



Children in Alternative Care

Orsolya SZEIBERT

Full Professor, Department of Civil Law, Faculty of Law, Eötvös Loránd
University, Hungary
E-mail: szeibert@ajk.elte.hu
ORCID: 0000-0003-1989-0931

Abstract. This article focuses on the alternative care of children. It emphasises several major points of alternative care from a children's rights perspective. The issue of alternative care as defined in the UN Convention on the Rights of the Child (CRC) and interpreted regarding the standards of children's rights is complex and affects essentially all rights of children, as enshrined in the CRC. This research contributes by envisaging some aspects of the Hungarian Child Protection Act that were enacted in 1997 and were meant as a milestone in the history of Hungarian child protection. This research explores children's rights in general, the main objectives of the Child Protection Act, reasons of child placement in alternative care, and main forms of this alternative care, including the foster care and children's homes. Furthermore, the issue of how Hungarian alternative care institutions meet the requirements of appropriate care for vulnerable children such as children with disabilities is examined. Consequently, the children's rights approach and Hungarian legal requirements are compared and form the basis for social assistance, alternative care as an *ultima ratio* solution, de-institutionalisation, and the caretakers of the vulnerable children. Of course, this series of issues is not an exhaustive list and does not include the practical realisation of the envisaged rights and institutions.

Keywords: alternative care, children's rights, children's home, foster parent, comparison

1. Children in Alternative Care – A Children's Rights Perspective

Children's rights, as enshrined in the UN Convention on the Rights of the Child (CRC) adopted in New York on 20 November 1989, have to be interpreted and applied in a complex way, as all children's rights are interconnected. Specifically, a particular right established for children by the CRC should not be construed

without considering the other rights included in the CRC. Moreover, all the listed rights are equal, although there exists the following ‘pillars’: the definition of the child in Article 1; prohibition of discrimination in Article 2; child’s best interests, which are to be taken as the primary consideration in Article 3; right to life in Article 6; and the child’s rights to be heard in Article 12.

According to Articles 20(1) and (2) of the CRC, a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State, and States Parties shall, in accordance with their national laws, ensure alternative care for such a child. Article 20(3) provides a wide interpretation of ‘alternative care’, as it states that such care could include, *inter alia*, foster placement, the *kafalah* of Islamic law, adoption, or, if necessary, placement in suitable institutions for the care of children. Additionally, this Article states that when considering solutions, due regard must be paid to the desiderate of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural, and linguistic background.

It is important to emphasise that when mentioning the temporary or permanent deprivation, the CRC does not refer to parents but to the child’s family. This stands in harmony with the CRC’s approach towards the wider family of the child, as Article 5 provides, *inter alia*, that States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family.¹ These children are in need of special care, as they are vulnerable² and are ‘at special risk of being denied’ a ‘nurturing environment’.³ The wording and the interpretation of the CRC, which are unambiguous, suggest that the institutional placement of the child is the last resort, even if it can serve as the best solution in certain situations, for example, when siblings want to stay together.⁴ Evidently, the first interpretations of the CRC indicate clearly that ‘institutionalisation is particularly inappropriate for young children’.⁵ The institutionalised alternative care of the child is the last resort and should only be temporary.⁶

The obligation to provide special protection and assistance for children being deprived of family environment is mandatory⁷ and is the responsibility of the state, even if non-state entities may play a role in providing alternative care.⁸ The provision of alternative care should meet several requirements, as simply providing alternative care is not sufficient; the state must offer various alternative

1 Hodgkin and Newell, 2007, p. 278.

2 *Id.*, p. 280.

3 Tobin, 2019, p. 737.

4 Hodgkin and Newell, 2007, p. 282.

5 *Ibid.*

6 Schmal, 2021, p. 291.

7 Tobin, 2019, p. 734.

8 *Id.*, p. 735.

care options that meet the requirements, as children are the holders of rights, and alternative care is not the subject of mere charity.⁹ One option is children's foster care, which is maintained and operated based on a legally regulated 'foster care policy'.¹⁰ Residential care as an alternative care option may play a role if it is 'necessary and suitable'.¹¹ Children being cared for in institutions or in foster families are certainly entitled to all children's rights.

