Minors under guardianship: 34,076;
5. Approved adoptions: 1,254.<sup>42</sup>

### 8. Guardianship of Those Under Child Protection Care

The Civil Code refers to the guardianship of persons under child protection guardianship as “child protection guardianship”. In the new Civil Code, the scope of children under child protection guardianship sought to take over the previous solution but the institution of child protection guardianship has changed in the meantime, with the unified foster placement replacing temporary and permanent foster placement.<sup>43</sup>

Child protection guardianship evolved from institutional guardianship. Specifically, a minor who has been placed in institutional or state care by a guardianship authority, has been temporarily placed in an institution and has initiated the termination of parental custody or where the guardianship authority has ordered the suspension of the exercise of certain powers of parental custody is placed under institutional guardianship. The director (or his or her deputy) of the child protection institution is the institutional guardian. The institutional guardian has similar rights and duties as a legal guardian but is not required to report and is not legally represented by the director of the institution, but by one of his or her staff: One of the main characteristics of institutional guardianship, and one of its defects, was the lack of a direct, individual relationship between the institutional guardian, who could be

40 Art. 15 para. 4 of Gyvt.

41 Ibid., Art. 15 para. 5 of Gyvt.

42 Central Statistical Office Data, n.d.c.

43 Regarding the appointment of a guardian for children in specialised care, since 1 August 2015, the child protection guardian has taken over the responsibilities of the guardian. The purpose of this reform was to prevent possible conflicts of interest between the child and head of the child protection institution, who was previously the child’s guardian. See: Lux and Sebhelyi, 2019, p. 12.

the guardian of thousands of children, and the ward.’ In other words, there is a clear breach of the principle of immediacy and permanence in the event of a change of placement: ‘The gradual transformation of institutional guardianship was a key issue for the renewal of child protection.’<sup>44</sup>

A foster child is subject to child protection guardianship, that is, the guardianship authority takes the child into care if a foster guardian cannot be appointed (this is provided for in Civil Code Art. 4:229<sup>45</sup>) and the child’s development is at risk within his or her own family and the risk cannot be eliminated by the services provided under the framework of basic care or by taking the child into protection (the least coercive measure by the authorities), or if the child cannot be cared for within his or her own family, or if both parents are dead, their parental rights have been terminated by the court or the guardianship authority has initiated proceedings for the termination of parental rights and the child derives from an unknown person.<sup>46</sup> A child who has been placed temporarily in a foster care, children’s home or residential institution and whose parent has consented to secret adoption and who cannot be placed temporarily with his or her prospective adoptive parents shall be provided for by a child protection guardianship for the purpose of his or her continued protection and representation. If the child’s parents are in an unknown place, in the case where the child is an unaccompanied minor under the Act on the General Rules for the Entry and Residence of Third-Country Nationals and the Asylum Act or the parents do not exercise their parental authority for any other reason and, in either case, it is not possible to appoint a foster parent, the child is taken into care, as well as when the child is of unknown parentage.<sup>47</sup>

In the past, the guardianship of children under child protection guardianship was performed by the foster parent (i.e. child protection foster parent within the meaning of the Civil Code) or the head of the children’s home. However, Act CXCVII of 2012 on the State Takeover of Certain Specialised Social and Child Protection Institutions and Amendments to Certain Acts fundamentally changed the system: it separated the legal representation of the child from the care of the child. Therefore, in the Gyvt. according to Art. 84, the guardianship authority shall appoint a child protection guardian for the child, irrespective of the child’s place of care, based on a proposal by the regional child protection service. As a general rule, neither the head or employees of the children’s home and foster care network nor the foster parent of the child may perform the duties of a guardian; however, the Gyvt. allows the guardianship authority to appoint a foster parent as a guardian, in addition to the child protection guardian, to perform certain guardianship duties specified in the Act. However, the care of the child will not be provided by the child protection guardian but, for example, by a

44 See: Rózsás, 2008, p. 59.

45 That person must be appointed as the child’s guardian: a) with whom the child has been placed temporarily by the guardianship authorities; b) with whom the child has been placed by the court; or c) who has adopted the child with the consent of the guardianship authority.

