

# I. INTRODUCTION

In 2010, the Fidesz-KDNP coalition won the general elections, gaining two-thirds majority in Parliament. The government announced the reform of the public law and the state; the two-thirds majority enabled to perform it without consulting the opposition.

## The new constitution<sup>1</sup>

The constitution writing process after the 2010 elections was extremely fast; the impossibility of a substantive discussion and public debate resulted in a legitimacy deficit. The year-long period devoted initially to elaborate the “fundamental principles” of the Constitution was decreased to a few months by the Parliament. The parliamentary debate on the draft began on 14 March 2011 and the Fundamental Law was adopted on 18 April 2011. The Fundamental Law was amended five times in the first 2.5 years of being in effect.

## Packing the Constitutional Court<sup>2</sup>

In 2010, rules of the nomination of the Constitutional Court (CC)<sup>3</sup> changed fundamentally.<sup>4</sup> Accordingly, if the governing party has a two-thirds majority, as it happened in 2010-2014, it can both nominate and elect CC judges without the support of any of the opposition parties. Furthermore, the number of CC judges has been increased from 11 to 15; and the age limit for judges was abolished also with regard to the already elected judges. These steps led to a situation where 11 of the current 15 judges have been confirmed to the CC by the current governing majority without negotiations with the opposition. According to an NGO research, this also had a detectable impact on the CC decisions.<sup>5</sup>

The Fourth Amendment to the Fundamental Law continued the practice to include provisions into the Fundamental Law of which the unconstitutionality was earlier established by the CC.<sup>6</sup> Furthermore, the Fourth Amendment excluded the in-merit constitutional review of amendments to the Fundamental Law by the CC. The Fourth Amendment formally “declared void” the decisions of the CC adopted prior to the entering into force of the Fundamental Law. The CC’s competence has been restricted by the Fundamental Law in relation to laws on certain economic matters (central budget, taxes, etc.), meaning

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<sup>1</sup>[http://helsinki.hu/wpcontent/uploads/Comments\\_on\\_the\\_Process\\_of\\_Framing\\_the\\_New\\_Constitution\\_of\\_Hungary\\_EKI\\_HCLU\\_HHC.pdf](http://helsinki.hu/wpcontent/uploads/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf),

[http://helsinki.hu/wpcontent/uploads/Hungarian\\_NGOs\\_assessing\\_the\\_draft\\_Constitution\\_of\\_Hungary\\_2011\\_04141.pdf](http://helsinki.hu/wpcontent/uploads/Hungarian_NGOs_assessing_the_draft_Constitution_of_Hungary_2011_04141.pdf)

<sup>2</sup>[http://helsinki.hu/wp-content/uploads/Hungary\\_fact\\_sheets\\_20140921.pdf](http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf)

<sup>3</sup>elected with a two-third majority vote in the Parliament

<sup>4</sup> According to the former Constitution, members of the Constitutional Court were nominated by a committee consisting of one member of each parliamentary group. As a result, the opposition and the governing majority had to agree on the nomination. From 2010, members of the CC shall be nominated by a committee consisting of members of the parliamentary groups of parties; and the number of members per parliamentary group on the nominating committee shall be proportionate to the parliamentary group’s size in relation to the total number of MPs. Hence, the governing party has the majority necessary for nominating a CC judge, without a need to reach a consensus with the opposition.

<sup>5</sup> For the executive summary of the respective research report, see: [http://tasz.hu/files/tasz/imce/2009/ekint-hclu-hhc\\_analysing\\_cc\\_judges\\_performances\\_2015.pdf](http://tasz.hu/files/tasz/imce/2009/ekint-hclu-hhc_analysing_cc_judges_performances_2015.pdf).

<sup>6</sup>For examples of how the Fourth Amendment to the Fundamental Law overruled decisions of the Constitutional Court, see: [http://helsinki.hu/wp-content/uploads/Hungary\\_fact\\_sheets\\_20140921.pdf](http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf)

that these laws are exempt from constitutional review until the state debt of Hungary falls below 50% of the GDP.<sup>7</sup>

The changes described above finally led to a situation where the Fundamental Law and the Constitutional Court are not able to fulfill their basic function of limiting the Government in a constitutional way.

