

Protect children on the move



**ANALYSIS OF THE SITUATION OF CHILDREN ON THE MOVE:
ASSESSING THE CAPACITY AND THE ADEQUACY OF THE
CHILD PROTECTION SYSTEM IN HUNGARY TO ENSURE
THE PROTECTION OF CHILDREN ON THE MOVE
Research Report**



Title: Analysis of the situation of children on the move: assessing the capacity and the adequacy of the child protection system in Hungary to ensure the protection of children on the move

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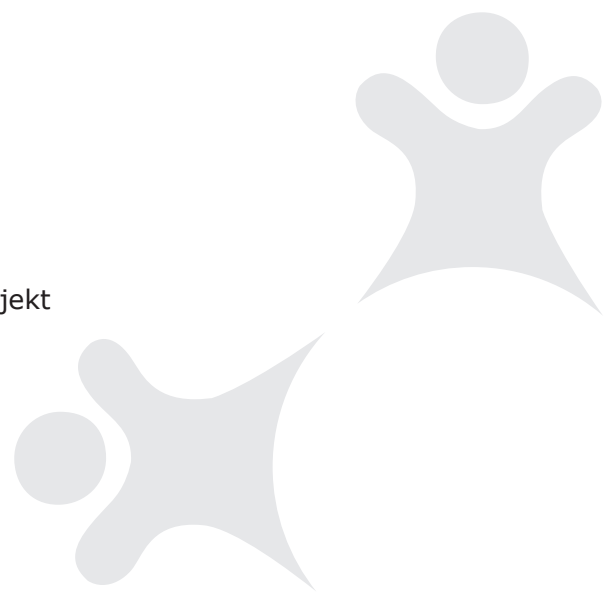
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Research Report

2013, Budapest

Terre des hommes – Mario projekt



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EXECUTIVE SUMMARY

The main objective of this Mario research was to analyze good practices and gaps of the Hungarian Child Protection System (hereinafter referred to as CPS) in relation to Children on the move (hereinafter referred to as CoM). The report is based on a desk research and qualitative methods according to "Mario Methodological Guidelines".

The first section provides an overview, which sets out the general framework of the research and a short comparative analysis of the legal and institutional background that impacts or is applicable to CoM.

The second section addresses the particular characteristics of the CPS and CoM. It provides an analysis of qualitative indicators of CPS, like efficacy, inclusiveness, adequacy, accessibility, proactivity and prevention. Results of more than 30 interviewees, including children affected and adult professionals show that:

- While some efforts to promote a more comprehensive approach were successful the problem is still likely to be investigated and treated by respective professional areas. There is no exact definition of the term CoM neither at international level nor in Hungary.
- In general, the Hungarian legal environment can be considered coherent with international and European standards. It contains fundamental protection measures, however (as this paper is going to reveal) there is still room to improve.
- CoM should be primarily seen as children. The circumstances in which they find themselves and the challenges they face are diverse and complex, requiring multilateral, multi-sectoral, comprehensive and holistic lines of action.
- CoM are in need of a holistic approach and multi-sectoral cooperation, whereas fragmented child protection responses, during which each stakeholder deals with problems individually rarely provide a comprehensive and durable solution. Focusing on single issues on their own may result in the ineffective operation of the CPS, which is neither sustainable nor truly able to respond to the needs of all CoM.
- The protection of CoM is affected by capacity issues. In the last years, Hungary has reached some progress regarding both basic and special services. There have been some successful initiatives for capacity building, but mainly initiated by the international bodies and NGOs. Despite some improvements, there are still enormous problems that root in financial limitations.
- In the case of cross-border migrants, the greatest challenge is communication. The availability and the language used by information sheets and websites is not satisfactory either.
- Psychological care is also very problematic in the Hungarian CPS. In addition, CoM and their families have limited knowledge about the access to health care and education.

- From the children’s point of view: they rarely demonstrate that they are aware of the risks or that they care about their safety. This makes them even more vulnerable. Professionals helping CoM are often misled by the appearance of mature, independent looking children and get the wrong idea about the need for help.

In particular, there is no evaluation available regarding the efficiency of CPS, nor assessment of challenges researchers face when evaluating Hungarian child protection services.

An additional key finding of this work is that there is a need for more systematic research on the effectiveness and adequacy of CPS and the characteristics of CoM, as there is hardly any high-quality research in this field.

GLOSSARY

Child: As defined in UNCRC Article 1 (every human being below the age of 18)

Children on the move (CoM): the umbrella term brings the following categories of children under the same term: migrant children (internal or across borders; legal or illegal; accompanied or not), asylum seeking and refugee children, trafficked children, internally displaced children or children outside a protective environment. Therefore, the child should already have moved, may also be a returned migrant, is moving or/and is susceptible to impending migration. The child should possess the citizenship or habitual residence in one of the Central and South Eastern European countries. Migration may be either internal or international.

Children out of protective environment: Children with no care / runaway children / missing children / street children.

Child Protection System: A coherent set of actions and actors, in which the child is the starting point and which aims to guarantee the rights and well being of the child by constructing synergies within and between protective environments'. That encompasses different actors, including families, communities and various statutory agencies including law enforcement.

Internally displaced children: Children affected by armed conflicts, natural disasters or human rights violations. In this paper, this term comprises children affected by hate crimes (as we see them as human rights violations).

Trafficked children: Victims of human trafficking (children that were either recruited or transported, transferred, harbored for the purpose of exploitation). Types of exploitative purposes include, but are not limited to, forced labour, sexual exploitation, children in armed forces, children in drug trades, child begging.

Unaccompanied minors: Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. In the framework of this paper, this definition comprises both categories, asylum-seeking and non-asylum seeking children. An unaccompanied asylum-seeking child is applying for asylum in their own right. A child may move between unaccompanied and accompanied categories, for instance, where a child arrives alone but is later united with another family member in Hungary, or inversely when children arrive with their parents or close relatives but are later abandoned, or a trafficked child, or one brought in on false papers with an adult claiming to be a relative.

PART I

THE MARIO RESEARCH

The research project was dedicated to the analysis of the situation of CoM: to assess the capacity and the adequacy of the Child Protection System (CPS) in Hungary, to ensure the protection of migrant /asylum seeking /refugee children, trafficked children, internally displaced children or children outside a protective environment.

The overarching goal of the research project was to determine and analyze the adequacy, effectiveness, accessibility, inclusiveness and pro-activity of the Hungarian CPS as far as the protection of CoM is concerned. Concentrating on these characteristics of the Hungarian CPS, the main goal of the research was to understand the vulnerability factors and the child protection-related concerns that the groups of children in focus had to face before, during and after the move. The research also had a secondary focus on collating the needs and rights of CoM with the structure and capacity of CPS and other relevant sectors (migrant authorities, law enforcement agencies, civil sector organizations).

Since the “*Mario Methodological Guidelines*” refer to the definitions and research methods applied in the project, the research findings also carry information regarding the methodology.

1. RESEARCH METHODS

According to the “*Mario Methodological Guidelines*”, three research methods were applied in Hungary: (1) desk research, (2) semi-structured interviews with stakeholders and children, (3) open group discussion with children.

1.1. Desk research

The *desk (secondary) research* was completed primarily in order to assess the existing documents, papers, and research reports about CoM. Since the goal of the research was not an international overview or extended situation analysis, the main findings of the desk research were incorporated in the research report with reference in footnote. The reviewed background papers came from every possible source¹: UNHCR, FRA, UNICEF, Save the Children, EU, COE, IAG CoM, NGOs (like the Hungarian Helsinki Committee) and of course, Tdh and Mario itself.

The secondary research highlighted the challenge involved in the very definition of CoM, the worsening situation of child and adolescent migrants and the deepening gap between the needs and rights of CoM, the CPS and other governmental systems. Most documents emphasized the lack of holistic, multi-sectoral approach in this field. ²

¹ In total, 37 documents written in Hungarian and English were reviewed in the secondary research.

² See the details in the relevant chapters.

1.2A. Semi-structured interviews with key stakeholders

The *semi-structured interviews with key stakeholders* were conducted between September and October 2013 in person, via phone or via e-mail.³ The interviewees came from both governmental and civil organizations and reflected the views of every relevant body and authority in relation to CoM.⁴ The interviewees were divided into two parts: field workers and other stakeholders (with no daily practice in the field). Core questions were put to every interviewee and, in addition, field workers were asked specific questions regarding their daily routine.⁵

In the interviews, the retrospective think-aloud protocol was used. It means that the actual interview was conducted after the interview questions had been given in advance. When the interview was completed, the interviewer returned to some of the topics discussed in the interview and asked additional, open-ended questions regarding the research goals (vulnerability of the children and adequacy, effectiveness, accessibility, inclusiveness or pro-activity of CPS). The interviews were not recorded, all responses were written down by the interviewer.

The civil organizations and professionals representing the child protection system proved to be open-minded and cooperative⁶ during the interviews. The representatives of authorities and special organizations of migrant children, however, were hard to access or persuaded to make themselves available for the interviews because, in many cases, they felt stressed and frustrated by the interview questions. One reason for this can be the sharp criticism formerly leveled at the Hungarian immigration system for its treatment of asylum seeking and non-asylum seeking unaccompanied minors.

The lack of a holistic approach was another feature of these interviews. None of those involved in the research sample had an overview of the entire dimension of CoM. They met either migrant children or children on the run or children out of a protective environment. The professionals dealing with international migration had not known or met professionals in charge of internal migration.⁷ Considering that the term CoM applies not only to their movements in and out of countries but also to their drifting between different categories of hardship, we should be keenly aware of this painful lack of a holistic approach. Looked at from the researchers' angle, all the interviews appear to have provided only partial information on the children and the CPS, therefore we have had to put together the pieces of a puzzle in order to obtain a fuller picture. Owing to the limited nature of the interviews,⁸ the research findings are not suitable for generalizations in every respect.

³ Because of the very limited scope of research time, we couldn't conduct all the interviews in person. So two interviews were completed via phone or via mail.

⁴ Representatives of the Ombudsman's Office, Child Helpline, Residential Home for Asylum Seeking Children, Residential Home for Unaccompanied Minors, Hungarian National Police, Hungarian Country Office of UNHCR, Office of Immigration and Nationality, Child Welfare Agency, a psychologist (dealing with refugee children) and a parent (an asylum seeker together with his child) were interviewed. The research sample was 10 persons in total.

⁵ For the interview questions, see Appendix 1.

⁶ Every interviewee had read the short description of the Mario research project and signed the 'informed consent' letter before the interview.

