

1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration, including in relation to:

a) The situation of separated and unaccompanied migrant children

22 Member States of the European Union including Hungary produced national reports about the reception, return and integration policies for and numbers of unaccompanied minors in the framework of the European Migration Network. Based on these national reports the European Migration Network published an EU comparative study, which together with the national reports might be helpful for the Office of the High Commissioner while preparing this study on the rights of migrant children.¹ Another report on the situation of separated, asylum-seeking children in 12 Member States including Hungary is being prepared by the Fundamental Rights Agency of the European Union and is expected to be published in June 2010.²

Unaccompanied minors are defined by Hungarian legislation as foreigners below the age of eighteen, who arrive on the territory of the Republic of Hungary unaccompanied by an adult responsible for them by law or by custom, as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Republic of Hungary.

Separated and unaccompanied migrant children in Hungary can be divided into two larger groups: asylum seekers and unaccompanied children who do not seek asylum in Hungary. Unaccompanied asylum seekers are cared for in a specialised facility of the asylum system, while other unaccompanied minors are cared for in the mainstream child care system. The latter group consists of irregular migrant children and children of unknown nationality. The number of the two groups is not large, but one of the challenges is that accurate data about their numbers is sometimes unavailable.

The care of unaccompanied minors who are not asylum seekers is the task of the Guardianship Office of the 5th District of Budapest. The national study on unaccompanied minors³ found that the Guardianship Office of the 5th District could only provide approximate data on the number of migrant children in their care retroactively as due to changes in their IT system some data was lost. Since 2004 there were around 500 cases of unaccompanied minors in their care altogether. On an annual basis it is estimated that the number of non-Hungarian children in their care is around 90, which is 2-3% of all children being in care. At the end of 2009 there were approximately 150 active cases of non-Hungarian children. It is estimated that more than one third of these children are EU nationals, mainly Romanian nationals.

Unaccompanied minors who are third country nationals can not be returned to their country of origin or to a third country unless their adequate protection is ensured there. Unaccompanied minors having the right to free movement and residence under Community law can not be expelled from Hungary unless it is in their best interest. During their stay in Hungary those minors are taken into interim care by the guardianship office and placed in foster families or child care institutions.

¹ The national reports and the comparative study is available at <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=115>

² The summary of this report is available at http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_sep_asylum_en.htm

³ The study is available in English at http://www.irm.gov.hu/i/irm.gov.hu/files/EUpalyzatok/EMH/Policies_on_unaccompanied_minors.pdf

As one of the national priorities of the European Integration Fund is the empowerment of the existing structures having a role in the integration of third country nationals several projects aiming to prepare the social sphere to the work with third country nationals were implemented in 2009 in the framework of the European Integration Fund. One of these projects implemented by the Hungarian Interchurch Aid financed by the European Integration Fund and the Ministry of Justice and Law Enforcement expressly aimed at the training of child protection experts in order to prepare them to better perform their tasks related to migrant children. The training generated a high level of interest and the beneficiary held 9 training courses instead of the planned 6 by the end of September 2009 with the participation of 196 child care experts in total.

The number of unaccompanied minor asylum seekers was 66 in 2007, 176 in 2008 and 270 in 2009. The fact that their number is rapidly increasing is one of the challenges faced by Hungary.

According to the Act LXXX of 2007 on Asylum and its implementing decree unaccompanied minor asylum seekers have to be accommodated separately from other asylum seekers in a special reception facility. The principle of family unity should be observed by accommodating siblings together taking into account their age and degree of maturity.

Unaccompanied minor asylum seekers are cared for in a shelter for unaccompanied minor asylum seekers operating at Bicske since 2008 in a separate building of the refugee reception centre which is operated by the Office of Immigration and Nationality. The shelter is run in the framework of a project financed by the European Refugee Fund and the Hungarian Ministry of Justice and Law Enforcement. The project is run by the Hungarian Interchurch Aid and the Bicske Reception Centre of the Office of Immigration and Nationality: the Reception Centre provides the infrastructure of the shelter while the NGO is responsible for the provision of the staff, and the provision of professional care and support for unaccompanied minors.