### **The courts<sup>8</sup>**

The administration of courts became fully centralized; the former judicial body in charge of administering courts was replaced by a one-person decision-making mechanism, the President of the newly established National Judicial Office (NJO). Following criticism by many stakeholders concerning the NJO President's extensive powers and its non-transparent and uncontrolled decision-making, the status of the NJO President was re-regulated and its powers were partly restricted. However, some of the related problems remained unsolved,<sup>9</sup> and neither of the amendments eliminated the basic concern that significant decisions may be made by an "external actor from the viewpoint of the judiciary" which "cannot be regarded as an organ of judicial self-government"<sup>10</sup>. The mandate of the President of the Supreme Court was terminated before the end of the regular term; in 2014 the European Court of Human Rights concluded that Hungary was in breach of the European Convention on Human Rights due to this premature termination. By lowering the mandatory retirement age of judges, which affected a significant number of judges serving at higher courts and leaders of higher courts and was deemed as a violation of the respective EU directive by the Court of Justice of the EU, the governing majority could replace practically the leadership of the judiciary.

### **Changes in the ombudsperson system<sup>11</sup>**

The former four Ombudspersons (Parliamentary Commissioners) have been replaced by one, which decreases the level of protection in relation to certain rights.

The tasks of the former Data Protection Commissioner were undertaken by a newly established authority, which does not comply with the requirement of independence.<sup>12</sup> The former Ombudspersons' mandate was also terminated before the end of their term of office. With regard to the premature termination of the Data Protection Commissioner's mandate the Court of Justice of the EU concluded in 2014 that Hungary violated the respective EU directive.

### **Harassment of NGOs<sup>13</sup>**

Because of the aforementioned erosion of the state bodies responsible for enforcing human rights, the role of human rights /watchdog NGOs increased accordingly in the last few years. Some of those NGOs became a target of a Government communication campaign, being forced to use their limited resources to protect themselves instead of protecting the rights of others. The campaign was backed by unlawful actions of the Government Control Office and the police, and resulted in the suspension of the tax

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<sup>7</sup>[http://helsinki.hu/wp-content/uploads/Main-concerns-regarding-the-Fourth-Amendment-to-the-Fundamental-Law\\_SUMMARY.pdf](http://helsinki.hu/wp-content/uploads/Main-concerns-regarding-the-Fourth-Amendment-to-the-Fundamental-Law_SUMMARY.pdf)

<sup>8</sup>[http://helsinki.hu/wp-content/uploads/Hungary\\_fact\\_sheets\\_20140921.pdf](http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf)

<sup>9</sup>e.g. the NJO President's rights concerning call for applications to judicial positions remained excessive

<sup>10</sup>as put by the Venice Commission

<sup>11</sup>[http://helsinki.hu/wp-content/uploads/Hungary\\_fact\\_sheets\\_20140921.pdf](http://helsinki.hu/wp-content/uploads/Hungary_fact_sheets_20140921.pdf)

<sup>12</sup>The greatest difference between the safeguards of independence of the two institutions is manifested in the manner of formation of their mandates: the Ombudsperson was elected by the Parliament for a six-year period, while the head of the new authority is appointed exclusively by the Prime Minister for a nine-year period.

<sup>13</sup>[http://helsinki.hu/wp-content/uploads/Timeline\\_of\\_gov\\_attacks\\_against\\_HU\\_NGOs\\_short\\_12082015.pdf](http://helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_short_12082015.pdf)

number of the NGOs of the consortium responsible for distributing the EEA/Norway Grants NGO Fund. This campaign caused major damages to the civil society.

### **Curtailing social protection and the criminalization of poverty**

Poverty has drastically increased in Hungary since 2008; the number of poor people and people at risk of poverty increased by 17.5% between 2008-2012.<sup>14</sup> But still, Hungary was the country in the region with the most severe cuts in welfare expenditure (-10%). Access to welfare provisions has become increasingly limited as crucial provisions such as debt management and the housing maintenance subsidy have been terminated and for other provisions eligibility criteria have become stricter and ever more humiliating.<sup>15</sup>

Besides curtailing welfare provisions, various measures were introduced that criminalize different manifestations of poverty. Despite pressure from the UN against it<sup>16</sup>, street homelessness was outlawed on the constitutional level in 2011 and building self-made shacks was also criminalized in 2013<sup>17</sup>. Besides, cutting trees illegally is now sanctioned with up to two years of imprisonment, independent of the amount or the value of the wood cut.

## **II. RECOMMENDATIONS**

Submitting organizations encourage the Human Rights Council to address the following issues regarding Hungary. The proposed recommendations are contained at the end of each section.

### **1. Issues related to detention**

#### **a. OP-CAT**

In line with the respective UPR recommendations, Hungary ratified the OP-CAT, and the Commissioner for Fundamental Rights (the Ombudsperson) was designated to be the National Preventive Mechanism (NPM). However, on the basis of the first year of the NPM's operation NGOs find that the NPM's functioning leaves much room for improvement and does not fulfil all the requirements set by OP-CAT and the Paris Principles. Especially the participation of NGOs with significant experience in monitoring detention is not substantively ensured in the work of the NPM, experts by experience are not involved at all. The budget available for the NPM is inadequate, hindering its effective operation. Given the present intensity of monitoring only in over 100 years would the NPM be able to visit all places of detention instead of the maximum 5 years recommended.