46 Art. 78 para. 1 of Gyvt.

47 Szeibert, n.d.; Art. 84 para. 1 of Gyvt.

child protection foster parent. As a result of the above, child protection guardianship is even more strongly characterised by the predominance of public law elements over private ones.<sup>48</sup>

The activity of the child protection guardian is directed and supervised by the guardianship authority. The conditions necessary for the performance of the duties of the child protection guardian are provided by the regional child protection service. The child protection guardian works in cooperation with the foster parent, children's home or other care placement providing care for the child. The child protection guardian or the foster parent appointed as guardian for the performance of certain guardianship duties shall provide the guardianship authority with written information on their activities and on the affairs of the child under their guardianship every six months. The foster parent, children's home, home for the disabled or psychiatric patients or supported housing organisation caring for the child shall aid in preparing the information. This obligation to provide information shall be without prejudice to the obligation to report under the law.<sup>49</sup>

The child protection guardian monitors and promotes the child's physical, intellectual, emotional and moral development and education, and supervises the child's full care.<sup>50</sup> The child protection guardian shall have the right to meet the child in person, without the presence of the head of the child protection service or of a member of staff, including the foster parent, at a time of his or her choosing. When choosing the time, the child protection worker shall consider the child's compulsory occupation. The child's place of care shall ensure conditions for uninterrupted contact between the child and child protection worker. If a foster parent is appointed by the guardianship authority to act as guardian in addition to the child protection guardian, the child protection guardian and the foster parent shall cooperate with each other.<sup>51</sup> The child protection guardian has the right and the duty to represent the child in personal and property matters.<sup>52</sup> The guardianship authority shall appoint an ad-hoc guardian to represent the child *a) ex officio*, if the child protection guardian cannot legally represent the child in accordance with the rules of the Civil Code governing family law or *b) upon request*, if the child protection guardian does not undertake to represent the child in cases requiring special expertise.<sup>53</sup> It is the right and duty of the guardian to protect the child's property interests, to ensure the proper use and management of the property and to manage the child's affairs in accordance with the rules of ordinary property management.<sup>54</sup> The guardianship authority shall appoint a substitute guardian for the child, irrespective of the place of care, based on a proposal of the regional child protection service and at the same time as appointing the

48 Ibid.

49 Art. 85 paras. 4, 4a and 5 of Gyvt.

50 Ibid., Art. 86 para. 1.

51 Ibid., Art. 86 paras. 1–2.

52 Ibid., Art. 87 para. 1.

53 Ibid., Art. 87 para. 4.

54 Ibid., Art. 88 para. 1.

guardian in the event of the absence of the guardian or his or her actual inability to perform his or her duties, to solve the cases requiring immediate decisions and actions.<sup>55</sup>

## 9. What Is the Institutional Background?

Child protection and guardianship administration are closely related, with child protection care overlapping between them, which is also part of the child protection system under the Gyvt. The Gyvt., as mentioned above, clearly separate the activities of public authorities from those of service providers. Child protection (service provision) is the responsibility of the municipal (capital district) and county governments. The notary or the guardianship office may take official measures in guardianship administration. The Minister is responsible for sectoral management and professional supervision.<sup>56</sup>

According to § 1 of the Government Decree No. 331/2006 (XII.23.) on the performance of child protection and guardianship duties and powers and on the organisation and competence of the guardianship authority, the duties and powers of the guardianship authority are: a) the notary of the municipality; b) the district (metropolitan district) office of the government office of the capital and county (hereinafter referred to as the “child protection and guardianship office”); and c) the Metropolitan and County Government Office acting in its capacity as a child protection and guardianship authority.