⁷ *Internal migration*: This term refers to migration within the borders of a country. Reasons for internal migration tend to be different from those for cross-border migration. In this paper: it also means travel for educational or economical but not for political reasons. Missing children or children migrating with their family may also fall under this term.

⁸ The interviews were limited in time. Likewise, the interviewees were restricted in their competency and, the lack of a holistic approach also implied an important constraint on behalf of the researchers.

1.2B. Semi-structured interviews with children

The *semi-structured interviews with children* were the most challenging part of the research. In keeping with the specifics of the definition of CoM used in this research, we considered children from four different groups:

- Asylum seeking and non-asylum seeking unaccompanied minors,
- Trafficked children,
- Internally displaced children and
- Children outside a protective environment.

Good sampling is key if we use such a broad and complex target group in the research.⁹ In the preparatory phase of the research (and in part of the desk research) we tried to gather all relevant information on the number and characteristics of these children.

According to the official database, there were registered 875 *unaccompanied minors* in 2012 in Hungary. The number of asylum seekers was 2.157 in total, of which the number of unaccompanied minors stood at 183.¹⁰ The number of *trafficked children* in the official criminal database appeared to be extremely low. In the last 8 years, the confirmed cases of human trafficking have not exceeded the number of 20 annually.¹¹ The figures of this crime committed against children (under the age of 18) reached 10 (in 2010),¹² which seem to indicate that the majority of the cases were in latency and that criminal investigations were launched only in a few cases. Another specific feature of this crime category is that according to the Hungarian Criminal Code, only cross-border trafficking shows up in the official criminal statistics. We have no data on cases of child trafficking or human trafficking that have taken place in this country.

The professionals and field workers are frustrated by the lack of statistical data since children who have illegally crossed the Hungarian borders keep claiming that they have been moved by human traffickers.¹³

It appears there is no *internally displaced children* in Hungary and no data is available to this effect either, which does not necessarily mean that in this country there are no children who have been forced to leave their homes or have been victims of harsh violence or human rights violations. In 2008 and 2009, Roma families were attacked and killed in racist attacks that took place in villages in northeastern Hungary. The perpetrators used guns in nine assaults on Roma and the victims of these deadly incidents included a five-year-old child. The so-called “Roma murders” shocked Hungary¹⁴ and the four-member gang who committed these crimes have been found guilty and sent to jail this

⁹ With all related information also available in the co-mailing list of other researchers, we have learned that other countries have faced similar problems with research sampling. Without indicating all the relevant causes, we have to point out that the term “CoM” was used too broadly in the research.

¹⁰ Unfortunately, there was a lot of discrepancy between the statistics of different institutions and sometimes we missed the valid data. Szabó, M.- Hajas B. (ed.): Pajzsuk a törvény – Rászoruló csoportok az ombudsmani jogvédelemben. AJBH. Budapest. 2013, page 392.

¹¹ The official criminal statistics do not contain information on the nationality or any other personal characteristics of these victims. More research is required.

¹² On child trafficking, there exists no official statistical data after 2010.

¹³ This frustration could also lie in the fact that most professionals have a very limited understanding of what human trafficking is, and often operate a confusion between trafficking and smuggling.

¹⁴ For further details, see: <http://content.time.com/time/world/article/0,8599,1895255,00.html>, <http://www.bbc.co.uk/news/world-europe-23586440> Accessed in October 2013

year. Except for this horrible series of crimes, there appears to have been no violence or threats associated with children being forced to flee their homes.

The number of cases of “*children outside a protective environment*” proved to be the hardest to find out about. There was no CPS statistical data on *children on the run*.¹⁵ The data obtainable from the Ministry of Human Resources was not up-dated and, most worryingly, not even the residential homes had valid data on these children. A rough estimate put the number of children running away in 2012 at 17000.¹⁶ In 85% of these cases, the children ran away from their residential homes or foster parents and were subsequently found by the police within a week.¹⁷ Most of the children who run away from residential homes while under temporary placement do so within the first 72 hours after they have been taken out of their deleterious family environment. These escapes appear to have a clear pattern¹⁸ to them and have served us ample evidence of the quality and operational problems of the Hungarian child care system. The extremely high number of “children on the run” in itself calls attention to a so-called system abuse¹⁹ and underlines that the existing child care system cannot handle the primary (emotional) needs of children removed from their families.

After screening the available statistical database, we chose the following categories of children for interviews and for open-group discussions as the most relevant target entities in Hungary: asylum seeking or non-asylum seeking unaccompanied minors, and children outside a protective environment.

The interviews²⁰ were conducted in places familiar to the children (schools, residential or child care homes). Only one interview was carried out via Skype, the others were conducted in person. The interviews were not recorded, all responses were written down by the interviewer.²¹ During the interviews, the same retrospective think-aloud protocol was used as with the adult interviewees.

Practical details of the interviews with children:

- Sample-wise – The children were hard to reach for the interviews. We tried to reach them through NGOs, schools and child protection services. At the end, no children through NGOs were involved in the research sample.
- Time-wise: The children had only limited time to be interviewed because of their other activities. We had to restrict the timeframe of the interviews to a maximum of 40 minutes. In addition, the children dramatically lost interest after 30-40 minutes, with the value and usefulness of the conversations diminishing.

¹⁵ In 2012, the Hungarian Ombudsman’s report established that ‘there is no uniformly used definition or a unified practice of collecting data on missing children’.

¹⁶ Resource: Kék Vonal (Blue Line) Foundation, Workshop of Children on the Run, 2012.

¹⁷ 700 children were still missing a month after their running away.

¹⁸ For further details, see: Part II, Chapter 4.

¹⁹ System abuse is defined as preventable harm inflicted on children by policies or programmes meant to provide care or protection to them. The children’s welfare, development or security are undermined by actions of individuals or by the lack of suitable policies, practices or procedures within the systems or institutions.

²⁰ In total, 15 interviews were conducted with children. 4 asylum seeking unaccompanied minors, 2 asylum seeking with the family and 9 outside a protective environment (children on the run) were elected into the research sample (of which 1 child had the experience of being trafficked).

²¹ Every interviewee had read the short description of the Mario research project and signed the ‘informed consent’ letter before the interview.

- Children-wise: Some children did not really feel like talking about personal matters, presumably because of their recent traumatic experiences.²² In most cases, they were invited to talk about their feelings, previous experiences in general, and give personal opinions in the interviews at first. In other cases, children felt put off and even frustrated by the number of testimonies, hearings, examinations and other official procedures. Generally speaking, they mostly appeared to be emotionally disturbed. The more psychological support was made available; the easier the interview was to make.²³

1.3. Open group discussion with children

The third research method we used in the research was the *open group discussion*. While performing it, we slightly diverged from the methodological guidelines. From the experience gained from the interviews in the preliminary phase of the research we realized that all the children had very difficult background with most of them traumatized, and some of them constantly running away. It seemed both risky and difficult to attend to all their emotions and take charge of each of them if there were more than five in a group. Finally we decided to organize two groups of 6 and 4 participants, respectively. In this way we managed to conduct the group discussions without a hitch and also focused on them individually. In addition, we asked the managers of the residential homes (the venues of the group discussions) to select children who knew each other. This way, it was easier to start a discussion without a need for icebreaking or giving extra attention to creating an atmosphere of confidence.

Two researchers conducted the open group discussions: one to steer the conversation and the other to write down the answers and the feedbacks. The group discussions took no more than an hour. We were really focused and keen on the subject, hence the children were willing to share their thoughts with us. *Terre des hommes* provided researchers with some giveaways (e.g. bangles, badges and notepads) to thank the children for their time, which we distributed at the end of the group discussions.

During the open-group discussions researchers had to face the same problems of lack of motivation and trauma as with the children in the individual interviews. Even though the children tried to answer every question and share their thoughts after some gentle nudging, true stories and real emotions were missing all through the conversations with them. On the one hand we had false / high expectations. On the other hand, however, researchers felt sorry for not succeeding in loosening up the situation.

²² Despite these difficulties, we completed the full interview with all the children involved.

²³ We think that our difficulty with the interviews was merely a symptom: the bad mental health status of children being a problem in itself.

1.4. Research sum-up

Summarizing the methodology of the research, researchers concluded that all the selected methods have worked well. The basic rules and core questions indicated in the "Mario Methodological Guidelines" were adaptable and useful to reach the research goals.

Most of the problems that have emerged in the research were objective (inevitable) and were rooted in the breadth and depth of the frame of research or in the system of investigation itself. Such were

- The limited scope of time,
- The small research sample,
- The broad and complex research target (CoM),
- The problems involved in research sampling,
- The lack of available statistical data,
- The absence of national-level documents, papers, relevant research preceding this one,
- The unmotivated, frustrated interviewees,
- The traumatized children interviewees,
- The difficulty in recruiting interviewees,
- The fragmented information, the lack of general overview of the research goals on behalf of interviewees.

The outcome of qualitative research can be limited, especially with such a small research sample and such a broadly defined research target. The umbrella concept of CoM itself is a relatively new coinage created by international organizations with no such a term to be found in either the Hungarian legal terminology or in the vocabulary of field workers. We, unfortunately, couldn't identify a fitting word for it. In the research, researchers focused on the list of children they understood were covered by the English term. Obviously it was not the best way to keep the interviewees focused on the holistic meaning of CoM. Despite all the limitations and challenges, the research has led to a better understanding of the vulnerability of CoM and of the operations of CPS in CoM cases.

2. INTERNATIONAL AND LEGAL CONTEXT

Before indulging in the main narratives of this paper, it is essential to clarify the international, legal, procedural, and institutional context within which children on the move situation is assessed. This section therefore aims to create the framework of the present argumentation. It establishes the conceptual background in the international discourse and outlines the most relevant provisions and processes.

2.1. International context

Every year, millions of children take to the road, and leave their homes voluntarily or involuntarily *"in search of survival, security, improved standards of living, education, economic opportunities, protection from exploitation and abuse, family reunification or a combination of these factors."*²⁴ CoM, basically any children who leave their place of habitual residence, represent a large group of population movements. Although their special vulnerability is apparent, they remained invisible in the international discourse about migration and child protection for a long time. Only in the last few years has there been a growing interest to deliberately address the protection of CoM. More precisely, the protection of the various sorts of children who lose their homes or go missing has been only recently addressed as a coherent problem. This new approach gave birth to the term 'CoM', which has emerged as a new classification of vulnerable children.

At the time of the current study, a quick Google search revealed more than 3.5 million results for the term "CoM". Google Trends shows that until 2009²⁵ the search interest for this expression was found insignificant relative to the total search-volume.²⁶ Being aware of the limitations of this data's credibility, it clearly shows the tendency that this artificial term has become popular only in the last few years, and created a fairly new categorization of children.