Alternative care makes children vulnerable and results in stigmatisation,¹² although other factors, such as disability, make children more vulnerable. The Convention on the Rights of Persons with Disabilities (CRPD) adopted in New York on 13 December 2006 provides in Article 23(3) that State Parties shall ensure that children with disabilities have equal rights with respect to family life either when the child is disabled or when the parents are or both. If these children have to be placed in alternative care, according to Article 23(5), State Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, or within the community in a family setting, when the former fails. Evidently, this Article prioritises child placement in family surroundings rather than in institutional care.¹³ It occurs that the number of children belonging to certain vulnerable groups, including disabled children, is extremely high in alternative care as a consequence of societal stigmatisation of children with disabilities and the fragmented system of social assistance.¹⁴ The importance of avoiding institutionalisation, whenever possible, is underlined by the fact that children with disabilities who are institutionalised are at increased risk of experiencing abuse when we compare them with children who live with their own families.¹⁵

2. 1997 – A New Regime for the Protection of Children in Hungary

The child protection system in Hungary is regulated by Act No. XXXI of 1997 on the protection of children and guardianship administration (Child Protection Act).¹⁶ The Act was adopted by the Hungarian Parliament in April 1997. The child protection system envisaged in the Act was influenced by the CRC, which was

9 Id., pp. 745–446.

10 Id., p. 748.

11 Schmal, 2021, p. 291.

12 Alternative care being one of the most stigmatising situations was mentioned in Hungarian context by the sociologist János Zolnay (Ferge Zsuzsa szakmai örökségének nyomában – Szabadegyetem). [In the Footsteps of Zsuzsa Ferge's Professional Heritage].

13 Fiala-Butora, 2018, p. 654.

14 Schmal, 2021, p. 287.

15 Sabatello and Layden, 2020, p. 605.

16 The Act was promulgated in May 1997.

ratified in Hungary in 1991 and promulgated by Act No. LXIV of 1991. An aim of the Child Protection Act was to eliminate the gap between the requirements of the international documents and the child protection regime in force in the Hungarian situation.¹⁷ The Act was warmly welcomed by experts, and it is considered a milestone in the history of regulation of the child protection system in Hungary.

The actual protection of children's rights is emphasised as the objective and principle of the Child Protection Act. Several principles can be enumerated as the basis of the Child Protection Act and the child protection system as a whole, including: the prohibition of discrimination, protection of the child's best interests, the child's right to life, and the child's right to be heard. These rights echo the statements of the CRC. Most importantly, the functioning of the child protection system, requirements for cooperation, importance of volunteering, and primacy of children's rights and interests should be emphasised. Child protection is regarded simultaneously in a narrow and a wide sense. In the wide sense, all children fall under the 'umbrella' of child protection, the purpose of which is to provide assistance with specific services and measures to enforce the rights and interests of children enshrined in the law, fulfil parental duties, and ensure the prevention and elimination of children's endangerment and the replacement of missing parental care. The basic child welfare services target the upbringing of the child in his or her family and the prevention and elimination of danger to the child. This aim is realised through social assistance for the child and the family. Financial benefits and benefits relating to personal care are part of basic child welfare services. The narrow sense relates to authoritative measures with the aim of providing alternative care for the child. The Child Protection Act provides several instruments for the protection of children that are applied based upon the principle of graduality.

3. Children's Rights in the Child Protection Act

The connection between the Child Protection Act and the CRC is evident from Chapter II of the Act, which enumerates several rights of the children. As Hungary ratified the CRC, a huge gap emerged between the requirements of the CRC and the Hungarian practice, thereby elaborating the Child Protection Act.¹⁸ Therefore, it has become the main legal source of the Hungarian law, containing a comprehensive list of children's rights.

While some children's rights apply to children who are brought up in their own families, other rights protect children belonging to a special or minority

¹⁷ Rózsás, 2004, p. 140.