- *Ensure that the National Preventive Mechanism substantively involve NGOs in its work.*
- *Increase the budget of the NPM substantially in order to allow for its effective operation.*

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<sup>14</sup>To compare, see other countries of the region: Czech Republic: +0.9%, Slovakia: -0.2%, Poland: -12%, Slovenia: +8.6%.

<sup>15</sup>[http://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2014\\_soc\\_glance-2014-en](http://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2014_soc_glance-2014-en)

<sup>16</sup><http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13206&LangID=E>

<sup>17</sup>[http://avarosmindenkie.blog.hu/2013/09/12/the\\_criminalization\\_of\\_homelessness\\_in\\_hungary\\_between\\_20\\_10\\_and](http://avarosmindenkie.blog.hu/2013/09/12/the_criminalization_of_homelessness_in_hungary_between_20_10_and)

## Overcrowding in penitentiaries and inadequate detention conditions

The UPR recommendations to combat overcrowding in prisons and improve prison conditions have only been implemented partially. In the past years, the average number of detainees has constantly increased, until 2013 in parallel to the average overcrowding rate. (The rise of the latter was stopped only because in 2014 the capacity of the penitentiary system was slightly increased.) The average overcrowding rate of the penitentiary system was 141% in 2014, but overcrowding may reach 200% in certain institutions. In a pilot judgment reached in 2015<sup>18</sup> the European Court of Human Rights concluded not only that the detention conditions of the applicants – including the overcrowding and the inadequate moving space per person – amounted to the violation of the prohibition of inhuman or degrading treatment, but also that overcrowding constitutes a structural problem in Hungary, and, therefore, set out that Hungary should produce a plan to solve the issue. According to the judgment, the solution would be the reduction of the number of prisoners by the more frequent use of non-custodial punitive measures and minimising the recourse to pre-trial detention. However, the Government's communication shows that for the time being it wants to solve the situation solely by building prisons. Overcrowding is often accompanied by unsatisfactory detention conditions, such as toilets separated from the rest of the cell only by a textile curtain, inadequate number of toilets and sinks, widespread presence of bedbugs, and poor sanitary conditions in general.

- *Ensure that moving space per person provided for detainees complies with international standards.*
- *Adopt measures to overcome overcrowding in penitentiary institutions with a view to comply with the pilot judgment of the European Court of Human Rights delivered in the Varga and Others v. Hungary case, including measures beyond building new prison facilities.*
- *Equip all prison cells with separated toilets and improve sanitary conditions in penitentiary institutions in general.*

## 2. Migrants, refugees and asylum-seekers

### a. Serbia designated as a safe third country

The UPR recommendation that Hungary should proceed to forced expulsions only in strict compliance with international and regional standards has only been partially implemented and there was a significant change in this regard since the mid-term report. As of July 2015, Serbia is again designated as a safe third country in a new national list of safe countries, despite the clear contrary position of the UNHCR and the Hungarian Supreme Court. This designation allows the Office of Immigration and Nationality (OIN) to reject as inadmissible almost all asylum claims, as over 99% of asylum-seekers (over 75% of whom flee from war and terror in Syria, Afghanistan and Iraq) enter Hungary through Serbia. As Serbia provides no access to effective international protection, Hungary by applying this rule will violate its obligation of non-refoulement and indirectly expose vulnerable asylum-seekers to a risk of torture, inhuman or degrading treatment.

- *Following the recommendation of the UNHCR, delete Serbia and the FYRO Macedonia from the national list of safe third countries.*

### b. The situation of asylum-seekers

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<sup>18</sup> Varga and Others v. Hungary

The UPR recommendations aimed at improving the living conditions of asylum-seekers have not been implemented and there has been a serious deterioration in this regard since the mid-term report. Notwithstanding an ever-increasing influx of asylum-seekers since 2013 and significant amounts of EU-funding, the Hungarian government has failed to properly extend the country's reception capacities. The open reception centers for asylum-seekers have become extremely overcrowded which resulted in seriously inappropriate hygienic and other conditions (asylum-seekers sleeping on corridors and in community areas, or even outside, lack of showers, lavatories, medical and psycho-social services). In addition, a legal provision in force since August 2015 enables the OIN to specify merely the territory of a county as the designated place of stay of the asylum-seeker, instead of a reception or detention center, thus converting the obligation of providing a shelter for those in need into a mere option. This change is likely to increase the danger of homelessness among asylum-seekers in Hungary.