This umbrella term brings many categories of children in a situation of mobility under one roof. Migrant children, asylum-seekers, refugees, internally displaced or separated children, trafficked or street children, or children who live outside protective environment all fall into this category. Some of these children need to return home, others reach their new destination, yet others do not even have one either. The circumstances and the status of CoM vary on a large scale, but if they are on the move, whether accompanied or unaccompanied, legally or illegally, within or across borders, they belong to this newly created group of vulnerable children.

The Global Movement for Children organized the first international conference that gave momentum to the debate about the protection of 'CoM' in 2010. The conference *"concluded with a call for joint coordinated action in promoting a more comprehensive approach to public policies in various areas directly affecting CoM"*.²⁷ International NGOs

²⁴ European Forum on the Rights of the Child (2012) *'The role of child protection systems in protecting CoM'* p.3. Background-paper for workshop No 3 – 14 November 2012 at http://ec.europa.eu/justice/fundamental-rights/files/background_cps_children_on_the_move_en.pdf Accessed in October 2013

²⁵ MARIO project was also launched this year.

²⁶ Google Trends: search interest for 'CoM' from January 2004 to October 2013, at <http://www.google.com/trends/explore?hl=en-US#q=children%20on%20the%20move&cmpt=q>. Accessed in October 2013.

²⁷ Global Movement for Children (2010) *'I. International Conference on Protecting and Supporting CoM 5-7 October 2010, Barcelona, Executive Summary'* at http://www.gmfc.org/images/pdf/com_executive%20summary.pdf and <http://www.gmfc.org/images/pdf/leavinghome.pdf> Accessed in October 2013

are the leaders in bringing forward this issue, and address the improvement of the children's situation in its full complexity. They bear the brunt of awareness raising, advocating for policy change, increased funding, the development of protection mechanism with the involvement of children affected, and also support drafting protocols – just to highlight their key activities.²⁸ The *European Network of Ombudspersons for Children* is a new advocate of CoM, which devoted their annual conference in 2012 to this sensitive topic.²⁹

Among the different actors addressing the issue of 'CoM', there are personal, geographical and institutional differences in the interpretations of this overarching term. For instance, according to the definition of the European Network of Ombudspersons for Children, "*the term 'CoM' covers the broad range of children who migrate from their country of origin to and within the territory of the EU.*"³⁰ This regional focus helps to put the message across towards the decision- and policymakers.

While some efforts to promote a more comprehensive approach were successful, the problem is still likely to be investigated and treated by respective professional areas. The European Union has articulated its concerns and recommendations regarding many groups within the CoM category in various official documents, (directives³¹, resolutions³², reports³³, strategies³⁴ and action plans³⁵), but it has failed to adopt such an all-inclusive approach.

What is the intent behind the efforts to revise the fragmented policy responses to the protection of these children? They are children primarily, who need tailored social and psychological assistance and cannot advocate on their own behalf. They are all particularly vulnerable, and extensively exposed to dangers.

2.2. Institutions, processes

This section addresses the national legal background related to CoM. The current research adopts a holistic, child-centered approach, to better understand the Hungarian legal and procedural environment. We divided the regulations into three parts, mainly in line with the different processes CoM can engage in. Firstly, the applicable constitutional and fun-

28 Terre des Hommes International Federation launched an international campaign in December 2012 called Destination Unknown to develop protection mechanisms for CoM, raise awareness and advocate for policy change. Save the Children has included CoM as one of the two priority areas of its Child Protection Initiative issued in 2009 and advocates for allocating EU funding for them and for taking into account the voices and views of children affected. UNICEF also urges to widen the focus to all segments of children who move, and supports efforts to develop regional systems for information sharing and to improve policy and legislation by drafting protocols.

29 European Network of Ombudspersons for children (2013) '*Children on the move: children first*'. at http://www.crin.org/docs/FileManager/enoc/ENOC_statement_children_on_the_move_2013.pdf Accessed in October 2013

30 *Ibid.*, p.3

31 Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (Reception Directive)

32 Council Resolution 97/C 221/03 on unaccompanied minors who are nationals of third countries

33 Report on separated asylum-seeking children in EU Member States (2010)

34 EU Strategy towards the eradication of trafficking in human beings (2012-2016)

35 The EU action plan on unaccompanied minors (2010-2014)

damental rights, secondly the regulation on migration will be introduced and criminal law closes this section about legal background.³⁶

2.2.1. Relevant fundamental rights

The Fundamental law of Hungary³⁷ creates an important basis for the protection of CoM. Its most relevant provisions are as follows³⁸:

- Article L (1) and (3) name the protection of families as a cardinal rule that shall be ensured by the State.
- Article Q (3) assures the concordance of international and domestic law.
- Article XIV guarantees the rights of migrants, and in justified cases it prohibits expulsion, extradition and ensures the grant of asylum.
- Article XV (2) ensures fundamental rights to every person without any discrimination on any circumstances, and (5) obliges Hungary to adopt special measures to protect children.
- Article XVI (1) prescribes that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.
- Article XX (1) ensures the right to physical and mental health.

The State has incorporated a broad range of relevant international treaties³⁹ and EU directives⁴⁰ into its domestic law. Among these the most widely accepted is the *UN Convention on the Rights of the Child* (hereinafter UNCRC) with a special, holistic approach.⁴¹ It was ratified by the Hungarian Act LXIV of 1991, so the UNCRC has been a binding treaty for 22 years in Hungary. Building on the idea that childhood is a special phase of human life thus entitled to special care and assistance, UNCRC articulates some basic principles to ensure children's rights. Basically all articles affect CoM directly or indirectly, but the followings are the most significant to our current research:

- Article 2 prescribes that State Parties shall respect and ensure the rights to each child within their jurisdiction without discrimination of any kind. This means that CoM enjoy equal rights to local children and shall not be subject to discriminative treatment because of their different background.⁴²

³⁶ The legal environment of CPS will be presented in the following chapter.

³⁷ The Fundamental Law of Hungary, 25 April 2011. <http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf>. Accessed in October 2013

³⁸ It is noteworthy that among the fundamental human rights, the right to education ensured in Article XI of the Fundamental Law, is merely assigned to Hungarian citizens. This not only causes an inconsistency with the people covered by fundamental rights, but also questions the inclusive approach of the Fundamental Law of Hungary.

³⁹ The Geneva Convention relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and more general human right treaties, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, regional documents like European Convention on Human Rights, European Social Charter or the EU Charter of Fundamental Rights all include some guarantees for the realization and protection of the rights of CoM.

⁴⁰ See note 28 above

⁴¹ Hungary also ratified the two Optional Protocols to the UNCRC. Hungarian Act CLX of 2009 ratified the Optional Protocol on the involvement of children in armed conflict, and Act CLXI of 2009 ratified the Optional Protocol on the sale of children, child prostitution and child pornography.

⁴² General comment No. 6 of the Committee on the Rights of the Child affirms in the interpretation of Article 2, that the enjoyment of rights stipulated in the UNCRC must be available not merely to citizens but to all children, "including asylum-seeking, refugee and migrant children – irrespective of their nationality, immigration status or statelessness".

- Article 3 requires States to adopt a child-centered approach in each of their measures by saying that 'the best interests of the child shall be a primary consideration' in all actions concerning children.⁴³
- Article 20 requires State Parties (1) to provide special protection for children living permanently or temporarily outside of a family environment, (2) to ensure alternative care and (3) stipulates its conditions.
- Article 22 outlines the special protection measures for refugee and asylum-seeking children, including assistance to family tracing and reunification. It requires State Parties to treat unaccompanied children as equally as any child who lives outside of a family environment.
- Those who are unaccompanied by any family member are entitled to the same protection measures as those deprived of a family environment.

2.2.2. Legislation on asylum

In Hungary, the rights of migrants are guaranteed partly by the *Geneva Convention* of 1951 and partly by the Asylum Act. Hungary has ratified the Geneva Convention by the statutory rule 15 of 1989. It requires States to accord to refugees the same treatment as is accorded to nationals (elementary education, social security, access to courts), or alternatively as favourable as possible, and not less favourable than that accorded to aliens generally in the same circumstances (housing, freedom of movement). Though it does not include any special measures for children, providing that the evidence of being eligible for refugee status as stated in Article 1 is also established, all of its principles and provisions apply for children (e.g. facilitation of travel, non-refoulement, unity of the family, access to welfare services).

In Hungarian legislation, the Act LXXX of 2007 amended by Act XCIII of 2013 on asylum (hereinafter Asylum Act)⁴⁴ and the Act II of 2007 on the entry and stay of third country nationals⁴⁵ represent the cornerstones of the migration law. The Asylum Act identifies the criteria, the legal status⁴⁶ and the rights of asylum-seekers, refugees and the beneficiaries of subsidiary or temporary protection, and stipulates the general rules of asylum procedures. Due to the limitations of space, this study is restricted to list only the Act's special provisions on children, which help to bear in mind the scope of special care and assistance for children.

⁴³ The General Comments No. 6 serves as a useful tool guide in the determination of what is in the best interests of the child (comprehensive assessment of the child's identity, the appointment of a guardian and a legal representative, etc.)

⁴⁴ Asylum Act as of January 2013 in English: <http://helsinki.hu/wp-content/uploads/Asylum-Act-and-GvtDecree-2007-in-January-2013.pdf>, and its up-to-date version in Hungarian at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700080.TV More information about the amendments in: Hungarian Helsinki Committee (2013) 'Brief information note on the main asylum-related legal changes in Hungary as of 1 July 2013' <http://helsinki.hu/wp-content/uploads/HHC-update-hungary-asylum-1-July-2013.pdf> All sources were accessed in October 2013.

⁴⁵ Act II of 2007 on the Entry and Stay of Third-Country Nationals at http://konzulizsolgalat.kormany.hu/download/7/f9/20000/EN2007evi_II_trv_harmadik_orosz_allamp_beutazas_tart.pdf, accessed in October 2013

⁴⁶ Pursuant to Article 10 (1) and 17 (1) of the Asylum Act, unless an Act or government decree expressly provides otherwise, a foreign refugee or a beneficiary of subsidiary protection shall have the rights and obligations of a Hungarian national.