## 10. What Is the Procedural Background?

The main rules of child protection and guardianship administration can be summarised as follows based on the Gyvt.

*Procedure in the case of siblings:* in guardianship proceedings, the cases of siblings who are being brought up together must be dealt with together in one file. The guardianship authority shall draw up a summary official record of any case of separated minor siblings of the child before the guardianship authority or of the case pending before the guardianship authority accompanied, where appropriate, by a copy of the guardianship decisions concerning the separated minor sibling. The guardianship authority shall prepare the summary official record by means of a request if a child’s separated sibling has been or is being dealt with by another guardianship authority.<sup>57</sup>

55 Ibid., Art. 90 para. 1.

56 Rózsás, 2008, p. 128; see: point 4.

57 Art. 123 of Gyvt.

*Preliminary hearing:* the guardianship authority may decide to take a preliminary hearing without the approval of the public prosecutor to hold a hearing or trial which cannot be waived, if the child is in danger or if immediate action is necessary in the interest of the person to be placed under guardianship or the person placed under guardianship whose capacity is affected.<sup>58</sup>

The guardianship authority may, unless otherwise provided by law, initiate proceedings ex officio in cases within its competence. In guardianship proceedings, a child with limited capacity and an adult person with partially limited capacity shall have procedural capacity in matters in which he or she is entitled to initiate proceedings or make a declaration of rights under the Gyvt. or other legislation. In the proceedings, the client is obliged to cooperate in the expert examination.<sup>59</sup>

The guardianship authority acts as a party in the administrative, civil and other legal proceedings in which it has the right to bring proceedings under the law, even if it does not otherwise have standing.<sup>60</sup>

In the guardianship proceedings, the parent and other legal representative, the guardian, the child with limited capacity, the person partially limited in his or her capacity to act in respect of a statement of rights arising in the guardianship proceedings and the child who is incapacitated in the exercise of his or her judgment, as well as the person against whom a liability is sought to be imposed and, where appropriate, other close relatives of the child, shall be heard. The child who has the capacity to make a statement in the guardianship proceedings shall be informed of the opportunity to make a statement and the legal representative shall be informed at the same time. The hearing may be waived if a delay due to the hearing would cause unavoidable harm or danger.<sup>61</sup>

At the request of a minor mother with limited capacity who is in a crisis situation and is concealing her pregnancy, the guardianship authority may waive the hearing of the legal representative if it would jeopardise the interests of the expectant mother in a crisis situation who is concealing her pregnancy or of the unborn child.<sup>62</sup>

If the law requires the legal representative to act or make a declaration in the personal matters of the child, both parents, exercising joint parental authority, must act or make a declaration in person.<sup>63</sup>

During the guardianship proceedings, statements may only be made in person and, if the guardianship authority holds a hearing to clarify the facts, must appear in person at the hearing:

‘(a) except for applications for the institution of proceedings before the guardianship authorities and applications for legal remedies,

58 Art. 124 of Gyvt.

59 Ibid., Art 127.

60 Ibid., Art. 127/A.

61 Ibid., Art. 128 para. 1.

62 Ibid., Art. 128 para. 1a.

63 Ibid., Art. 128 para. 2.

- aa) by authorising the marriage of a minor,
- ab) the residence of the unborn child of a pregnant mother in crisis who is concealing her pregnancy,
- ac) the exercise of parental authority,
- ad) family reunification,
- ae) guardianship, trusteeship and assisted decision-making,
- af) with the exception of (b);  
family status
- (b) with the exception of applications for legal remedies, adoption, acknowledgement of parentage and full acknowledgement of paternity;
- (c) the request to initiate proceedings, with the exception of the request for redress, by contact in the context of guardianship proceedings.<sup>64</sup>