¹⁸ Mattenheim, 2017, p. 21.

group. The Act establishes children's rights dealing with endangered children and general children's rights, several of which expressly repeat the children's rights enacted in the CRC. General children's rights refers to the child's right to receive help to develop his or her personality, to avoid a situation that threatens his or her development, to be integrated into society, and to create an independent way of life.¹⁹ Children have the right to have their human dignity respected and to be protected against abuse (physical, sexual, or mental violence), neglect, and informational harm.²⁰ The child has the right to access to programs in the media that are suitable for his or her development, to help to expand his or her knowledge, to preserve the values of the Hungarian language and culture, and to be protected against such harmful effects as incitement to hatred, violence, and pornography.²¹ The child has the right to be protected against environmental and social influences harmful to his or her development, as well as substances harmful to his or her health.²² The child has the right to freely express his or her opinion, to receive information about his or her rights and the possibilities of enforcing his or her rights, to be heard directly or in another way in all matters concerning his or her person and property, and to have his or her opinion considered with regard to age, state of health, and level of development. The child has the right to file a complaint with the forums specified in the Act in matters of his or her concern. The child has the right to initiate proceedings before court and other bodies defined by law in case of violation of his or her fundamental rights.²³

A special group of children is marked out for protection by the Child Protection Act, articulating that disadvantaged and cumulatively disadvantaged children have the right to receive increased assistance to overcome the conditions hindering their development and to increase their chances.²⁴ Such a disabled or chronically ill child has the right to special care that helps his or her development and the development of his or her personality.²⁵ Some articles aim to prevent abuse against children and manage situations when they seem to be the victims of abuse. Children, as aforementioned, have a right to be protected against abuse and may not be subjected to torture, physical punishment or other cruel, inhuman, or degrading punishment or treatment.²⁶ In 2014, a new regulation was introduced, such that now, the child has the right to benefit from the actions of professionals acting in the interest of his or her protection, especially to recognise and eliminate child abuse and apply uniform principles and methodology.

19 § 6(2) Child Protection Act.

20 § 6(5) Child Protection Act.

21 § 6(6) Child Protection Act.

22 § 6(4) Child Protection Act.

23 § 8(1)-(3) Child Protection Act.

24 § 4(2a) Child Protection Act.

25 § 6(3) Child Protection Act.

26 § 6(5) Child Protection Act.

4. The Characteristics of the Child Protection Act

The Act is the first complex legal rule in the field of child protection, which created an opportunity to establish regulations with a unified and wholistic approach.²⁷ Several objectives of child protection and the child protection system are enumerated in the Child Protection Act, providing a very wide spectrum. Child protection in the broadest sense applies to all children irrespective of whether they live in their own families or are endangered. It is closely connected to a professional dilemma of whether to intervene in the life of a family. The solution in the field of child protection was that social work and social assistance should be provided to the families.²⁸

The general principle by which the state, local governments, persons, and bodies for the protection of the child have to support children such that their rights and interests may be realised and the parental obligations may be performed applies to all children. The principle that prescribes that the endangerment of the child has to be prevented and eliminated is also general, as it is fundamental and applicable to all children; theoretically, each child may be at risk of becoming endangered. The requirement of eliminating endangerment applies only to children who are endangered such as the principle that the absent parental care has to be substituted, and if the child has grown up in alternative care, his or her social integration has to be facilitated.²⁹ These principles create a clear system encompassing all children, based upon the idea that each child may get into a situation resulting in his or her endangerment.

The child protection system serves these objectives through different legal institutions, based upon detailed legal provisions. Three layers of care provided for families and children are defined. The first layer involves the different forms of supply belonging to the category of basic child welfare and care. It intends for families to use these supplies voluntarily and access them easily, close to their residence. The next layer of care is specialised and provided to children who already live in alternative care. The third layer includes the authoritative measures that can – and simultaneously have to – be applied if the care needed for the child's physical, mental, emotional, and moral development cannot be provided for the child with the consent of his or her parents, which endangers the child's development. The public guardianship authority then has to take one of the enumerated measures in such a case.

27 Herczog, 2001, p. 25.

28 Mattenheim, 2017, p. 21.

29 § 1(1) Child Protection Act.