- *Elaborate a national plan to reform the reception structure, based on good practices from other states and on the strong involvement of civil society and charitable organisations.*
- *Establish a reception structure that is based on smaller units and involves local communities to the maximum extent.*
- *Amend the legislation so that it provides an obligation for the Office of Immigration and Nationality to ensure the accommodation of asylum-seekers during the entire asylum procedure (in case they are not able to pay for their own accommodation).*

### **3. People with disabilities**

#### **a. Monitoring of the rights, care and treatment of people with mental disabilities**

The Government still has not established any robust independent mechanisms with the mandate of monitoring the implementation of the CRPD.

- *Take immediate action to establish – as prescribed in Article 33(2) of the CRPD – an independent monitoring mechanism in line with the Paris Principles, which promotes, protects and monitors the implementation of the CRPD in Hungary.*

#### **b. Equal recognition before the law: guardianship vs. supported decision making**

The new Civil Code<sup>19</sup> maintains the possibility of placing people with intellectual and psycho-social disabilities under plenary or partial guardianship,<sup>20</sup> through which they are denied to make legally valid decisions on an equal basis with others. Those whose legal capacity is fully restricted are even deprived of the rights to marry,<sup>21</sup> make a will,<sup>22</sup> adopt children,<sup>23</sup> give and withdraw informed consent for medical treatment,<sup>24</sup> access justice,<sup>25</sup> and choose a place of residence.<sup>26</sup>

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<sup>19</sup>Act V of 2013.

<sup>20</sup>According to the most recent statistical data, by the end of 2014, there were 55,928 people under guardianship in Hungary, a country of 10 million people, of which more than 30,000 were under plenary guardianship.

<sup>21</sup>Section 4:10(1) of the Act V of 2013 on the Civil Code.

<sup>22</sup>Section 7:11 and Section 2:22(1) of the Act V of 2013 on the Civil Code.

<sup>23</sup>Section 4:121(1) of the Act V of 2013 on the Civil Code.

<sup>24</sup>Section 15(2) of the Act CLIV of 1997 on Health. Section 16 (2) and Section 21 of the Act CLIV of 1997 on Health.

<sup>25</sup>Section 49(1)-(2) of the Act III of 1952 on the Code of Civil Procedure; Section 15 (7) of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.

<sup>26</sup>Section 2:22(1) (3) of the Act V of 2013 on the Civil Code.

Supported decision-making has been introduced in a form which is limiting the availability of this service to persons with “minor decrease in their mental capacity”. It is the guardianship authority that appoints two supporters maximum. A professional supporter is allowed to provide assistance to 30-45 people simultaneously,<sup>27</sup> which deprives the system of its core element, trust and personal relationship between the supporter and the supported person. A further problem is that neither the public, nor the courts and public guardians understand the essentials of supported decision-making, as a result of which it is rarely applied in practice.

- *Amend the relevant sections of the Civil Code in accordance with the CRPD by abolishing plenary and partial guardianship for persons with mental disabilities.*
- *Make supported decision-making a real alternative to substituted decision-making by promoting it, raising awareness of the public, judges, public guardians and other professionals, and making it available for all people with mental disabilities, regardless of the level of their impairment.*

### **c. Right to live in the community vs. institutionalisation**

Around 25,000 people with disabilities are placed in large scale institutions<sup>28</sup> where residents are often subjected to several forms of ill-treatment and abuse.<sup>29</sup> The European Union Structural Funds allocated 6 billion HUF<sup>30</sup> for moving people with mental disabilities out of large institutions to smaller living centers, group homes or apartments in Hungary. However, the user’s involvement in the transformation process was insufficient and the alternatives of institutions provide congregate care and still reflect the institutional model.

- *Immediately stop spending funds on refurbishing existing institutions and creating new, smaller institutions in which residents will continue to be segregated and deprived of their right to live in the community. Instead, reallocate funding to increase the accessibility of general public services for persons with disabilities, and to develop individualised community-based services.*
- *Ensure that children with disabilities enjoy their right to live in a family and community environment on an equal basis with other children by providing appropriate support to them and their families.*

### **d. Education<sup>31</sup>**

Children with disabilities do not receive appropriate education due to the lack of conditions required for their academic and social development in schools close to their place of living. Travel to remote schools is disproportionate burden both for them and their family. Due to the lack of appropriate knowledge of teachers on disability the effective individualized educational development of these children is not guaranteed. Possibilities of adults with disability to take part in further training and/or retraining are even more restricted, as a consequence, they leave schools earlier than their peers, it reduces their chances to find work in the labour market.

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<sup>27</sup>Section 7(5)-(6) of the Act CLV of 2013 on supported decision-making.