- Article 2 (k) names a minor as a vulnerable person, a “*person in need of special treatment.*”
- Article 4 (1) and (2) affirm the principles of the best interests of the child and that of the unity of the family.
- Article 4 (3) prescribes that while implementing the provisions of the Act, States shall take due consideration of the specific needs of children arising from their situation.
- Article 31/A (7) orders that asylum detention cannot last longer than 6 months, in case of families with minor no longer than 30 days.
- Article 31/B (2) prohibits the order of asylum detention for unaccompanied minors⁴⁷ but (3) allows it as a measure of last resort for families with minors, by taking the best interests of the child into primary consideration.
- Article 39 b limits fingerprints recording to persons older than fourteen years of age.
- Article 43 (3) prescribes that accompanied asylum seekers below fourteen with full proceeding capacity may be heard if his/her personal interview is indispensable for clarification, but it is not obligatory.

Some provisions of the Act on the entry and stay of third country nationals also require special treatment for children in many procedures. Among them, Section 45 (5) deserves particular attention, saying that “*an unaccompanied minor may only be expelled if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care.*”

Following the two Acts above, provisions about structures and procedures were implemented to identify and ensure protection needs and integration services.⁴⁸ In 2000, the *Office of Immigration and Nationality* (OIN) was established to serve as a unified migration organization. OIN carries out all the alien policing tasks, executes the tasks related to the administration of refugees, and manages and operates reception centers, temporary accommodation and community shelters.⁴⁹ The report of the *European Migration Network*⁵⁰, as well as ombudsman investigations⁵¹ form a great starting point for further information on asylum procedure, reception and integration arrangements in Hungary.

In general, Hungarian migration legislation can be considered coherent with international and European standards as far as children on the move are concerned. It contains fundamental protection measures, however (as this paper is going to reveal) there is room to improve.

⁴⁷ Unaccompanied children are the only group of vulnerable asylum-seekers who cannot be detained.

⁴⁸ Government Decree No. 301/2007 (XI.9.)

⁴⁹ The Office of Immigration and Nationality: General Guide at www.bmbah.hu/a_bah_ismertetese.php Accessed in October 2013

⁵⁰ European Migration Network (2010) ‘*Policies on reception, return and integration arrangement for, and numbers of, unaccompanied children*’. http://emnhungary.hu/sites/default/files/kisero_nelkuli_kiskoruak_vegleges.pdf (Accessed in October 2013)

⁵¹ Ombudsman’s Reports No. AJB-7120/2009, AJB-1953/2012, AJB-2731/2012, AJB-4019/2012, AJB-733/2012.

2.2.3. Legislation on human trafficking

While public opinion and the Hungarian government claim that Hungary is merely a transit country, the majority of the international reports appear to indicate⁵² that Hungary is a transit, source and destination of child trafficking. Geographically, Hungary is a transit country for illegal migration lying at the crossroads of eastern and southeastern migration.

The Hungarian Government has been making efforts to harmonize national legislation with minimum EU standards to eliminate trafficking and sexual exploitation of children. Undoubtedly, CoM are among the most vulnerable groups at risk of forced prostitution.⁵³

Human trafficking, forced prostitution, child prostitution and child labour have been prohibited in Hungary since 1999. The new Criminal Code (*Act C of 2012*, hereinafter CC) that came into force in July 2013 brought new regulations in this field⁵⁴ and applied standard international rules to punish every form of commercial or non-commercial sexual exploitation of children.⁵⁵ *Part XVIII* of CC incorporates the criminal offence of trafficking in human beings, which complies with Directive 2011/36/EU of the European Parliament and of the European Council of 5 April 2011 on preventing and combating trafficking in humans and protecting its victims. Otherwise, the poor implementation of the EU anti-trafficking directive, which should have been fully transposed as of April 2013, highlights the challenges in this field.

The revised Hungarian Criminal Code has a controversial new provision that lowers the minimum age of consensual sex from 14 to 12 and decriminalizes sexual intercourse between 12 and 18-year-old children. According to criminologists and other experts in this field, this provision opens the door for circumstances that can lead to seemingly non-enforced prostitution.⁵⁶

Art. 192 of CC prohibits selling, buying, procuring, trafficking in, bringing into, taking out of the country, or obtaining possession of any human being, adult or child. The punishment for this crime is imprisonment of up to 10 years if the victim is a child of under 18 years of age. It is up to 20 years if the victim is under 14 and the perpetrator is in a position of trust or authority with the child or with whom the child is in a relationship of dependency. *Art. 193 of CC* prohibits child labour.

⁵² A glance through the European Union anti trafficking website or the US State Department Trafficking in Persons report confirm this. See: <http://ec.europa.eu/anti-trafficking/NIP/Hungary> and <http://www.state.gov/j/tip/rls/tiprpt/> Accessed in October 2013

⁵³ Although, official statistics fail to attest to this, Hungary is also a source country of forced child prostitution. In the last 8 years the number of sex abuse offences against children under the age of 18, has not exceeded 10 per annum, very likely indicating that the majority of cases have remained in latency. For all that, child prostitution does exist in Hungary both on its own (nationally) and combined with trafficking (internationally) to the detriment of the most vulnerable children. There is very high latency in child sexual abuse and neither legislation nor child protection practice has so far helped in bringing the real picture and magnitude of the phenomenon to surface. Source: Office of the Prosecutor General. Hungary (2012) '*Criminality and Criminal Justice 2003-2011*'.

⁵⁴ For further details, see <http://www.kormany.hu/en/ministry-of-public-administration-and-justice/news/parliament-has-passed-the-new-penal-code> Accessed in October 2013

⁵⁵ General Comment on Act C of 2012, the New Criminal Code Source (in Hungarian): <http://konyvtar.bpugyvedikamara.hu/wp-content/uploads/2012/02/BTKeloterjesztes-tervezet.pdf> Accessed in October 2013

⁵⁶ Resource (in Hungarian): <http://ujbtk.hu/btk-szabad-a-tiniszex/>, http://www.femina.hu/hirhatter/szexualis_kenyszerites_es_eroszak_kiskoru Accessed in October 2013

The Ministry of Home Affairs undertook to draft a new national strategy and action plan in 2012 against human trafficking,⁵⁷ which acknowledge the existence of child prostitution in Hungary and emphasize the role of the child protection system in the prevention of these offences and support to victims thereof. Controversially, this draft document includes no stipulation or even concept in relation to unaccompanied minors or migrant children. In its introduction, the document declares that other provisions will be put in place to address these issues in compliance with the relevant EU directives.⁵⁸

In 2010, some progress was made in the field of victim protection services and a new NGO-run shelter was set up especially for the victims of prostitution and trafficking. This shelter, however, is not available to foreign victims.⁵⁹

While mostly hidden to the public, the phenomena of human trafficking and prostitution are well-known to the CPS, whose professionals understand that children living in residential homes are among the most vulnerable to prostitution or trafficking. A large number of children have been taken out of their family because of sexual abuse (or reasonable suspicion thereof).⁶⁰ For the CPS, missing children are also potential victims of forced prostitution, which means that children on the run are at serious risk of being subjected to prostitution or victimized by organized crime. It has become obvious to CPS professionals that previous sexual abuse suffered by children in or out of their family significantly increases the risk of prostitution. In spite of this, most files on children in care do not include any information on sexual abuse or prostitution-related experiences.⁶¹ This creates the problem that the CPS is unable to respond to the needs and exigencies of the children affected. Missing information, attitudes, the acute shortage of capacity and the shortcomings of facilities are serious challenges that make it difficult to fight trafficking and prostitution. According to an Ombudsman's Report⁶², the Hungarian CPS has never had sufficient staff, funds or facilities to meet the requirements of the Child Rights Act. Since 1997, when the Child Protection Act came into force, the CPS has been struggling to maintain mandatory services. For the children, it means a scarcity of psychologists or other supporting service personnel in overcrowded children's facilities: overburdened or burnt-out auxiliary and negligent nursing staff not attuned to the needs of children entrusted to them. In its present situation, the fundamental precept of the "best interests of the child" is hardly definable for the CPS.⁶³

More details on the characteristics of CPS are to be found in the relevant chapters.

⁵⁷ It was still a draft document when we closed this report.

⁵⁸ Until the closing date of this research, neither the Ministry of Home Affairs nor the Ministry of Justice had been able to come up with any related documents in answer to our question.

⁵⁹ In total, of 19 victims placed in this shelter in 2012, there were 13 adults, 3 mothers with a child and 3 children.

⁶⁰ Senn, T. E. – Carey, M. P.: Child Maltreatment and Women's Adult Sexual Risk Behavior: Childhood Sexual Abuse as a Unique Risk Factor. In: Child Maltreatment November 2010 vol. 15. no. 4, p 324-335., Simons, R.L.-Whitbeck, L.B.: Sexual abuse as a Precursor to Prostitution and Victimization Among Adolescent and Adult Homeless Women. In: Journal of Family Issues. 1991 vol. 12. no. 361-379.,

⁶¹ Resource (in Hungarian): B. Aczél A. – Gyurkó Sz.: Létezik-e gyermekprostitúció Magyarországon. <http://www.csagyi.hu/jo-gyakorlatok/hazai/item/222-letezik-e-gyermekprostitucio-magyarorszagon>

⁶² Ombudsman's Report No. AJB-5441/2012. Resource (in Hungarian): <http://gyermekbantalmas.hu/celcsoportok/szakembereknek/item/ombudsman-jelentese-2009> Accessed in October 2013

⁶³ Ombudsman's Report No. AJB-5723/2012. Resource (in Hungarian): www.ajbh.hu/documents/10180/111959/201205723.rtf Accessed in October 2013

3. HUNGARIAN CHILD PROTECTION SYSTEM

3.1. General overview

Act XXXI of 1997 on Child Protection and Guardianship Administration (hereinafter Child Protection Act)⁶⁴ frames the legal background of the Hungarian CPS, which means a group of services designed to promote the well-being of children by preventing violent and abusive treatment, ensuring their safety, giving out-of-family care and strengthening families to give care to their children effectively.

The 1990s were the first decade of transition after the change of the political system and are said to be the most thriving period of the Hungarian child protection system. In 1991, the Hungarian Parliament ratified the UNCRC. In addition, many other fundamental legal norms on public education, health care and social services were adopted and approved in those years.⁶⁵

At this point, we have to emphasize the fact that the Child Protection Act has been amended 204 times since 1997. This resulted in both the instability and vulnerability of the CPS itself. It is hard for the professionals to keep in step with the new regulations and meet all requirements involved. Consequences of the constantly changing legal environment are the erosion of professionalism and a widening gap between the legal norms and the practice governed by them. The CPS workers frequently apply rules that are no longer valid and ignore the ones in force.⁶⁶

The Hungarian CPS – like most of CPSs in the world – is not a single entity onto itself and consists of many stakeholders. Many organizations in several related territories work together to help strengthen family ties and keep children safe. Professionals of many organizations and institutions are active in the children welfare system and many others are involved in the health sector (like e.g. visiting nurses), education (e.g. teachers), and the judicial system or at the law enforcement agencies (e.g. police officers). Good cooperation is key to the efficient operation of such a complex, multi-sectoral system.