5. Authoritative Measures as Interference in the Family's Life

One of the most important competences of the public guardianship authority is the exercise of its authoritative power.³⁰ The Child Protection Act regulates the measures that are to be ordered by the competent authority when needed, in the child's interest. Consistent with the main principles of the child protection system, such as the principle of graduality and differentiation between the supporting and authoritative competences, the public guardianship authority has to order one of the enumerated authoritative measures if the care that is needed for the child's physical, mental, emotional, and moral development cannot be provided with the agreement of the parents, which endangers the child's development. The authoritative measure has to fit the extent of the child's endangerment.³¹

The definition of being endangered is one of the most crucial issues in child protection, as it has a decisive importance. The Child Protection Act provides a definition according to the consequence of circumstances and behaviour or negligence displayed by the child or other person, obstructing or impeding the child's physical, mental, emotional, or moral development.³² The Child Protection Act further adds two important provisions. The child can be separated from his or her parents or other relatives only in his or her own interests and in cases and way defined in law, and if the child is endangered purely by pecuniary reasons he or she cannot be separated from his or her family.

The mildest measure entails taking the child under protection.³³ If the public guardianship authority takes the child under protection, it does not separate the child from his or her parents and relatives, and parental custody is not affected. If the child is endangered and the parents or the legal representatives of the child cannot eliminate this endangerment by voluntary access to basic care services, or they do not use this opportunity, but the public guardianship authority can reasonably assume that the care may be provided for the child in his or her family with support, the child has to be taken under protection.³⁴ It has to be stated by the decision-maker whether taking under protection is a proper measure concerning the particular child's special circumstances. This is definitely an authoritative measure that can be ordered without the parents' or the child's legal representative's agreement, but as the child is left in his or her family and shall receive support together with the family, this measure borders on child welfare services and coercive measures.

30 § 67 Child Protection Act.

31 § 67(1) Child Protection Act.

32 § 5 n) Child Protection Act.

33 § 68 Child Protection Act.

34 § 68(1) Child Protection Act.

This measure is intended to grant continuous support in caring for the child and its organisation and the support of parental care to ensure eliminating the endangerment of the child. The public guardianship authority takes some special measures and calls the family and child welfare centre as a case manager to join all forces and services in connection with the child's protection. Noteworthy is the type of measures that may be taken by the public guardianship authority. For instance, it may oblige the parents to continuously avail the child of daytime care, to turn to a person or body dealing with family protection, or to access medical services for the child, and it may also oblige the parents that they and the child participate in conflict management. Moreover, it can determine certain behavioural rules for the child and also call the parents' attention to the consequences of his or her improper lifestyle and behaviour. The family and child welfare centre has to elaborate a unique plan for caring for and bringing up the child.

Another special authoritative measure is the child's provisional placement.³⁵ There are special circumstances when it is essential to act without any delay. If the child is without any supervision or the child's physical, mental, emotional, or moral development is seriously endangered by his or her family circumstances or himself or herself, he or she has to be placed immediately. If the child's circumstances require an immediate intervention in the child's life, it can only be interim. Several authorities, including the public guardianship authority, police, immigration authority, asylum authority, prosecutor's office, court, and penitentiary institutions, have the competence to interfere in the child's life and place the child either with the parent living separately from the child if he or she is eligible for caring for the child, with another relative or person, or at a foster parent or children's home, if such persons are unavailable. This measure affects the parents or the parents' parental custody, as the right attached to it, namely caring for the child, is suspended as long as the child is provisionally placed. This kind of placement is terminated by the public guardianship authority if the development of the child may be provided in his or her earlier circumstances, the child needs to be taken under protection if necessary, or if the child has to be taken into alternative care.

The most severe and crucial authoritative measure is taking the child into alternative care.³⁶ It is the *ultima ratio* solution among the coercive measures. This measure is intended to ensure care for the child by providing a home and a legal representative for him or her until his or her family will be able to accept the child back or a guardian who takes the child into his or her own household may be ordered for the child until the child is adopted or he or she reaches his or her majority. For the latter, the aim of alternative care is to prepare the child for an independent life. There are several situations that may result in the child

35 § 72 Child Protection Act.

36 § 77 Child Protection Act.

being taken into alternative care, such as when both parents have passed away and there is no relative or other person who can take the child in his or her own household as a guardian. In this case, it is a reasonable decision, as the state has to provide special protection and assistance for the child who is deprived of his or her family environment.