By virtue of the Act on Asylum during the refugee status determination procedure a case guardian is appointed at the request of the Office of Immigration and Nationality (the authority responsible for the status determination procedure) by the local guardianship office to assist and represent the unaccompanied minor in the procedure. Case guardians are lawyers and their mandate covers only the legal representation of the minor in the asylum procedure. As the Act XXXI of 1997 on Child Protection does not authorize the guardianship office to appoint a legal guardian for an asylum seeker, these children do not have legal guardians for the duration of the asylum procedure. If it is necessary for the protection of their personal interests other than those that are related to the procedure another case guardian may be appointed by the guardianship office for them. This practice was questioned by the Parliamentary Commissioner for Human Rights in its report No. 7120/2009 suggesting that the best interest of the child requires the appointment of a legal guardian for all unaccompanied children regardless of their status.

The recognition rate of unaccompanied minor asylum seekers rose significantly in 2008 when 31 children were recognised as refugees and 10 as beneficiaries of subsidiary protection. Another 3 children were given the authorization to stay in Hungary as their return to their country of origin would have been contrary to the principle of non refoulement. According to the Act on Asylum in case of unaccompanied minors the prohibition of refoulement also prevails if the unification of the family or any state or other institutional care is not possible either in the country of origin or in another state receiving the minor. Despite these facts the proportion of unaccompanied minor asylum seekers leaving Hungary during the asylum procedure is high.

Minor refugees, beneficiaries of subsidiary protection and persons authorized to stay fall under the scope of the Child Protection Act and by law are entitled to the same care that is provided for Hungarian children. However due to the fact that the child protection system of the country where those children live is not prepared to receive significant numbers of children who do not speak Hungarian and whose cultural background is different from the Hungarian childrens', the practice evolved in the past years is that unaccompanied minor refugees, beneficiaries of subsidiary protection and persons authorised to stay are formerly taken into permanent care by the guardianship office (so they can benefit from the provisions of the child protection system) but continue to reside in the shelter up to the age of eighteen. This practice was also questioned by the Parliamentary Commissioner for Human Rights in the abovementioned report who suggested the integration of the shelter for unaccompanied minors to the Hungarian child protection system in order to ensure the continuity of its work, which is project based at the moment.

b) Access to social services

Access to education

According to the Act LXXIX of 1993 on Public Education the following categories of non-Hungarian national minors are subject to nursery care or mandatory schooling in Hungary:

- asylum-seekers, recognised refugees, beneficiaries of subsidiary protection, beneficiaries of temporary protection,
- children having the right to free movement and residence by virtue of the Act I of 2007 on the Entry and Stay of Persons having the Right to Free Movement and Residence
- children falling under the scope of the Act II of 2007 on the Entry and Stay of Third Country Nationals being in the possession of a valid immigration or settlement permit, or a permit entitling them to reside in the territory of the Republic of Hungary.

The services provided to the child under this Act are: nursery care, school education, boarding school education and special pedagogical services. In case of children belonging to the last two groups these services are provided under terms and conditions equivalent to those for Hungarian nationals only if the parent of the child holds a residence permit with a validity period of more than 3 months and exercises gainful employment. If the period of residence within the territory of the Republic of Hungary does not exceed one year, these services are provided upon the parent's request. If the period of residence does exceed one year, then by the power of the law, the child is subject to mandatory schooling.

Asylum-seekers are entitled to these services and subject to mandatory schooling from the moment they apply from asylum in Hungary without any further conditions.

Non-Hungarian nationals not mentioned above, unless otherwise stipulated in an international treaty or legislation shall pay a fee for the educational services. Such fees may not exceed the portion of expenses for specialized tasks per student. Heads of public education institutions may reduce or waive such fees in accordance with the regulations set forth by the operator of the institution.