If the determining authority carries out an on-site visit to clarify the applicant’s material, social, health, cultural, housing or other circumstances, it shall record the relevant statements and findings in a report (“environmental report”). The determining authority may also use in the procedure an environmental report drawn up by another authority or by another body or person dealing with family protection, provided that six months have not elapsed since the report was drawn up. The guardianship authority may request another guardianship authority to prepare a background report on the circumstances of the applicant referred to in Para. 1. At the request of the court and the public prosecutor’s office, the determining authority shall prepare a report on the environment. The recipient of the benefits shall notify the determining authority within 15 days of any change in the material facts or circumstances affecting the conditions for entitlement to benefits.<sup>65</sup>

In case of child abuse, serious neglect or other serious endangering or self-inflicted serious endangering of the child: the authority and the customer may communicate by any means; if an environmental assessment is required, it shall be carried out without delay; and the on-site inspection may be carried out by opening up the sealed area, building or premises against the will of the persons present.

In the event of child abuse, serious neglect or other danger, the guardianship authority shall keep data on the child, the witness and the body or person initiating the proceedings in camera, even in the absence of a specific request to that effect. In the absence of any other indication, the refusal of the parent or other legal representative who has the care of the child to cooperate with the primary health care provider – general practitioner, family doctor, paediatrician, nurse – or, in relation to the care of the child, with the daycare provider, public education institution or vocational training institution shall be considered as a serious cause of danger.<sup>66</sup>

64 Ibid., Art. 128 para. 3.

65 Ibid., Art. 130 paras. 1–5.

66 Ibid., Art. 130 paras. 1–3.

If the case requires special expertise to assess a significant fact or circumstance relating to the child's personality, the guardianship authority *a)* shall consult an educational counsellor, an expert and rehabilitation committee, a specialised psychiatric care institution or a family protection agency or *b)* shall appoint an expert. In the case of a child suffering from a physical, sensory, intellectual, speech or other disability and, for a child with an integration, learning or behavioural disability, the expert committee or educational counsellor under the National Public Education Act shall give an opinion. The county, capital and national expert committees for child protection shall make recommendations on the care of children in care who have serious psychological or psycho-social symptoms or are suffering from psychoactive substances and on the manner and form of care. The detailed rules of procedure of the expert committee are laid down by separate legislation. To resolve a conflict arising in proceedings for the regulation of contact between a child and his or her relatives, the guardianship authority may initiate or order, in the interest of the child, the settlement of the conflict in a mediation procedure or in a supported mediation procedure, as defined in the Government Decree on Guardianship Authorities and Child Protection and Guardianship Procedure.<sup>67</sup>

According to § 7/A of the *Government Decree 149/1997 (IX.10.) on guardianship authorities and child protection and guardianship proceedings lays down the common rules of procedure in guardianship cases*, a client in the framework of child protection care is:

- '(a) where the guardianship authority takes a decision within its competence;
- aa) the head of the family and child welfare service and the head of the family and child welfare centre,
- ab) the head of the regional specialised child protection service (specialised child protection service),
- ac) the child's legal representative, guardian or deputy guardian,
- ad) a foster parent appointed as a guardian for the performance of certain guardianship duties pursuant to para. (2) of Art. 4:122 of Act V of 2013 on the Civil Code (the foster parent),
- ae) the head of the probation service, the preventive probation officer;
- (b) in proceedings initiated by the children's representative.'

*The rules for initiating proceedings are as follows:* the guardianship authority may, unless otherwise provided by law, initiate or continue proceedings ex officio in a matter within its competence. The guardianship authority may, ex officio, or, unless otherwise provided by law or regulation: may initiate proceedings if requested to do so by an incapacitated child who has the capacity to judge, if this is in the best interests of the child; initiate the procedure if the family and child welfare service, the family and child welfare centre or the Gyvt. or by the body or person specified in para. 1 of Art. 17(1) of the Gyvt.