The public guardianship authority takes the child into alternative care if the child's development is endangered by his or her family surroundings and this endangerment cannot be eliminated either by child welfare services or by taking the child under protection, no result can be expected from the services or from having taken the child under protection, or the care for the child cannot be provided in his or her family.

The gradual character of the measures regulated in the Child Protection Act is mirrored in the presentation of the authoritative measures. While taking the child under protection does not separate the child from his or her family, alternative care results in separation in the child's interests. The provisional placement of the child is a reaction to an emergency situation, as the child has to be placed with another person who may be a separated parent of the child, a foster parent, or a children's home.

6. Alternative Care in the Mirror of the Child Protection Act

If the child is taken into alternative care, a home has to be provided for him or her. This provision consists of full care for the child, with the aim that he or she may be placed back into his or her own family or, in case of impossibility of the child's re-placement into his or her own family, support for the child's adoption may be ensured. Nonetheless, the child also needs support to start his or her own life path. The detailed rules on the institutions of alternative care are contained in Decree 15/1998 (IV. 30.) of the Ministry of Public Welfare on the tasks and operational conditions of child welfare and child protection services and professionals providing personal care.

6.1. Foster Families and Children's Homes

There are two main solutions for placement outside the family (also extended), which differ from each other. One is the child's placement in a foster family and the other is his or her placement in a children's home. From 1 January 2014, a change of paradigm occurred:³⁷ all children under the age of 12 have to be placed in a foster family instead of in a children's home, and the child may be

³⁷ Filó and Katona-Pehr, 2022, p. 338.

placed in a children's home only if it is required by the child's health, the need for the joint placement of siblings, or is hindered by the definite request of the natural parents. According to this new regime, children under the age of three were re-placed with foster families in 2014, children under the age of six were re-placed with foster families in 2015, and children under the age of 12 were re-placed with foster families in 2016.³⁸ Since 2014, it has become a priority for a child in alternative care to be placed in a foster family, with child placement in a children's home becoming a secondary option.

Until the adoption of the Child Protection Act, children's homes were typically large institutions providing homes for several children, whereas the aim of the Child Protection Act was to reshape the system consisting of children's homes for a small number of children. Besides the children's homes, the so-called 'flat' children's homes were built.

A children's home provides for the care and upbringing of at least 12 and at most 48 children.³⁹ The 'flat' children's home is a children's home that is operated in an independent flat or family house having a maximum of 12 children who may live there.⁴⁰ The number of children who may live in a children's home is a crucial issue with regard to children with special needs or children with both special and particular needs who may live there.

6.2. Children with Special and Particular Needs

Children with special needs are children who are chronically ill or disabled and those who are under the age of three. Children with particular needs are children with severe psychological symptoms (severe personality development, emotional life and impulse control disorders, or severe psychotic or neurotic symptoms), those showing severe dissocial symptoms (severe behavioural and integration disorders or severe antisocial behaviour), those who abuse psychoactive substances (alcohol, drugs, etc.), or those suspected of being victims of human trafficking (including children who violate the prohibition of offering sexual services as defined specifically). Children with both special and particular needs belong to another group as they simultaneously need special and particular care.⁴¹

In a children's home, care for the children is provided in residential units according to the unique professional programme of each children's home. In one residential unit, a maximum of 12 children may be placed, and within the group of 12 children, at most one child with both special and particular needs, one child with special needs, or four children with particular needs may be placed.

38 Filó and Katona-Pehr, 2022, p. 339.

39 § 124(1) Decree.

40 § 125(1)-(2) Decree.

41 § 53(1) Decree.

Deviation from this requirement can only be allowed in the interest of the children concerned. The total number of children may be reduced to accommodate the placement of children with both special and particular needs, one child with special needs, or four children with particular needs. These requirements have to be applied to a 'flat' children's home where only a maximum of 12 children may be placed.⁴² These rules were introduced in 2014.