The number of non-Hungarian nationals participating in general education is relatively low: In the 2007-2008 academic year the total number of migrant children attending Hungarian public educational institutions was all in all 10.916. This number corresponds to merely 0,65% of the country's total school population. The majority of foreign pupils are ethnic

Hungarians coming mostly from the neighboring countries: depending on the educational level and the type of school, they make up 45-87% of all foreign nationals. The total number of minors from non European countries except for those coming from China and Vietnam is negligible (several dozens of new arrivals per year). Minors falling in the last category mostly arrive from the Middle-East and Central-Asia and the majority of them are asylum seekers, while some are unaccompanied children. The number of migrant children attending Hungarian public educational institutions was 10.376 in the 2008-2009 academic year which shows a decrease in comparison with the number of migrant children in the previous academic year but the trends described above did not change significantly.

The geographical distribution of migrant students is uneven. About 50 % of all foreign pupils are enrolled in schools in the capital. The proportion of foreign pupils in some schools operating in districts with a relatively higher density of immigrant population, reaches 5-8% of the school population. Also, in some schools operating in larger cities located near the Hungarian borders the percentage of non-Hungarian nationals is above the national average.

Although the number of migrant children is not high ensuring their integration into the Hungarian education system poses several challenges for the children and for the teachers and the schools as well. The education of asylum seeker and refugee children as well as children who are beneficiaries of subsidiary protection usually means a greater challenge as it is more likely that these children do not speak Hungarian, have no proof of their previous education or have never attended school before their arrival to Hungary, and usually the prevalence of traumatic experiences is higher among them. The difficulties experienced in the education of these children are partly due to the complexity of the pedagogical tasks the teaching staff is confronted with, but also to overall pedagogical weaknesses. Another major impediment is the recurrent aversion demonstrated by parents of Hungarian children in accepting the inclusion of asylum seeker children into mainstream education. Local authorities are sometimes confronted with the resentment of a segment of the local community against the practice of inclusive education (parents occasionally show reluctance of enrolling their children into these schools). Access to education might be delayed when a large number of asylum seeker children arrive at the same time.

In April 2008 the Commissioner for Civil Rights examined the access to education of asylum seeker and refugee children living in the three reception centres in Hungary. At the moment of the visit two of the three centres hosted children, and the Commissioner found that all school age children received some form of education (all but one who received special preparatory training were educated in Hungarian schools), but at the same time 9 children were unable to attend compulsory nursery as none of the nurseries in Debrecen accepted them despite their obligation to do so. In 2009 there was a period during which more than 200 asylum seeker children were living with their parents in the reception center in Debrecen and they were unable to attend school as the local government was unable to provide enough school places for them and as some of the children despite being of school age have never attended school before and were unprepared to attend school. As public education institutions are operated by the local authorities the school attendance of asylum seeker children in some cases depends on the flexibility of the local government where the reception centre is located.

The Hungarian Ministry of Education has been working for years on measures ensuring that the Hungarian schools are capable of meeting those challenges. More information about these measures can be found in the answers to the second question.

Access to housing

A growing problem among refugees that threatens refugee families as well is homelessness. According to a research project made by the Regional Representation of the United Nations High Commissioner for Refugees⁴ the number of refugees within the Somali community who are either homeless or facing a serious risk of becoming homeless in the capital fluctuates over time between twenty and fifty persons. This situation seems to mainly affect Somalian nationals but among the 15 persons interviewed in the course of the research was one Palestinian man as well. It seems that one of the root causes of the situation is the legal situation (mostly the non-recognition of Somali passports as valid travel documents) that results in the lack of family reunification prospects for Somali nationals and the real or perceived lack of employment prospects and prospects of earning an income to support family members remaining in Somalia. These factors together with several other ones inspire Somali refugees to leave Hungary and try to find employment or seek asylum in other EU Member States. Due to the rules of the Common European Asylum System these persons can not be recognised as refugees in other Member States and are often returned to Hungary. After their return to Hungary these refugees do not have the right to live in the reception center as this possibility is only offered in the first 6 months following recognition and if someone moves out of the reception centre without written notice he/she is not allowed to go back, and face the risk of becoming homeless. One of the refugees interviewed in the course of the research was a single mother with a small child while another one was a man with three children.

e) Access to identity, birth registration

All children born on the territory of the Republic of Hungary are registered in the Hungarian registrar, even if they are not Hungarian nationals. According to Hungarian law children born in the territory of the Republic of Hungary do not acquire Hungarian nationality – this is only acquired by children having at least one parent who is a Hungarian national. Children of unknown parents found in Hungary and children of stateless parents residing in Hungary shall be regarded Hungarian nationals in the absence of proof to the contrary.