3.2. The mandatory reporting system

In the Hungarian CPS, the mandatory reporting system (*Article 14*) should provide good communication and collaboration among different sectors and professionals. Mandatory reporting means that the Child Protection Act requires certain professionals⁶⁷ to report their concerns about actual and suspected child abuse cases (and other endangering situations, like trafficking, sexual exploitation, runaway children, unaccompanied minors). In addition, the Child Protection Act requires all concerned, Hungarian citizens to report cases of suspected child abuse. These reports are generally communicated to child wel-

⁶⁴ Child Protection Act in English: <http://www.crin.org/resources/infodetail.asp?ID=29603> Accessed in October 2013

⁶⁵ <http://mpgy.ogyk.hu> Accessed in October 2013

⁶⁶ For instance, even though full prohibition of corporal punishment came into force with the amendment of the Child Rights Act in 2005, the majority of CPS workers do not seem to be aware of it and think that corporal punishment is still acceptable. For all intents and purposes, children are harmed as a result of this so-called system abuse.

⁶⁷ Art. 17. (1) of the Hungarian Child Rights Act imposes a mandatory requirement on professionals of health services, family support services, schools, police, victim support services, immigration offices, labour authorities, churches, foundations, and public prosecutors, judges, probation officers.

fare agencies or family support services and are either 'screened in' or 'screened out' by them. A report is screened in when there is sufficient evidence to justify an investigation.⁶⁸ While cooperation is a must in the spirit of the law, in reality it is rarely the norm for cases involving many stakeholders. In 2012, the Hungarian Ombudsman's Special Report on "*Abuse Cases and the Mandatory Reporting System*"⁶⁹ pointed out that "*professionals in the field often work independently of each other and without any coordination.*"⁷⁰

The operation of the mandatory reporting system in CoM cases is different from that of other cases. All authorities are required to immediately report unaccompanied, migrant or asylum seeking children to the police, the guardianship authority or the immigration office. The role of CPS is secondary in these cases, which means that other authorities are responsible for screening the report at first.⁷¹ In the case of missing or runaway children, the CPS professionals must follow the correct legal procedures of reporting. However, several research projects⁷² reveal that professionals do not report each and every case. Recognizing that some children keep running away to go back home to their biological parents or to their friends again and again,⁷³ the professionals tend to ignore their obligation to report these notorious runaways. This practice obviously imperils the children and violates their rights to protection and care. There is evidence that children are at risk of serious harm the more time they spend without care.⁷⁴ There are particular concerns about the links between running away and the risks of sexual exploitation and trafficking. Children missing from care are particularly vulnerable. In 2012, the Hungarian Ombudsman's Report pointed out that many of these children were not being effectively safeguarded. Other key issues in that report indicated that children in residential care were at particular risk of going missing and vulnerable to sexual and other types of exploitation.⁷⁵ The incomplete operation of the mandatory reporting system raises questions concerning both accessibility and efficacy of the CPS which are addressed in the following chapters.

⁶⁸ A report may be screened out if there is not enough information to follow up on or if the situation reported does not meet the legal definition of "endangered children". In these instances, the worker may refer the person reporting the incident to other community services or law enforcement agencies for additional help

⁶⁹ Resource (in English): <http://www.crin.org/resources/infodetail.asp?ID=28801> Accessed in October 2013

⁷⁰ AJBH (2012) '*The Hungarian Ombudsman's findings about the legal regulation on missing children and some other related issues*' <http://www.eoi.at/d/Presse/Ungarn/hu-MTI-Missing%20children%20-2012%2005%2024%20.docx>. Accessed in October 2013

⁷¹ A national referral mechanism was set up in 2008 for the victims of human trafficking and prostitution.

⁷² Gyurkó, Sz.- Herczog, M.: Gyermekvédelmi jelzőrendszer működése Magyarországon. Kutatási zárójelentés. OKRI. Budapest 2009., Dávid, B. – Magvas M.: A munkakapcsolat határozza meg a jelzőrendszert. http://www.esely.org/kiadvanyok/2011_5/02david.indd.pdf Accessed in October 2013

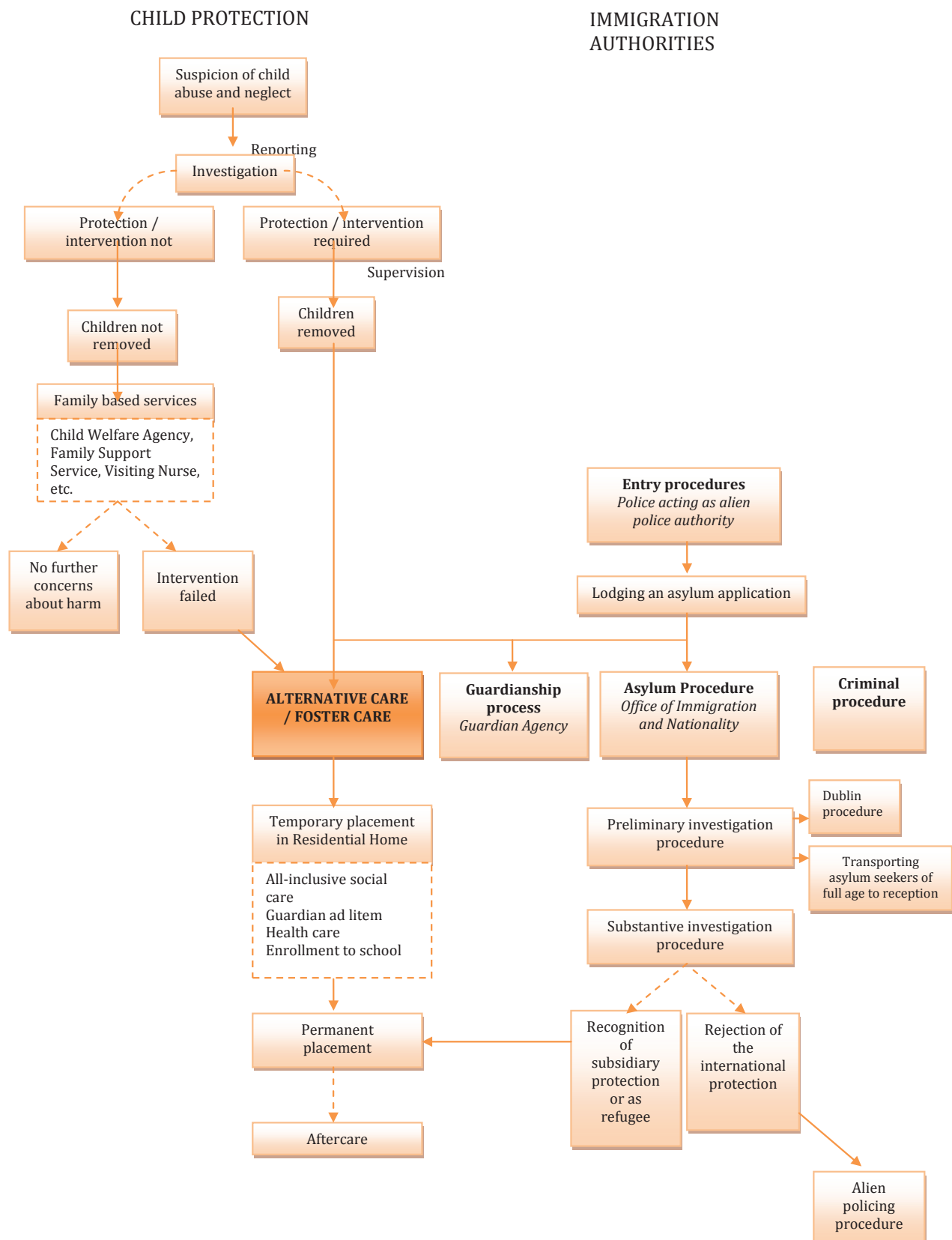
⁷³ Based on the statistics available (and our rough estimates) approx. 3.400 children run away from residential homes or foster parents at least 5 times a year, amounting to a total of 17.000 missing children each year.

⁷⁴ Still Running 3 (2011) <http://makerunawayssafe.org.uk/campaign-stories/still-running-young-runaways-danger-england-and-uk> (Accessed in October 2013)

⁷⁵ http://webcache.googleusercontent.com/search?q=cache:MCI_C96s5KEJ:www.eoi.at/d/Presse/Ungarn/hu-MTI-Missing%2520children%2520-2012%252005%252024%2520.docx+%&cd=7&hl=hu&ct=clnk&gl=hu&client=safari Accessed in October 2013

3. HUNGARIAN CHILD PROTECTION SYSTEM

The Children-on-the-Move Flowchart:



3.3. The subsystems of Hungarian CPS

Act XXXI of 1997, Part III names those two subsystems, which constitute the Hungarian CPS: primary services and out-of-home care (or in care / alternative child care). A wide range of institutions and a number of professionals provide services and support to children and their families within the framework of CPS's primary services. The main goal of the CPS is to promote the wellbeing, permanency and safety of children and their families by helping them look after their children effectively.⁷⁶

Child care is dedicated to children at risk whose families do not cooperate with CPS professionals or when the voluntary primary services have failed to help them. Only when the child's family is unable (even with appropriate support given) to provide adequate care, or if the family abandons the child, does the State have a mandatory obligation to provide alternative care that meets the child's needs. Any placement must be made in the 'best interests of the child' concerned. The fundamental principle of the Hungarian CPS is to prevent the separation of children from their families and, if that is not possible, provide appropriate care and protection for children out of family ties. The primary services prepare the decision concerning "out of home placement" but the decision itself is made by the Guardianship Authority. The number of children placed out of their families is estimated to be around 21.500 in 2013. In the case of foreign children, the CPS is centralized and the Guardianship Authority of the Budapest 5th District has exclusive competence and power to make a decision about placement.

3.3.1. CoM in Hungarian CPS

The primary endeavor of the CPS' interventions is to provide family-based services. This makes it difficult to efficiently apply the system in CoM cases. Nevertheless, this family-centered approach of the CPS fits the core principle of family reunification and the fundamental right of migrant families to stay together.

Another reason why CoM are partly a hidden phenomenon within the Hungarian CPS is the small number of them. Compared to the total of 21.500 children living in care, the rate of non-national ones is less than 4%, while the annual rate of runaways is 14%.