<sup>28</sup>According to the latest data of the Hungarian Central Statistical Office.

<sup>29</sup>See Summary of Case report AJB-371/2015 on OPCAT Visit to the Therapeutic House of Debrecen (28 January 2015) available at <http://www.ajbh.hu/en/web/ajbh-en/opcat-reports>, and Case report on OPCAT Visit to the Closed Ward of the Centre for Psychiatry and Addictology of the Gusztáv Merényi Hospital available in Hungarian at <http://www.ajbh.hu/opcat-jelentesek> [both last accessed on 4 August 2015].

<sup>30</sup>Approximately 30 million EUR.

<sup>31</sup> The information and recommendations to this report regarding education, health and accessibility of persons with disabilities was provided by the National Council of Persons with Disabilities (FESZT).

- *Take immediate actions to ensure inclusive primary and secondary education for all children with disabilities as close as possible to their own place of living including rural areas, and phase out the placement of children with disabilities in separate schools or classes.*
- *Provide appropriate training, retraining for teachers and other educational professionals on the needs of pupils and students with disabilities.*
- *Take immediate actions to ensure inclusive adult education, including lifelong learning for persons with disabilities by providing them reasonable accommodation in line with Article 24 of the CRPD.*

#### **e. Health care**

People with severe or multiple disabilities often do not receive even the basic medical treatment either because health care professionals have no knowledge on their needs and on how to communicate with them, or because appropriate medical treatment is not available close their residence.

- *Take immediate actions to ensure the accessibility of appropriate health care for persons with disabilities as close as possible to their own place of living, including rural areas in line with the CRPD.*

#### **f. Accessibility**

Legal deadline to make public buildings and public transport accessible were several times modified and finally deleted with the amendment in 2013 of the Act no. XXVI of 1998 on ensuring rights and equal opportunities for persons with disabilities. An Action Plan for 2015-2018 for the implementation of the National Program on Disability for 2015-2025 has been recently adopted by the Government. However, the accessibility duties required by this Action Plan are significantly narrower than the ones mandated previously.

The government has no accurate database on the actual status of accessibility in Hungary.

In 2012 the government abolished the disability pension system and replaced it with a disability benefit scheme, which is by nature less predictable. A new medical assessment was also introduced, due to which many people completely lost their entitlement for disability benefits, while the ones still being entitled receive a significantly smaller contribution than in the previous system. At the same time the majority of people with disabilities are not able to find a job in the labour market.

- *Set out final deadlines to the elimination of the physical and communicational barriers in the field of public transportation and services open to the public. Improve the monitoring mechanism and its database on accessibility.*
- *Ensure sufficient resources to eliminate barriers and pursue the principle of universal design in close consultation with representative organisations of persons with disabilities to make the “result” accessible in practice also, not only in theory.*

## **4. Women’s rights**

There has been insufficient progress in complying with women’s rights norms: most of the UN CEDAW Committee’s recommendations from 2013 have not been implemented so far, no implementation plan has been elaborated for that purpose. Furthermore, the current government promotes traditional

gender roles through several communications and measures, in the context of the desired demographic increase.

Although the National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010–2021 is in force, after its first action plan for 2010–2011, no further plans have been elaborated. The government communicates since 2012 that Strategy will be replaced by a new one, but it has not been adopted, and women’s rights NGOs have not been consulted yet regarding this issue.

The government plans to use resources from the EU Structural Funds to meet state obligations in advancing women’s rights, however, no information is available on how gender mainstreaming will be systematically applied and gender equality enforced in the system.

The national machinery for gender equality has been consistently underfunded and understaffed, together with its marginalized location in the government structure. The Women’s Policy Unit under the Department for Family Policy and Demography at the Ministry of Human Capacities has only three employees, and the location determines its limited mandate.

Professional and public awareness raising on gender equality is missing in general: the lack of systematic trainings for state officials and different professionals, the lack of related guidelines and policies in the public education system and media indicate that.

Hungary signed the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in 2014, but has not ratified it. Despite some positive legislative measures in recent years, the comprehensive prevention, protection and prosecution approach is not reflected well in the state response. Improper application of existing legislation and regulations, the lack of systematic trainings and protocols for professionals often leading to inefficient and ineffective response, as well as limited availability of proper support services are considered by women’s rights NGOs as major obstacles for victims to access justice.

There are no female ministers in the current government, while the proportion of female state secretaries is only 12.96%. The constantly low representation of women in the Parliament did not improve after the 2014 elections, currently being 10.1%. No measures have been introduced by the state in the reporting period to remedy the situation.

With the general lack of effective gender equality policies in place, intersectionality and multiple discrimination against women have not been given due attention in related policies.