67 Ibid., Art. 132 paras. 1, 3, 4 and 6.

The guardianship proceedings may also be initiated by a child with limited capacity and a person with partially limited capacity independently. In proceedings initiated on the grounds of child abuse or serious neglect or other serious grounds of danger, or on the grounds of serious danger caused by the child himself or herself, the guardianship authority shall, after an immediate environmental assessment, take the necessary measures to protect the child.<sup>68</sup>

The guardianship authority shall prepare a detailed *environmental assessment* (situation assessment) or may request other persons or bodies to do so, in particular the family and child welfare service and the notary of the municipality. The child welfare office may ask: the family and child welfare service in the procedure for the declaration of adoptability; the child protection specialist service in the pre-adoption procedure and in the procedure for the authorisation of adoption.

The environmental assessment (situation assessment) includes:

- 'a) the child,
- aa) contact details of relatives or other persons residing in the place of residence,
- ab) contact details of persons present at the recording of the report which are relevant to the care and education of the child,
- ac) the contact details of family doctor, nurse or, if he/she in a nursery or school, the head of the public education institution,
- ad) findings relevant to the case, an assessment of the family's circumstances;
- b) the person concerned by the guardianship,
- ba) contact details of persons present at the recording of the report which are relevant to his or her lifestyle and care,
- bb) contact details of your general practitioner, psychiatrist,
- bc) contact details of the manager of the social institution used by the person concerned,
- bd) financial and social circumstances,
- be) findings relevant to the case.<sup>69</sup>

*With regard to the rules on representation*, the guardianship authority will examine ex officio at each stage of the procedure whether the child or the person subject to guardianship has a legal representative. Parents exercising joint parental custody have the right to decide on the child's property, in accordance with the Civil Code pursuant to Art. 4:156 (1) parents who have joint parental authority over the child may grant each other power of attorney, which the parent with power of attorney must submit to the guardianship authority during the proceedings. If there is a conflict of interest, the guardianship office ensures the representation of the child or the ward: between the child and his or her legal representative, through an ad hoc guardian; between the

68 Art. 8 paras. 1–5 of Government Decree 149/1997 (IX.10.).

69 Ibid., Art. 9 paras. 1–3.

person subject to guardianship and his or her legal representative, through an ad-hoc guardian.<sup>70</sup>

*According to the rules of the hearing*, in guardianship proceedings, the hearing may be waived if its delay would cause unforeseeable harm or danger, or if the adult to be heard is in an unknown place. In guardianship proceedings, an incapacitated client may be summoned to make a personal statement if it is in his or her own interest and the evidence expected from the statement cannot be substituted in any other way. The guardianship authority shall hear the child directly or otherwise, in particular through the family and child welfare services or an expert body or person, on matters concerning the child. The guardianship authority may not refrain from hearing the child directly: if the child of sound mind so requests; with certain exceptions, in the personal and property matters of a child with limited capacity and of a child who is incapacitated [Civil Code, Art. 2:12 (4), Art. 2:14 (3)]; where a specific legal provision so provides.

The direct hearing of a child with limited capacity and of a child who is incapacitated may be waived if: the annual amount of the payment and the annual amount of the withdrawal from the maintenance deposit does not exceed ten times the amount of the social projection fund, and the person legally representing the child provides credible evidence of the child's consent.

In particular, a statement by the parents or other legal representatives in a private or public document of the child's views, or a written request by the child for the payment or withdrawal of the money shall constitute credible evidence of consent.

The guardianship authority may hear the child without the presence of his or her legal representative or other interested person if it is in the best interests of the child. The guardianship authority may, if necessary, hear the client or the person concerned outside its official premises. In duly justified cases, the hearing shall take place at the place of residence of the incapacitated person, at the educational establishment or healthcare establishment providing services to the incapacitated person. The hearing may also take place by electronic means with simultaneous video and audio links, except in cases of adoption and parentage.<sup>71</sup>