Nevertheless, the key-roles of the Hungarian CPS can be identified in relation to CoM⁷⁷ as follows,

1. The prevention and reduction of the risks of unsafe and unnecessary migration. (*Act XXXI of 1997, Art. 4. par. (1) a*)
2. The accomodation of CoM and providing assistance to them. The protection of the children from harm and respecting their vulnerability. (*The Act XXXI of 1997, Art. 14-15. Part VII.*)
3. The identification and implementation of durable solutions for CoM.⁷⁸ Providing the highest accessible level of protection regardless of the nationality or legal status of the child. (*Act of XXXI of 1997, Part I, Art. 4, par. 3*)

⁷⁶ When that is not possible, they help the children find stability in other ways. The family is seen as the best place for the development, wellbeing and protection of children. Children who do not receive parental care are at heightened risk of being denied their rights and dreams for the future.

⁷⁷ These roles are in harmony with the ones specified in the background paper of European Forum on the Rights of Children in November 2012.

⁷⁸ Every child in care should have a permanency plan. Family reunification (excepting unusual and extreme circumstances) must be the permanency plan for most children.

The CPS provides education, health care and protection for these children as part of their placement in special child care facilities (see flowchart on page 25). In the Hungarian CPS, special residential homes are set up for migrant, asylum seeking and refugee children and respective authorities are appointed to make decisions in their cases. While the centralization of competences enables the adequate performance of legal procedures involved, a deep understanding of the children's situation seems to be lacking.⁷⁹

CoM are children first. The circumstances in which they find themselves and the challenges they face are diverse and complex requiring multilateral, multi-sectoral, comprehensive and holistic lines of action. These children are categorically eligible for all CPS services although most of them only meet the requirements as specified in the CPS flowchart (see page 25) for residential homes, temporary or transitional placements. Despite the strongly critical reports by international organizations and by the Ombudsman, the Hungarian CPS still fails to adequately address the specific needs of CoM or remedy the violations of the rights these children often experience while on the move.

⁷⁹ For further explanation, see Part II of this report.

PART II

Having established the framework of the analysis, let us step closer to the subject of our research and examine more thoroughly who CoM are. In order to be able to evaluate how much the Hungarian CPS realizes and acts upon the need of children, we need to be aware of the common characteristics of these cases, of why and how children leave their homes. This part of the study attempts to define the profile of the CoM, analyze the risk factors and look at their objective and subjective characteristics.

4. THE PROFILE OF CHILDREN ON THE MOVE

4.1. Common characteristics

The notion of 'CoM' is too broad to bring forward a one-size-fits-all description to it. However, there should be a reasonable argument behind the intention to address all these children consistently. What is common then in all CoM in Hungary? Based on a comprehensive desk research, the interviews and the open-group discussions, it has been determined that CoM are similar in two regards: they are particularly vulnerable and they have a special view of themselves and their life.

4.1.1. Vulnerability

"Children's need is to be loved. They feel that they are excluded from this world and forget that they are loveable. They think that they are not important, that no one cares of them, that they are not good enough, and they can be neglected, left behind and punished." (NGO stakeholder)

"I have never felt close enough to someone ...I feel that I am not important." (C., 14)

Children's vulnerability is rooted in their safety and emotional needs. These are manifested in various ways. Most importantly, they are children first, which makes them *per se* vulnerable. Due to their limited knowledge and capacities, they are exposed to the influence of their environment more than anyone else.

"They never ask us, where we would like to go, or what would be good for us. They just interrogate us; if it is sure that we cannot go back to our family. Even though we don't keep in touch with them and we do not even want to." (A., 15)

Besides all the efforts of child protection systems and human rights treaties, the best interests of the child often lag behind some habitual or pragmatic considerations, and children's rights are still many times just the matter of an insignificant group of human rights advocates. Children's voices are rarely heard and their special needs often remain unseen and unresolved.

CoM face even more challenges on their journey, and also at their new environment. Regardless of the reason for departure, the circumstances of the journey and the arrival, or the status of these children, they are all exposed to additional risks. Mobility can open up new opportunities and lead to an increased access to education, social services or income; however too often children cannot benefit from such potentials. The movement can put them at risk of violence, inadequate care, illnesses, sexual and economic exploitation, and result in serious psychological and emotional harm. They may encounter many situations that carry huge risks to their development. Recognition as a child might be uncertain in the absence of identity documents. Children might be victims of human trafficking and face the chance of living on the street. Their entry into a country might be refused, and the risk that they will be sent back or transferred remains there. Actually, the fact that they are recognized as underage is of great significance. Their age is the passport for special protection, no matter how they or the authorities feel.

Thirdly, CoM all lose stability. For them, the stability of the family, of the environment and also of the future is becoming volatile. The safety bonds (which sometimes did not even exist, or were just perceived) disappear and typically, the loss of supervision, the lack of care and attention will dominate. Even though children accompanied by adults also fall into the accepted definition of 'CoM', in reality, we rarely see any responsible person around them. In Hungary, among the various types of children leaving their homes, merely cross-border migrant children might arrive in the company of their family. Children look for a community, which gives them the feeling of care or togetherness.

This vulnerability is often exploited by criminal groups or gangs; hence victimization counts as one of the main risk factors for children. They may end up involved in illegal activities very easily, without taking notice of its risks and their exploitation⁸⁰ through different forms of child labour, like pickpocketing, prostitution, and drug trade, just to mention the most common problems.⁸¹

Later, when they get into the net of the child protection system, children find emotional stability very slowly- if ever. On the one hand, they can be reluctant and mistrustful of the new environment; on the other hand it is very occasional that they really find at least one person they trust.⁸²

"After they took us here in September, we ran away to our friends many times in the beginning. In February, we decided to stay. We have not run away since then." (A., 15)

If we take a look at the wellbeing of CoM and their families, we can observe a quite typical pattern among them. While shortcomings in every aspect of children's wellbeing (like health or problems in housing) contribute to children's vulnerability, in the vast majority of the cases, poverty and deprivation seem to be the most problematic factors. The previously mentioned stability also has a financial side, which greatly influences the wellbeing of a child. In general, CoM come from poor families, where financial hardship put a burden on the everyday life and turns over normal family relations. It can result in

⁸⁰ For further details, see: <http://www.csagyi.hu/hirek/item/914-szokesben-a-gyermekevedelmi-rendszert-el-eltuno-gyerekek>

⁸¹ Turning to crime is the only possibility for children to get money. Children's homes have limited resources to support them, and children in lack of papers, language knowledge and education have no chance to get money in a legal manner- which is actually the embodiment of their independency.

⁸² The recovery and/or reaching emotional stability is known as a slow process. For further details, see: http://www.academia.edu/1761642/Residential_care_The_social_and_emotional_effects_of_being_in_care_and_leaving_care_on_young_people Accessed October 2013

deprivation of basic, educational and social needs, lead to less attention on children and sometimes even to social exclusion.

"We are 9 children in the family. Our parents did not have a job, and the older children raise the smaller ones. Then a police car came in the middle of the night, and took us away."(S., 12)

The unemployment of parents plays an important role in financial problems. Moreover, CoM are usually members of large families with 3 or more children, but one-parent families are also very common.⁸³

Furthermore, CoM all went through some forms of a trauma. The fact that they have been taken away from their family is already a traumatic experience by all means, even if they left voluntarily. For unaccompanied children who were sent to Europe to support their families, this responsibility causes them extra distress. Directly or indirectly, every child experienced abusive situations, cruelty or serious hardship in their original environment or during their travel. A child from a caring family would not run away from home and a foreign child would not take the risk of a journey if he or she got his needs fulfilled there. As reported by many inquiries and by almost all the interviewed adult stakeholders, the vast majority of foreign children are showing symptoms of posttraumatic stress disorder (PTSD).⁸⁴ Sudden loss of weight or chronic headaches with no apparent cause, outbursts of anger, anxiety, losing toilet training, sleeping problems and nightmares are very common.

In the case of foreign children, communication barriers foster the feeling of 'loneliness' and exclusion.

4.1.2. Children's perspective

Besides vulnerability, the second thing in common for all CoM is their special perspective about themselves and their life. Based on the interviews and open-group discussion with children, the above-detailed challenges and risks change children's self-image and they adopt a particular approach to their life.

"How difficult is it to run away? ...You just decide it, open the door and leave. That's all."(M., 17)

In general, CoM show limited assessment of risks. They do not seem to assess the potential danger of running away, sleeping on the street or getting to know strangers. They are not aware of their vulnerability, and simply do not seem to care much about their safety. This takes us back to their victimization, which unfortunately goes hand in hand with criminalization. They get involved in illegal activities easily⁸⁵ and cannot judge properly what is happening with them. Many of them *show* indifference about their life, since their experiences teach them that 'they do not count'.

"It's fine here, it's fine there. It does not matter for me." (M., 17)

⁸³ Ombudsman's Report No. AJB-2731/2012.

⁸⁴ Although the use of PTSD has become outdated, and the latest studies already address this complex set of symptoms separately.

⁸⁵ According to the official data of the Central Statistical Office, almost 10% of the children on run were caught for committing crime.

Until they find someone they can truly trust and who truly cares about their own interests, own needs and own rights, they already learn that their life and their body are not important. Their self-image was damaged following the trauma and challenges they went through. Children on the run and unaccompanied minors rarely consider themselves vulnerable. They show themselves as very independent, who do not need any assistance.

"I don't say I cannot trust adults, but why should I say them where I go? It is enough if I know." (C., 16)

This can be also seen when unaccompanied foreign children, who come to Hungary to support their families back home, feel disappointed when the child protection system treats them as vulnerable children.⁸⁶

Unfortunately, picturing themselves as mature, independent persons confirms the wrong idea of many adult stakeholders that these children, close to becoming of age, are big enough to make decisions. In contrast, children cannot always make a consent decision or think early about possible outcomes. This situation is a real trap because children cannot receive efficient help, but they will not ask either, as many times it does not even occur to them that they need it.

Lastly, life and future prospects of children leaving their homes are characterized by total uncertainty. The majority has no picture of what they will do in the next three years.

"I don't know. I don't have a clue." (Á., 17)

This again takes us back to the argument of instability and illustrates, that CoM fall out of a system, and the normal, usual steps of a child's life are not built for them.

All in all, children's vulnerability and altered perspective describe every child on the move. However, when we try to find some parallels at their background, among their intentions or the circumstances of their travel, the divide between cross-border migrants and Hungarian children on run is very apparent. The second part of this section addresses these differences.