- *Put in place and duly implement a human rights based, comprehensive gender equality strategy equipped with deadlines, responsible actors, budget and monitoring mechanism;*
- *By adopting implementation plans, duly fulfill the recommendations of international mechanisms addressed to Hungary (e.g. CEDAW, Council of Europe – GRETA);*
- *Introduce a transparent mechanism for systematic application of the gender equality principle and gender mainstreaming in distribution and utilizing of resources from EU Structural Funds;*
- *Introduce policies and awareness raising measures – such as systematic trainings – on gender equality and elimination of stereotypes, targeting especially the education system, the media and state officials;*
- *Introduce effective legislative measures – e.g. quotas – to increase women’s participation in political life and decision-making;*
- *Ratify the Istanbul Convention without delay, and implement it in cooperation with women’s rights NGOs active in the field.*



## 5. Children's rights

The lack of a comprehensive policy covering all areas of children's rights under the UN CRC is an overarching problem, being repeatedly criticized by various UN treaty-bodies and also NGOs. Moreover, there are no effective monitoring and evaluation systems in place. Raising the awareness of all professionals working for and with children, children themselves, parents, and the public at large, about the provisions of the CRC and its optional protocols, with a view to ensuring that such efforts result in a positive shift in the attitudes of those involved, is still missing.

Human rights (and children's rights) education is not integrated into the Hungarian primary and secondary education system because education through human rights is not a principle, education about human rights is not comprehensive at all, and consequently education for human rights is not achievable.

- *Develop a comprehensive children's rights policy and action plan, which includes also monitoring and evaluation;*
- *Include human rights (especially children's rights) in the public education system, ensure proper training for professionals who are dealing with children.*

### Education – school segregation of Roma children & reduction of the compulsory school age

School segregation of Roma children is increasing in Hungary. Approximately 45% of Roma children attend schools or classes where all or the majority of their classmates are also Roma.<sup>32</sup> In 2014 381 primary and secondary schools have been officially reported to have 50% or more Roma among their students.<sup>33</sup> Despite protests of NGOs and professionals,<sup>34</sup> the Parliament adopted a modification of the Public Education Act in December 2014 that authorized the government to determine (in a decree) the waivers which could be applied to permit segregated education. Testing procedures in use to assess the mental ability of children (rather than assessing whether a child has any special needs) are contributing to segregation as culturally biased testing results in misdiagnosis of Roma children.<sup>35</sup> This has been affirmed in 2013 by the European Court of Human Rights in the Horváth and Kiss v. Hungary case.<sup>36</sup>

The new Public Education Act reduced the compulsory school age from 18 to 16 years and reintroduced "failing" from first grade which affects mainly disadvantaged (and Roma) children while school year repetition is one of the main reasons for early drop out.<sup>37</sup>

- *Continue its efforts to achieve full social integration of minorities, especially the Roma.*
- *Introduce national measures to eliminate school segregation and actively promote participation in society through education among the Roma community.*
- *Reinstate compulsory education until the age of 18 years.*

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<sup>32</sup> European Union Agency for Fundamental Rights (FRA): Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States. 2014. p. 44–45.

<sup>33</sup> The data of the Educational Authority (EA) provided upon request of the Chance for Children Foundation (CFCF) in 2014 reported 381 primary and secondary schools to have 50% or more Roma among their students (although the EA warned that there is high latency in the provided data).

<sup>34</sup> Commitment related to Bill No. T/2085. <http://cfcf.hu/images/Allasfoglalas.pdf> (Accessed 11 September, 2015).

<sup>35</sup> FRA: Roma Survey – Data in focus. Education: the situation of Roma in 11 Member States. 2014. p. 44.

<sup>36</sup> Horvath and Kiss v. Hungary, application no. 11146/11.

<sup>37</sup> See Art. 45 (6) of the Act CXC of 2011 on National Public Education on compulsory school age entered into force on 1 January 2013.

## Child protection – alternative care

The Hungarian child protection system went through significant changes in the last years. The system was centralized starting from January, 2013.<sup>38</sup> Despite of the positive image of DE-Institutionalization, the law was not prepared carefully enough, it's discriminative as it doesn't cover children with disabilities, chronically ill children and multiple siblings; there is not enough new foster care places and therefore often the principle of „empty place” prevails, when finding a place for a child in care and not his/her best interest; a high number of changes in care placements took place in 2014 which can be the result of bad matching, overloaded foster parents, lack of special support or badly trained new foster parents.