In that year, special children's homes, special 'flat' children's homes, and special units of the children's home were introduced to increase care tailored to the individual needs of children.⁴³ These homes or units provide special or special and particular care for the concerned children over the age of 12 as an obligatory task. For a child showing severe dissocial symptoms, severe psychological symptoms, or using psychoactive substances, special care adapted to the child's condition has to be offered, while for children with both special and particular needs, special and particular care has to be provided. The number of children being placed in a special ('flat') children's home is reduced for the effective provision of the special (and particular) care. In a special care children's home, a maximum of 40 children, with a maximum of 8 children per residential unit, while in a special 'flat' children's home, a maximum of 8 children, and in a special unit of the children's home, a maximum of 8 children may be placed, in such a way that only children of the same sex can be placed within each group.⁴⁴

In 2014, particular children's homes, particular 'flat' children's homes, and particular units of the children's home were introduced to increase care tailored to individual needs of children. These homes or units provide particular or special and particular care for the concerned children as an obligatory task. For a child who is under the age of three and has special needs owing to his or her young age, chronic illness, or disability, particular care adapted to the child's age and condition has to be offered, while for children with both special and particular needs, special and particular care has to be provided. All particular homes and units may take care of children under the age of six who are disabled and show developmental delay in some areas. In such a case, early development care is provided for the child. Moreover, the number of children is restricted in such institutions. In a particular children's home, a maximum of 40 children, while in a particular 'flat' children's home, a maximum of 10 children, whereas in a special unit of the children's home, a maximum of 10 children may be placed. At most 8 chronically ill, 8 moderately or severely disabled, or 10 mildly disabled children may be placed among the chronically ill or disabled children with particular needs in one group. In a group consisting of eight or ten children,

42 § 124 Decree.

43 These institutions were introduced by Decree 19/2014 (III. 13.) of the Ministry of Human Resources.

44 § 126 Decree.

a maximum one child with special and particular needs may be placed, and this can only be deviated from in the interests of the children concerned.⁴⁵

In 2013, the rules on the central special children's home were modified.⁴⁶ The central special children's home provides care for children with a nationwide service area. It provides, in the frames of special care, therapy requiring special expertise for children who show severe psychotic or neurotic symptoms or are in need of the therapy because they have committed serious acts of violence, regularly abuse psychoactive substances, suffer from acquired immunodeficiency syndrome, or have become a presumed victim of human trafficking and in need of both particular and special care. The therapy is adapted to the child's condition and needs.⁴⁷

6.3. Foster Family

Although child placement and care in foster families have a tradition in Hungary, the category of 'host parent' was introduced in 2014.⁴⁸ The host parent as an umbrella concept includes the deputy parent providing temporary care and the foster parent providing full care for children who are in alternative care. The temporary care by the deputy parent and the child's full care by a foster family through foster parents are different legal institutions belonging to different substructures of the child protection system. The child protection system involves two levels: basic child welfare care and specialised child protection care. The aim of the basic care is to support the child's mental, spiritual, and moral development and welfare, caring for the child by his or her own family, the prevention of the child's endangerment, termination of any endangered state, and prevention of the need for the child's placement in alternative care. Basic care is available upon a voluntary basis. Child protection (in a narrow sense) refers to the specialised care provided to children in alternative care.

6.4. Temporary Care as Part of the Basic Child Welfare Care

The key issue in temporary care⁴⁹ is its provisional character. Temporary care is provided at the child's parents' or his or her legal representative's request or upon the consent of these persons, if the parent is unable to raise the child in the family due to health conditions, lifestyle problems, justified absences, or other obstacles. Full care has to be provided to the child, and if the child is disabled, the care has to be adapted to the child's particular needs. Full care means the provision of

45 § 127 Decree.

46 The modifying legal source was Decree No 49/2013 (VII.10.) of the Ministry of Human Resources.

47 § 130–131 Decree.

48 Filó and Katona-Pehr, 2022, p. 343.

49 § 45 Child Protection Act

food, clothing, mental hygiene, and healthcare, education, housing that promotes the child's physical, intellectual, emotional, and moral development and is appropriate for its age, state of health, and other needs.