In this field there is one known challenge: the situation of children who are unknown nationals. Their number is currently about 40. One part of these children was left behind in the hospital after birth by their mother but as the hospital was aware that their mother is not Hungarian the children could not be registered as Hungarian nationals. In these cases the children are taken into interim care by the guardianship office who shall notify the consulate of the assumed nationality of the child in order to request the establishment of the nationality of the child. These children can not be adopted and can not acquire Hungarian citizenship until their nationality and legal status is clarified. Unfortunately in some cases the authorities of the requested state only reply to the request a long time after the birth of the child indicating that the child is their national and that they are ready to repatriate him/her. By this time the child may have spent a long period in the interim care of Hungarian foster parents and it is questionable whether his/her best interest lies in repatriation or in remaining in Hungary.

A smaller group of children with unknown nationality are children whose biological father is a Hungarian national but whose non-Hungarian mother was married to a foreign national when the child was born. In those cases the child does not acquire Hungarian nationality as by law the husband of his/her mother is considered to be his/her father. The child is registered as

⁴ Available at: <http://www.unhcr-budapest.org/index.php/news/220-unhcr-researches-refugee-homelessness>

an unknown national and until the parents acquire an identification document issued to the child's name by the consular authorities of their state the child remains unknown national. In some cases the parents fail to contact the authorities and therefore the child remains to be registered as an unknown national and does not have access to education, health care and can not be adopted.

A case of a child was solved in 2009 by the Minister of Justice and Law Enforcement issuing him a settlement permit without requiring the conditions of this permit to be met. If the child is in the possession of such a permit he/she may be adopted by the biological or the foster parent and therefore acquire Hungarian nationality. The Ministry of Justice and Law Enforcement is working in cooperation with the Ministry of Social Affairs and Labour to solve the situation of all children of unknown nationality in Hungary. Furthermore, the new Act on Registration Procedure that will enter into force on the 1st January 2011 provides that if the mother does not identify herself at the birth of the child or within 30 days following the notification of the registrar about the birth of the child and leaves the child in the hospital without custody the child shall be considered a foundling of unknown parents. As foundlings of unknown parents shall be considered Hungarian nationals by virtue of the Act LV of 1993 on Hungarian Citizenship the application of these rules will hopefully settle the situation of those children who are left behind by their migrant mothers in the hospital at their birth.

2. Examples of best practice in the implementation of the international framework for the protection of the rights of the child in the context of migration

a) Measures undertaken in the field of education

Beyond guaranteeing equal conditions on a legal basis, in order to promote the harmonious social and cultural integration of foreign students, the Minister of Education issued a pedagogical programme for the intercultural education of migrant children in 2004. The programme lays down in the form of guidelines the basic principles, objectives and methodology of an intercultural pedagogical programme to be implemented in the course of joint education of Hungarian and migrant children. Those schools that organize the education of their non-Hungarian speaking pupils on the basis of this pedagogical programme may apply for additional subsidy to the Ministry of Education and Culture. The amount of additional subsidy in the course of the present and the next academic year is 90. 000 HUF for asylum-seeker and refugee children as well as minor beneficiaries of subsidiary or temporary protection and 45. 000 HUF for other migrant children.

Furthermore, the New Hungary Development Plan (2007-2013) and its Social Renewal Operational Programme for 2007-2008 supports the education of migrant students. In the course of priority 3 of the Social Renewal Operational Programme (Access to quality education for all) institutes of the public and higher education, teachers and NGOs can apply for funding to ensure the high quality of the education of migrant students by actions such as: training in intercultural education, training of Hungarian as a foreign language teachers, introduction of global education to the educational practice, enhancement of the cooperation between schools, school managements and NGOs to support the integration of migrant students.