- *Take measures to ensure that all children in children's homes, including Roma children, children with disabilities, chronically ill children and multiple siblings are provided with family- and community-based care and that placement in institutional care is used only as a last resort;*
- *Ensure that children spend the shortest time possible in temporary care and are provided with permanent family- and community-type care solutions.*
- *Provide regular training to foster parents, including on professional skills to care for children with special needs.*

## Juvenile justice

From 15 September 2015 three new crimes related to crossing the border, and special rules expediting criminal procedures for those illegally crossing the fence on the border are in place. The special protections and rules pertaining to minors<sup>39</sup> are not met in the criminal procedures relating to the border closure. This means that for those under the age of 18 there is no requirement to appoint a guardian and parents or legal guardians cannot exercise their rights related to the case of the minor even if they reside within Hungary. Neither the favorable rules relating to deferred prosecution, nor the specialized rules of evidence pertaining to juveniles (i.e.: prohibition of the use of lie detectors) apply in these cases.

- *Ensure that asylum-seeking, unaccompanied and migrant children are not detained under any circumstance. In age assessment testing take into account all aspects, including the psychological and environmental aspects, of the person under assessment.*
- *Harmonize the criminal procedure law with the UN CRC;*
- *Reinstate the juvenile courts with judges who have undergone special training;*
- *Take measures to raise the age of criminal responsibility from 12 years back up to 14 years, even for the most serious crimes.*

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<sup>38</sup> As a result of it, the roles and responsibilities of local and governmental authorities changed. A year later, in January 2014 a second „phase” of De-Institutionalization was introduced by the modification of the Children's Act (Act No. XXXI of 1997 on the protection of children and the administration of guardianship affairs) stating that no children under 12 years old can be placed in institutional care.

<sup>39</sup> There is no independent law on juvenile offenders, neither is there a separate statutory definition for young adults. Provisions differing from the general are regulated in separate chapters within the Criminal Code and the Criminal Procedural Law. With the reorganisation of the organisational structure of judges, the exclusive jurisdiction of courts that used to be the fora for juveniles was terminated in 2012. The age of criminal responsibility for some crimes (manslaughter, assault, robbery and despoilment) has been reduced to 12 years from the earlier 14.

## 6. Homelessness

### a. Housing

- *Repeal section XXII/3 of the Fundamental Law as it contradicts the right of homeless persons to legal certainty, human dignity and property. Also repeal Articles 178/A and 179/A of Act 2012/II. on misdemeanors as these measures criminalize housing poverty and deprive people of the last resort to secure their own safety amidst the lack of state provided housing support.*
- *Adopt and implement Article 31 of the European Social Charter.*
- *Provide adequate support to paying housing costs – as a minimum reintroduce the housing maintenance subsidy and the debt-settlement service. Ensure that Roma citizens have equal access to all available forms of housing support (including social housing) and that they undergo equal treatment before housing authorities.*
- *Stop forced evictions. If a person/family is unable to maintain their housing, offer them alternative housing options or adequate support to maintain their housing.*
- *Increase significantly the availability of affordable housing – either provided directly by the state/local authorities or by public-private housing associations targeting low-income people. It entails an immediate hold on selling housing owned by the state/local authorities. Ensure the wide availability of affordable housing by legal means (e.g. by setting a threshold on the level of social/community housing in each municipality).*

### b. Employment

- *Ensure the equality before the law of people employed in public works programs, ensure that the Labor Code applies to them equally.*

### c. Right to vote

- *Ensure that electoral procedures in general would become barrier-free and accessible to persons with any type of address.*

### d. Health care

- *Ensure that all social strata, including homeless people have in reality equal access to the universal health care system, meaning access to the highest quality service available in the system.*
- *Through the universal health care system, ensure that pre-conception birth control devices (e.g. contraceptive pills or condoms) are widely available and affordable for all social strata.*

### e. Police

- *Ensure by adequate monitoring procedures and sensitizing trainings that police officers do not harass homeless people in public spaces by class-based profiling.*

### f. Right of the child

- *Ensure the right of every child to be raised in their family and that no child is “removed from their family due to their endangerment on the basis of solely material reasons” including the lack of adequate housing (as stated in Article 7 of the Act XXXI of 1997 on the protection of children and guardianship administration).*

## 7. The right to privacy and the right to data protection

Certain authorities<sup>40</sup> are entitled secret house search and surveillance with recording, opening of letters and parcels, as well as checking and recording the contents of electronic or computerized communications without a judicial warrant, when it aims the protection of national security. In these cases this activity is authorized by the Minister of Justice. As the Minister authorizes, not an independent court, it is not ensured that the decision in any specific case as to whether surveillance is justified will not be made solely on grounds of arguments in favor of the covert intelligence, but also by taking into consideration the criteria of respecting privacy.

In 2014 the Court of Justice of the European Union declared invalid the Data Retention Directive that unified the timeframe of the retention of selective data by Internet and telephone services and determined the accessibility of data by authorities in the member states. Despite the annulment of the directive, the Hungarian act allowing data retention still remained in force.