As the child has to be separated from the parent(s) not because of the parent's misconduct, the child's right to be taken care of in the company of his or her parents is crucial. The child under the age of 14 can only be separated from his or her parents in exceptionally justified cases, and the parent who has become homeless may be placed where the child is under temporary care. If the child is under the age of 12, his or her care has to be provided primarily by a deputy parent. In this case, the child's parent takes part in caring for the child according to his or her work schedule.⁵⁰ Temporary care may be provided in children's provisional homes where at least 12 and at most 40 children may be placed. There are 'flat' children's provisional homes that provide full and temporary care for a maximum of 12 children in an independent flat and in family-like circumstances.⁵¹

Upon the request of the parent who has become homeless, children and their parents may be placed together in the families' provisional home if, in lack of placement, their housing would not be provided, and the child would be separated from his or her family. The families' homes provide joint care of at least 12 and at most 40 adults and children.⁵² There is a wide variety of tasks of such provisional homes providing care for families and children. These homes accommodate parents and children who have become homeless due to lifestyle problems or other social and family crises, those seeking protection, abused, or pregnant mothers in a crisis situation. They also provide temporary care for children in need of care and take in their homeless parents; assist the parents in the necessary care and upbringing of their child; provide the parent with co-housing with the child and care, as needed; provide parents with legal, psychological, and mental health assistance in addition to care; and participate in cooperation with the child welfare service in eliminating the reasons for the need for temporary care, sorting out the family's situation, and in reducing homelessness.⁵³

Temporary care may be provided by a deputy parent who takes care of the child in his or her own household. The deputy parent can take care of up to four children at the same time, including their own children. The work of the deputy parent may be supported by a childcare worker, who is appointed by the maintainer of the network of host parents if the child placed with the deputy parent is under regular child psychiatric treatment or if there are more than two children under the age of three in the care of the deputy parent. The foster parent may also undertake the

50 § 45(3) Child Protection Act.

51 § 50 Child Protection Act.

52 § 51 Child Protection Act.

53 § 51 Child Protection Act.

tasks of the deputy parent; however, as a main rule, the children in the care of the host parent can only be those in alternative care or in temporary care.

6.5. Special and Particular Foster Parents

If the child is in alternative care, he or she may be placed with a foster family, to foster parents. This is not only an opportunity but is the objective of the system of alternative care to ensure family accommodation. A foster parent may be a special foster parent or a particular foster parent.⁵⁴ The special foster parent is the foster parent who is able to ensure the balanced upbringing of a child with severe psychological or severe dissocial symptoms or who abuses psychoactive substances and requires special care. The particular foster parent is the foster parent who can ensure the balanced upbringing of a chronically ill, disabled, or under three-year-old child in need of particular care. The foster parent can provide care for up to six children, including their own minor children. If the foster parent only takes care of foster children in his or her household, the foster parent can provide care for up to five children. If a child with special or particular needs is cared for in the foster parent's household, the number of children living there has to be reduced by one person in case of full care for each child with special needs or particular needs. There is a possibility of deviating from this rule on the request or with the consent of the foster parent and, especially, in case of the placement of siblings.⁵⁵

7. Comparison between Some Aspects of the Child Protection Act and the Requirements of the CRC Concerning Children's Rights and Alternative Care

7.1. The Priority of Social Assistance and Family Care

The Hungarian child protection system in a broad sense is based upon care in the family, whereby the skills and tools of social work are utilised. Basic child welfare care makes it possible to opt for the most appropriate service and supply. This is provided close to the families both geographically and personally, as primarily social workers, carers, psychologists, and mediators provide these services. The child's temporary care serves as an example for the case when the parents cannot take care of their child but consent to the child's temporary care. In such a case, the child is not separated from his or her parents, if possible, which means that

54 § 54 Child Protection Act

55 § 54/A Child Protection Act.

the family as a unit is supplied with services. The holistic and complex provision of care for families, which is deeply rooted and is not discussed in the Child Protection Act, is in harmony with the children's rights approach.