Complementarily with the abovementioned financial resources the European Integration Fund and the European Refugee Fund can also be used for the development of the education of migrant children. In the framework of the European Integration Fund one project was implemented in 2009 that aimed at improving the effectiveness of the work carried out by teachers dealing with migrant children thereby ensuring their more successful integration into the education system. The aim of the project was achieved by training 20 teachers with the help of a 60-hour accredited training programme, by holding three professional seminars for 75 teachers about the education of migrant children, and by the preparation of a publication for teachers about the education of migrant children. In 2010 two projects are being implemented with the aim of developing the education of migrant children in the framework of the European Integration Fund: a project aiming to develop a special curriculum for migrant children and a project aiming to provide information for migrant children and parents about the Hungarian education system in several languages in the form of a short publication. Another project is implemented in the field of child care by providing intercultural training to the staff of a crèche where the number of migrant children is relatively high.

In order to support their participation in public education asylum seeker and refugee children as well as minor beneficiaries of subsidiary protection are entitled to supplementary Hungarian language training, and support for enrollment to school. Refugee children and minor beneficiaries of subsidiary protection are also entitled to reimbursement of the costs of Hungarian language exam, reimbursement of the costs related to the translation of official documents made before recognition (such as certificate of education) and support for living costs available for school age children provided that they attend school.

In 2003 a working group on the education of migrant children was set up by the Ministry of Education and Culture. All the relevant stakeholders have been participating in the work of this expert team, particularly the ministries concerned in the field of integration, international organizations, experts, NGO's, teachers, directors of schools. The aim of the working group is to share best practices, exchange information, coordinate and harmonize the tasks of the participants.

A special school that promotes multiculturalism in Hungary is the Hungarian-Chinese bilingual public school ⁵ that was established in September 2004, based upon a bilateral agreement between Hungary and China. The school is operating in Budapest where the estimated number of Chinese nationals at the age of compulsory education exceeds 500. The school is organic part of the Hungarian public education system, its special pedagogical programme and curriculum advocating the principles of integration and multiculturalism are based on Hungarian regulations. The teaching staff is mixed, but mostly Hungarian. Attendance of the school is tuition free, and at present almost 50% of the pupils are native Hungarians.

A background note containing detailed information about the situation of migrant children participating in general and higher education in Hungary including national approach to migrant education, information on school policies and practices, government policies and approaches, the role of the community and recent national data and research evidence was prepared by Hungary in the framework of the OECD review on migrant education.⁶

⁵ The website of the school is available at: <http://www.magyar-kinai.sulinet.hu/hun/> in Hungarian and in Chinese

⁶ The report is available at http://www.oecd.org/document/27/0,3343,en_2649_39263294_42484763_1_1_1_1,00.html

b) Legislative framework in the context of detention

According to the Act II of 2007 on the Entry and Stay of Third Country Nationals and the Act I of 2007 on the Entry and Stay of Persons having the right to Free Movement and Residence minors can not be held in administrative detention because of their irregular entry into or stay in Hungary. According to the Act II of 2007 parents of migrant children can not be held in detention if their placement under detention would result in their minor child residing in the territory of the Republic of Hungary being left unattended.

c) National legislation, policies and practice, including mechanism to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

The general legislative framework of child protection that was set up by the Child Protection Act XXXI of 1997. According to this Act the protection of children's rights is the duty of all natural and legal persons who are dealing with the education and care of children and with their affairs.

This Act laid down the responsibilities of the Parliamentary Commissioner for Civil Rights, defending the right of the child. Under this Act the Commissioner helps defending the constitutional rights of the children with his special means. In this process his main tasks are to inquire the misuses – which became known to him – of the right of the child, and to initiate general or particular measures for the redress thereof. The Commissioner is exclusively responsible for the Parliament (he is elected for 6 years by the majority of two-thirds of the parliamentary votes after the proposal of the President of the Republic of Hungary), and during his six-year mandate he acts as a quasi ombudsperson for children's rights.

The Commissioner is actively engaged in the protection of children's rights and used his capacity provide by the Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights to proceed and investigate the situation of migrant children's rights in some cases ex officio in the past years. In 2008 the Commissioner investigated the access to compulsory education and nursery care of asylum seeker children staying in the reception centers. In 2009 the Commissioner investigated the situation of unaccompanied minor asylum seekers and beneficiaries of international protection.