4.2. Differences in the profile

4.2.1. Cross-border migrants

Ombudsman inquiries, on-site inspections made by NGOs, and the experiences of the current Mario research all draw a fairly coherent picture of cross-border migrants. Although the OIN does not collect any statistics on the age of unaccompanied minors, most of them are over fourteen years old, and the vast majority are boys. Approximately one third of the asylum-seeking children arrived to Hungary from conflict-ridden areas.⁸⁷ According to the data provided by the Alien Policing Division of the Hungarian National Police Headquarter, children arrive predominantly from Afghanistan, but an outstanding

⁸⁶ For further details, see: Szabó, M.- Hajas B. (ed.) (2013) *supra* note 10., p. 398.

⁸⁷ European Migration Network (2010) *'Policies on reception, return and integration arrangement for, and numbers of, unaccompanied children'* http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/unaccompanied-minors/0._emn_synthesis_report_unaccompanied_minors_final_version_may_2010_en.pdf. Accessed October 2013

part of them come from Kosovo, Pakistan, Somalia, Bangladesh, Syria and Serbia. This data underpins the statistics of Missing Children Europe, who reported that only 20% of missing children in Europe are coming from the continent.⁸⁸ Furthermore, the majority of children are Muslim and exercise their religion regularly.

Unfortunately there are no statistics available on the number of asylum-seeking children who arrived to Hungary with their family. UNHCR requested this data related to children's detention, however it was not provided by OIN despite Article 35 of the 1951 Geneva Convention about their obligation to do so.⁸⁹

As stated above, a great proportion of children flee from conflicts. They either lost their family or are sent to Europe by their parents to have better prospects in life. Children who left their family in their home country usually come here to support them from the better wage they can get in Europe.⁹⁰ An Ombudsman inquiry⁹¹ revealed that it is not uncommon that migrant children depart with an utopist view that everything is possible in Europe. Other children leave their home to reunite their family or to join some relatives already staying in Europe.

Almost every unaccompanied child entered Hungary illegally. In 2012, border police initiated a procedure in 875 cases against irregular migrant children. Children, who cross borders and even continents sometimes, would hardly be able to travel such big distances without any adult help. Although there is no official data on human smuggling and human trafficking, children heard at Ombudsman inquiries all said they get to Hungary with the assistance of human smugglers.

4.2.2. Children on the run

The risk factors of Hungarian children on the run are quite different. In 2012, 3.246 child ran away from children's home in altogether 17.396 cases, which means around 5 times per year on average. In the same year, there have been 21.148 children in alternative care, of which two-thirds have been in temporary care.

According to the concordant opinion of various adult stakeholders, abuse and bad social conditions are the two main risks for children to run away or be placed in alternative care. Most children run away from a situation, which they feel uncomfortable in or cannot cope with. It is usually an escape from abusive relationships or from school problems. It is also a typical scenario, when revolving expectations, neglect and the lack of stability at home end up in the increase in the negative influence of children of similar age. Learning difficulties and the sense that they are not understood can make children truant.

"They start to hang out with different gangs, they commit some smaller crimes, and their family 'punishes' the child for doing so instead of going to school." (Psychologist)

⁸⁸ Resource (in English) http://www.missingchildreneurope.eu/index.php?option=com_content&view=article&id=77&Itemid=63 Accessed in November 2013

⁸⁹ UNHCR (2012) 'Hungary as a country of asylum - Observations on the situation of asylum-seekers and refugees in Hungary'. p.16.

⁹⁰ The colleagues of the unaccompanied children's home often take note that accompanied minors do not spend their money on their own needs but send them back to their families.

⁹¹ Szabó, M.- Hajas B. (ed.) (2013) *supra* note 10., p. 398.

A child is classified as a runaway if he /she stays out later than 24 hours. Therefore those who stay in places where they want to be or with people they want to be with, and do not come back within a day, fall also into this category. Having some private time is not unusual as a purpose for running away. Interviewed children talked about some examples when they go to sleep at their boyfriend's place, and wished the foster parent would let them go out to 'arrange their businesses'.

Experience shows that until children do not find an answer to the problem and find stability somewhere, they will continue to abscond. Usually this happens in parallel with realizing the danger of running away, which rarely steps children back in it. It is often unsure where they go. When children are taken away from their families, they usually return to them, even if they have serious problems at home. It happens many times, that they go home from the children's home and vice versa: basically, they 'do not find their place'. Children on the run often go to friends, too, and a few end up on the street until the police find them.

5. THE PROFILE OF CPS

The current research also aims at offering an insight into the capacity of the CPS to reach out to CoM and prevent them from falling into risky situations as well as to assess whether the services available are accessible, inclusive and effective.

5.1. Capacity

The protection of CoM is practically about capacity issues. In the last years, Hungary has reached some progress regarding both basic and special services. Accommodation facilities, health care, education and other measures aiming to facilitate the protection and integration of children, have slightly improved in quality and in quantity. In 2012, the demand for places in alternative care did not exceed the official capacity of children's homes.⁹² Since March 2011, unaccompanied children are accommodated in a separate home in *Fót*, which has been supplemented in April 2013 with an NGO-run home dedicated to non-asylum seeking foreign unaccompanied minors at *Hódmezővásárhely*, close to the Serbian border. These two homes cover the demand for places. Before 2013 and the centralization of the home in *Hódmezővásárhely*, non-asylum seeking children were scattered throughout child care homes of the county where they were found and the services were not adapted to their specific needs at all (including provision of translation and culturally appropriate management of their cases). The system of development courses and integration into Hungarian education system can be considered satisfactory, though its quality shall definitely be improved.

"There are more and more school programs about migrants and for them, and thanks to the support of European Migration Fund, schools can organize more intercultural courses for pedagogues." (NGO representative)

There have been some successful initiatives for capacity building, but mostly from the side of the UNHCR and NGOs. *Menedék Hungarian Association for Migrants* created an online knowledge database⁹³ and holds various trainings for a wide range of stakeholders.

"As part of the 'Response to vulnerability in Asylum' project of the UNHCR,⁹⁴ four thematic events have been organized since April 2013 to train police officers, judges, OIN social workers, and employees of children's homes. These events addressed traumatization, special needs of homosexual asylum-seekers and those with disabilities, unaccompanied children, sexual violence and the judicial application of applicable laws. We also initiated to set up a regular platform for meetings with the stakeholders. Unfortunately ION employees were not able to participate in any events due to their heavy migratory caseload, therefore many additional trainings are planned to provide assistance specifically for them." (Representative of UNHCR)

Despite some improvements, there are still enormous problems that root in financial limitations. Most of the reports dealing with the child protection system and most adult stakeholders mentioned in their interviews that social care is absolutely overwhelmed.

⁹² In 2012, there were 24.563 places available for children in alternative care, but only 21.148 children were accommodated. (data of Central Statistical Office)

⁹³ Resource: <http://tudastar.menedek.hu/> Accessed in October 2013

⁹⁴ UNHCR: Response to Vulnerability in Asylum at <http://www.unhcr-centraleurope.org/en/what-we-do/caring-for-vulnerable-groups/response-to-vulnerability-in-asylum.html> Accessed in October 2013

The constantly changing legal environment, the withdrawal of resources and the unusually heavy caseload⁹⁵ make the situation more difficult.

"In fact, as migrants make up approximately 2% of the population in Hungary, which includes all forms of them, so children are only a certain proportion of that data. This number is so small that their support remains marginal." (NGO Representative)

Capacity problems affect both children's physical and mental needs. Appropriate clothing, proper shoes, access to quality food, hygiene and living conditions need further improvement. The available budget leaves little space for special eating habits or dietary restrictions.

"685 HUF (2.30 EUR) can be spent on the daily provision of a child, of which 5 meals per day should be provided. 6000 HUF (20 EUR) is available to buy clothes, shoes, school supply, textbooks and all sorts of articles per month. ...Unfortunately, state funds cannot guarantee the proper everyday provision of children. Equal condition should be provided for unaccompanied children at the moment of arrival as in any Hungarian child getting to alternative care (like changing clothes, pyjamas, shoe and slippers). This doesn't happen." (Representative of Children's Home for Unaccompanied Minors)

"Did you see what she cooked for us? It is not food... it even smells disgusting" (C., 16)

Meeting children's social and mental needs means an even greater challenge. Organizing social and cultural events or take children on excursions fully depends on the foster-parent and is subject to external funding. These vulnerable children need special assistance, which of course requires a good supporting team with expertise, patience, sensitivity, experience, openness, strong social and communication skills, and above all commitment. Unfortunately, the reality falls quite far from this. The number of personnel, including social workers, foster-parents, psychologists, interpreters and cultural anthropologists are very small; consequently it is very hard to provide efficient support to children, not to mention taking into account their special, individual needs. The lack of professionals is mainly attributable to financial reasons, too.

"From the professional's point of view, the financial prospects are not motivating enough, and children's homes do not have the budget to hire sufficient number of professionals." (Representative of UNHCR)

In case of cross-border migrants, the greatest challenge is rooted in communication problems.⁹⁶ Many unaccompanied minors do not speak English and due to the lack of professionals speaking these faraway languages, their help is often not ensured.

"The law only requires a mother-tongue interpreter to asylum procedures but not to child protection procedures." (Representative of Children's Home for Unaccompanied Minors)

⁹⁵ For further details in Hungarian, see: Ministry of Human Resources: 'Szociális ellátások összefoglaló táblázata' <http://www.kormany.hu/download/9/ca/c0000/Szoci%C3%A1lis%20ell%C3%A1t%C3%A1sok%20%C3%B6sszefoglal%C3%B3%20t%C3%A1bl%C3%A1zata%202013.doc>. Accessed in October 2013

⁹⁶ Szabó, M.- Hajas B. (ed.) (2013) *supra* note 10, p. 396-397

Free interpretation should be guaranteed in every measure affecting a child⁹⁷; therefore children's right to use their own language⁹⁸ is often violated due to the limited capacities of the CPS. Interpreters are not ensured at most of the medical examinations either. Not to mention that since the best interests of the child shall be a primary consideration in all cases (including in health services), communication, personal interaction and listening to the child is essential.

Psychological care is also very problematic in Hungarian children's homes in various aspects. As detailed above, all CoM experienced some forms of trauma, still, psychological counseling is not always guaranteed. At the unaccompanied children's home in Fót, crisis intervention – which would be needed straight away – is absolutely missing. Even though the legislation ensures the access to psychological support within the public health service, since these institutions cannot always afford to employ a psychologist in full-time, it is rarely provided in practice.⁹⁹ Furthermore, there is no isolation ward for newcomers who are suffering from infectious diseases or parasites, leading to the danger of its spread.

It is believed that not everything is a question of money, however the motivation of personnel, the quality of work, and reduction of the occasional treatment from the part of foster-parents could have been improved indeed with greater attendance to people working in this sector.