7.2. Alternative Care as the Last Resort

The CRC requires that alternative care must be *ultima ratio*. The Hungarian Child Protection Act meets this requirement, as the basic child welfare care services precede the child protection measures and the child is placed in alternative care with foster parents or in children's homes only when there is no other opportunity to take care of the child. If the child is not endangered in his or her own family but is not under parental custody, the public guardianship authority has to be notified that a guardian needs to be appointed for the child. In such a case, if the parents exercising parental custody did not name anybody as the guardian, the guardianship authority shall primarily appoint a close relative who is suitable for the guardianship to act as guardian. If there is no such relative, the guardianship authority shall appoint another relative or another suitable person as guardian, primarily from among those who already take part in caring for and bringing up the child. Therefore, the child may remain in family circumstances or in his or her wider family and may be brought up in the guardian's own household. If the child is taken into alternative care, the child protection guardian – as part of the professional staff of the public guardianship authority – will represent him or her and administer the child's assets. The child in alternative care will be cared for personally by the foster parent or the staff of the children's home or 'flat' children's home.

7.3. Deinstitutionalisation

The child being separated from his or her parents or wider family and family members has to be placed in family-like circumstances. The process of deinstitutionalisation has long been an objective, as there has been an obvious need for more foster families and foster parents. In 2014, the legislator introduced rules guaranteeing the gradual elimination of institutionalised children's homes. The effective rules require that children under the age of 12 have to be placed with foster families and cared for by foster parents. 'Flat' children's homes indicate a middle way solution, as a maximum number of 12 children may be placed in these homes, but these homes are operated in flats and family houses to create family-like circumstances. The same principle prevails in the residential units of the 'traditional' children's homes where the number of children is also limited. These children's homes are 'traditional', even though they are not the old, enormous children's homes anymore.

7.4. Appropriate Care for Vulnerable Children Such as Children with Disabilities

The Hungarian system of alternative care has several layers to provide special and particular care for children in need. Both the children's home (including the 'flat' children's home and the residential unit of the children's home) and the foster family (foster parent) may provide a surrogate home or parent who is prepared to care for children with special or particular needs or both these types of needs. These children are more vulnerable, and they need special attention from the staff of the children's home and the foster parent. The modification of the rules in 2014 made it possible to distinguish among these children, as being vulnerable is not a homogenous category.

8. Conclusions

The legal regime established by Act No. XXXI of 1997 in conjunction with the CRC provides for particular solutions in the case of children, particularly those with special needs. These solutions, in line with the desiderate of avoiding institutionalisation and even removal of the child from his or her family, strive to ensure assistance that is as close as possible to the child's original home and family. Only in extreme cases, and especially in the case of children suffering from disabilities, addiction or found in other specific circumstances, is the removal of a child from his family through placement allowed, and even in such extreme cases foster care is prioritised over institutionalisation.

References

- Fiala-Butora, J. (2018) 'Article 23: Respect for Home and the Family', in I. Bantekas, M. A. Stein and D. Anastasiou (eds.) *The UN Convention on the Rights of Persons with Disabilities*. Oxford: Oxford University Press.
- Filó, E. and Katona-Pehr, E. (2022) *Gyermei jogok, szülői felelősség és gyermekvédelem*. Budapest: ORAC.
- Herczog, M. (2001) *Gyermekevédelmi kézikönyv*. Budapest: KJK Kerszöv.
- Hodgkin, R. and Newell, P. (2007) *Implementation Handbook for the Convention on The Rights of the Child*. UNICEF: Geneva.
- Mattenheim, G. (2017) 'Preambulum', in G. Mattenheim (ed.) *Kommentár a gyermekvédelmi törvényhez*. Budapest: Wolters Kluwer.
- Rózsás, E. (2004) 'A gyermekvédelem rendszere', *JURA*, (2), pp. 140–149.

-
- Sabatello, M. and Layden, M. F. (2020) 'Children with Disabilities: Achievements, Prospects, and Challenges Ahead', in J. Todres and S. M. King (eds.) *The Oxford Handbook of Children's Rights Law*. Oxford: Oxford University Press.
- Schmal, S. (2021) *United Nations Convention on the Rights of the Child*. Baden-Baden: Nomos, Munich: Beck, Oxford: Hart.
- Tobin, J. (2019) 'Article 20. Special Protection for Children Deprived of Their Family Environment', in J. Tobin (ed.) *The UN Convention on the Rights of the Child*. Oxford: Oxford University Press.