- *Revise the law on National Security Services allowing unjustified and disproportionately intrusive measures within the framework of secret surveillance without a judicial warrant.*
- *Repeal the unlawful legal provisions on Data Retention (Act C of 2003 on Electronic Communications) in accordance with the ruling of the Court of Justice of the European Union in case C-293/12. and C-594/12.*

## 8. Access to information

Recent amendments to the act on the right to informational self-determination and freedom of information are reacting to specific cases, when the press or NGOs reveal corruption, and they are tailored to the ongoing corruption scandals. The aim of these amendments is to prevent any data from being subject to successful freedom of information (FOI) requests in connection with the controversial tenders, or, to discourage citizens from data requests. According to the most recent amendments, if someone files a FOI request he or she has to pay a fee not only for copying or scanning but also for the workforce of the state agency. Anonymous FOI requests can no longer be submitted. If a FOI is requested repeatedly it can be denied without giving a reason, even if no answer has been given to the previous request. A FOI request can be denied on the basis that the requested documentation is considered to be preparatory for some future hypothetical decision, which is such a broad term that it can be applied to any case.

- *Revise the amendments of laws restricting freedom of information and undermining transparency and accountability (Act CXII of 2011 on the right to informational self-determination and freedom of information, Act XCIC of 2014 on excluding the applicability of Act CXCV of 2011 on the transparency of state aids).*

## 9. Freedom of speech

Protection of sources is guaranteed in the Press Act.<sup>41</sup> According to section 6 (1) of the Act, journalist have the right not to disclose their sources of information during legal procedures. This protection only covers “media content providers and the persons they employ under contract of employment or some

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<sup>40</sup> E.g. the National Security Services, the Counter-Terrorism Center

<sup>41</sup>Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content

other form of employment relationship". Therefore, freelance journalists and citizen journalists, who are not formally employed by a media content provider will not enjoy the right of protection of sources. The right of source protection shall be expanded to everyone who covers stories of the public interest and who participate public debates.

- *Amend the rules of protection of sources so they will not only cover professional journalists, but everyone publishing stories in the public interest.*

## 10. Hate crimes

Political analysts, human rights NGOs and international organisations have repeatedly emphasized the government's responsibility in generating intolerance, in particular in its anti-immigration campaign initiated in 2015 against asylum seekers. The European Parliament pointed out in a Resolution<sup>42</sup> that the launch of a national consultation on immigration and terrorism (sic!) spreads a rhetoric of hatred and prejudice, relying on xenophobic misconceptions by stigmatising asylum-seekers as welfare migrants and a national security threat.

The Under-secretary of EU affairs in the Ministry of Human Resources indirectly admitted that the billboard campaign, featuring anti-refugee and immigrant slogans, ordered by the government to discourage asylum-seekers from coming into the country was aimed at generating intolerance towards them.<sup>43</sup> The government's spokesman commented the human smuggling operation leading to the suffocation of 71 asylum-seekers in a truck, as "a tragedy involving exploited and self-victimizing people".<sup>44</sup>

The legal framework would make it possible for the authorities to effectively tackle hate crimes. However, systemic failures can be detected when it comes to the implementation and application of the law in case of hate crimes against vulnerable group members. These systemic failures are: regular under-classification of hate crimes, regular failures on the part of the police to undertake law-enforcement measures and failures of the authorities to take investigative steps.

- *Discontinue with the anti-immigration campaign and take measures to promote tolerance with regards to refugees and migrants.*
- *Take effective measures for the police and prosecution to ensure prevention of hate crimes and full implementation of hate crime legislation. Adopt a hate crime investigative protocol (in collaboration with NGOs) and assure law enforcement officers are made aware of its guidelines during their trainings.*

## 11. Right to vote

- *Allow voters registered as minority voters to choose between parties and minority lists on election day. Allow minority organizations to set up national minority lists which compete with each other.*
- *Abolish restrictions on the right to vote for all persons with disabilities, including those who*

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<sup>42</sup>European Parliament resolution on the situation in Hungary (2015/2700(RSP)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2015-0536+0+DOC+XML+V0//EN&language=en>

<sup>43</sup><http://www.euractiv.com/sections/justice-home-affairs/hungarian-official-admits-campaign-generate-hate-against-migrants>

<sup>44</sup>[http://index.hu/belfold/2015/08/28/kovacs\\_zoltan\\_a\\_menekulteket\\_hibztatja/](http://index.hu/belfold/2015/08/28/kovacs_zoltan_a_menekulteket_hibztatja/)

*have been placed under plenary or partial guardianship.*