If necessary, or at the request of the client, the guardianship authority will hold a hearing for which the client may be summoned to its seat. The guardianship authority may hold a hearing anywhere in its territory in the interests of the child or the ward, in particular if several clients would have to travel to the place of the headquarters from another place. In such cases, the place of the hearing shall be the official premises of the mayor's office of the municipality nearest to the place of residence of the client. If the guardianship authority holds a hearing in a case initiated by the client and the client does not appear at the hearing and does not excuse his or her absence, his or her application is deemed to be withdrawn.<sup>72</sup>

70 Ibid., Art. 10 paras. 1, 3 and 5.

71 Ibid., Art. 11 paras. 1–7.

72 Ibid., Art. 13 paras. 1–3.

The operative part of the decision must contain: the identity of the child and of the person for whom a guardian has been appointed and, except as provided in para. 2, for whom a right or obligation has been established; information on the legal consequences of the decision, warning of the consequences of non-compliance; and the request of the body involved in the implementation or execution of the decision.<sup>73</sup>

The decision on the provision of family allowances in kind, temporary placement, foster care and parental supervision shall be enforced by the guardianship office. At the request of the guardianship office and of the capital and county government office acting in its child protection and guardianship functions, the notary of the municipal government shall assist in the enforcement of temporary placement and foster care.<sup>74</sup>

## **11. Participation of Children in the Child Protection System (Role of the Representative of Children's Rights if Any)**

*According to Art. 2 (a) of Government Decree 149/1997 (IX.10.) on guardianship authorities and child protection and guardianship procedures, a child who has the capacity to judge is a minor who, in accordance with his or her age and intellectual and emotional development, can understand the essential content of the facts and decisions affecting him or her and to see the expected consequences. The rules governing the hearing of such a child are described in the previous section.*

Pursuant to Art. 2 (1) of 15/1998 (IV.30.) NM Decree on the professional duties and conditions of operation of child welfare and child protection institutions and persons providing personal care, personal care shall be provided in a manner that respects the rights of children and parents and ensures their enforcement. Pursuant to (2), to ensure the widest possible exercise of children's rights, the providers of child welfare and child protection services (service providers) shall ensure that children have access to the name and telephone number of the children's representative and the place and time of his or her appointments. Para. 3 states that service providers shall ensure that children's rights representative: a suitable room within the premises of the institution that is easily accessible and suitable for children to have a private conversation during the visit; the possibility to be informed on the spot and to consult the documents; to be informed of the date of the meeting of the representative forum.

The children's council elected by more than 50% of the children may represent all children in the residential childcare institution. The children's council decides on its own functioning after consulting the head of the institution. The rules for organisation and operation are adopted by the elected children's council and approved by the head of the institution. Approval may be withheld only if the rules are unlawful or contrary to the institution's rules of organisation and operation or of procedure. The

73 Ibid., Art. 14.

74 Ibid., Art. 16.

children's self-governing body may express its opinion to the head of the institution on all matters relating to the operation of the residential childcare institution and to the children, which the head of the institution shall consider.<sup>75</sup>

## 12. Summary

In theory, the Hungarian child protection system works in line with international standards. However, ratification of the Istanbul Convention; signing of the Third Optional Protocol to the UN Convention on the Rights of the Child, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and accession to the International Convention for the Protection of All Persons from Enforced Disappearance are still pending.

The Gyvt. was indeed of epoch-making importance and its amendments sought to reflect the changes that have taken place since 1997. However, to date, no national action plan or comprehensive strategy for children has been developed, except for the Digital Strategy for Child Protection, which sets out tasks to promote safe Internet use for children. This strategy came into force in 2016.

However, the theoretical rules cannot be effective in practice without a comprehensive strategy on children's rights. Without such a strategy, the practical implementation of legal provisions cannot be effective. It is essential that such a strategy involves the actors in the child protection system working together. It is essential to initiate closer cooperation with NGOs and the National Professional College, as well as to create an independent ombudsman for children's rights.

75 Art. 2/D paras. 1–3 of 15/1998 (IV. 30.) NM Decree.

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