"The support of professionals is missing a lot. Supervision does not operate, even if they also need help to handle failures. Working with migrants is missing from university programs." (NGO representative)

Although it is widely accepted that supervision and creation of a mentor system would ameliorate the support provided by the CPS, limited capacities push this desire down at the agenda. Intercultural trainings and language courses are only available very limitedly, which is especially problematic in the case of social workers and teachers working with migrants.

"Very few persons complete special trainings. An average social worker can be armed with his or her experiences, but does not really have anything else." (NGO representative)

"The problem is that many of the teachers do not speak English, but they try their best. Our sports teacher is for example very nice. We teach each other, I teach him English, he teaches me some Hungarian." (Child learning in a special course for migrants; aged 17)

Obviously these problem areas are closely interconnected and one cannot be improved without the other. The efficiency of protection resides in the quality, which cannot be ensured without proper funding. For this reason, children's homes try to compensate these shortages in three ways. Firstly, they attempt to receive donated clothes and food. Secondly, they tender external funds from the *European Refugee Fund* (hereinafter ERF,

⁹⁷ For further details, see: Gagy, R. (2012): 'Kísérő nélküli kiskorúak Magyarországon. Szakmaiság és kompetencia'. Magyar Ökumenikus Segélyszervezet.

⁹⁸ The objects covered by the Child Protection Act fully cover alien children who do not belong to the persons covered, therefore their right to use their language and free interpretation should be ensured in every measure affecting children.

⁹⁹ The investigation of the Ombudsman carried out on unaccompanied minors in 2012 highlighted that this results in the violation of the Article XX (1) of the Fundamental Law of Hungary, and he made steps to remedy this violation at the Minister for National Resources.

with matching funds provided by the Government) to cover missing services. For example, excursions for unaccompanied minors have been organized exclusively thanks to these resources. Thirdly, they outsource some services to NGOs, who find a budget to perform some tasks that would have been the responsibility of the children's homes.

The role of NGOs deserves to be underlined. Their support and their flexibility try to fill the gaps in the CPS – in fact very effectively. Just to list the most important ones, *Menedék Hungarian Association for Migrants*,¹⁰⁰ *Cordelia Foundation*,¹⁰¹ *Kék Vonal Child Crisis Foundation*,¹⁰² *SOS Children's Villages Hungary*,¹⁰³ *Hungarian Helsinki Committee*,¹⁰⁴ *Refugee Mission of the Reformed Church*¹⁰⁵ and *ESZTER Foundation*¹⁰⁶ do an outstanding job in providing psychological support, organizing social programs and promoting the integration of "CoM" in various ways. Additionally, their voluntary, special approach brings new colors to the formal, overwhelmed CPS.

"NGOs can be more mobile as those who work as an authority or systemically. They are present more in the operations of life cycles, where children may occur, hence they can realize mistreats better. It is a huge advantage that NGOs are not bound to too much rules and do not need to meet the requirements and principles apart from their own. They can prioritize tasks, which cannot be put first by the CPS. They have a greater flexibility to react on tasks, which are really necessary. In any systems, there are certain regulations therefore they can realize changes more difficultly. NGOs play an important role in awareness raising and in realizing that the CPS does not always work efficiently." (NGO representative)

"Supporting migrant children is a public duty and NGOs overtake some of the services voluntarily, which is very important for the children affected." (Representative of the Police)

The support of NGOs is very welcomed by the CPS and other authorities, their cooperation works well in Hungary.

"Civil control and feedback is absolutely crucial. We work closely together and consult in every debated question." (Representative of the Police)

Basically it is very pleasurable that shrinking financial resources urge child protection and asylum systems to proactivity look for external help and to cooperate with NGOs. The other side of the coin is that outsourcing some services might also involve some risks. Firstly, in these cases, proper quality control is not resolved. Secondly, ERF projects might not be sustainable, as the requisite complementary national resources are not always allocated. Similarly, the resources of NGOs depend on available funding, which impedes long-term planning and endangers the sustainability of the service.

"Funding these services on a case-by-case basis on tenders can break the continuity and the sustainability is also at risk." (Representative of UNHCR)

All in all, Hungarian CPS still faces great challenges in terms of capacity building. The work of NGOs perfectly completes, but cannot substitute the provision of the CPS. In order to

¹⁰⁰ <http://menedek.hu/en> (Accessed in October 2013)

¹⁰¹ <http://www.cordelia.hu/index.php/en/> (Accessed in October 2013)

¹⁰² <http://kek-vonal.hu/index.php/en/> (Accessed in October 2013)

¹⁰³ <http://www.sos.hu/Pages/default.aspx> (Accessed in October 2013)

¹⁰⁴ <http://helsinki.hu/en/> (Accessed in October 2013)

¹⁰⁵ <http://rmk.hu/menekultmisszio/index.php?p=6> (Accessed in October 2013)

¹⁰⁶ <http://eszteralapitvany.hu/?lang=en> (Accessed in October 2013)

ensure the rights of CoM and to provide efficient help to them, more funds should be made available.

"It is sure that the issue of CoM should be answered based on child rights consideration. In this question, thrift should not be a dominant viewpoint." (NGO representative)

5.2. Inclusiveness

Hungarian legislation provides equal protection for every child within its territory. The non-discrimination clause of the UNCRC ensures that CoM shall enjoy equal rights to local children. What is more, since 2010 migrant children belong to the persons covered by the Child Protection Act¹⁰⁷, which introduced a special guarantee for equal treatment.

However, there are some holes both in the net of CPS and in legislation. The laws are modeled primarily to the needs of Hungarian children whom are separated from their families, and do not include any guarantees to meet the special needs of unaccompanied minors. Special knowledge for professionals, appointment of a guardian, and ensuring an interpreter for free are just the main shortages in regulations. The appointment of a representative ad litem/ temporary guardian (*eseti gondnok, ügygondnok*)¹⁰⁸ often happens after more days than foreseen in the law, until the child absconds. It is a promising step forward that from 1 January 2014, a child protection guardian will take over the role of temporary guardians.

"It makes a huge difference if a guardian ad litem, temporary guardian or a guardian is assigned for the children. On the one hand, the training and the special know-how of these professionals are problematic. On the other hand the connection and trust, which can be evolved between the children and their representatives, are not the same." (NGO representative)

5.2.1. Foreign children who do not seek asylum

According to the definite and concordant opinion of the interviewed adult stakeholders, there is one special group that is excluded from the protective services: those, who do not seek asylum.

"Child Protection Act places asylum-seeker children in a legally higher status. The situation of those children who do not lodge their asylum application, is not regulated properly." (NGO representative)

These children usually are on their way to join their families in Western Europe, and do not want to stay in Hungary. The CPS tends to accept that Hungary is a transit country,

¹⁰⁷ Article 4 (1), Child Protection Act: The scope of the Act covers children who are Hungarian citizens, who settled down, immigrated, who are hosted, or whose refugee, stateless status, or subsidiary protection, is acknowledged. Article 4 (3) adds that the scope of the Act covers every child residing in Hungary if failing to order their temporary placement, nursing supervision [*ed. 'nevelési felügyelet' in Hungarian*] or guardian ad litem would entail the vulnerability of the child or irreversible harm.

¹⁰⁸ *Representative ad litem / temporary guardian*: CPS stakeholder dedicated to temporary guardianship. Temporary guardianship is generally granted by guardianship authorities or courts to achieve a specific purpose for a certain amount of time. Once the purpose is accomplished, the guardianship is terminated.

and therefore abandons these children. As a consequence, the provision highly differs *vis á vis* asylum-seekers and children who have not even filed an application.

"The procedure divides into two parts based on the decision of the child if he or she applies for international protection or not. If he/she seeks asylum, he/she will be transferred to the unaccompanied minors' home in Fót, and a guardian ad litem will be appointed next to them for the period of the asylum procedure. However, if he/she does not apply, she will fall out of the scope and perspective of the CPS. According to the lawful procedure, they will get into a children's home, and the OIN decides on their situation. In practice what we see is that these children disappear within a few days." (NGO representative)¹⁰⁹

Still, apparently there is no intention to include these children in the CPS. The representative of the police also raised the idea that NGOs should apply for tenders in ensuring the accommodation of these children.

5.2.2. Age assessment

In the analysis of the inclusiveness of the CPS, the situation of age-disputed persons and hence age assessment are cardinal problems. Although the currently used Greulich-Pyle method is widely used in Europe, there is a disagreement whether it is still adequate today. The major critique is the lack of a multi-disciplinary approach. In contrast to the international standards¹¹⁰ the determination of the age disregards the examination of the mental, ethnic and cultural characteristics of the child.

"The method of age assessment (Greulich-Pyle) is out-dated and not complex. It is made of an X-ray, but the youths are not examined properly by the police doctor, and are not seen by psychologists or social workers." (Representative of unaccompanied children's home)

Age assessment is often viewed as a tool for migration control.

"It happens quite often, that after the police catch a runaway unaccompanied minor, as a sort of a punishment, they do not acknowledge that he or she is a child." (NGO representative)

Furthermore, children, by whom any doubt emerges concerning their underage status, are blamed to declare themselves as minors just because they would like to avoid the asylum detention. This approach is in contrast with the principle of the best interests of the child. Age assessment is not open to legal remedy and does not provide the necessary time to gain trust, and reveal sensitive information.

"Taking into account the vulnerability factors is missing from the procedure. OIN does not have any internal protocol for age assessment, but UNHCR has offered to assist them in establishing informal procedural guidelines." (Representative of an international organization)

¹⁰⁹ Tdh representatives indicated at this point that „After discussion with the representative of X. (at Guardianship Authority) and following our appraisal of the situation in 2012, a guardian should also by law be appointed. We think it deserves a mention, even though in practice the guardian appointment is realized after the child has gone missing. By law, all these children also fall under the scope of protection of the CPS.”

¹¹⁰ Resolution 97/C 221/03 of the Council of the European Union on minors who are nationals of third countries, Article 4 (3)

UNHCR reported to have information on cases, *“when UASC recognized in Hungary as adults were able to apply for special assistance as children in other European states”*. Referring to the report of the Hungarian Helsinki Committee, they outlined that if such children are returned by other EU Member States to Hungary *“with documents stating that they are children, based on those States’ own age assessment procedures, such documents are reportedly not taken into consideration in Hungary. Instead, a new age assessment is conducted and in most of the cases, the persons concerned are considered adults.”*¹¹¹

5.2.3. Abandoned children

What is more, there are some ‘problematic’ children, to whom less attention is given; who are sometimes even neglected by the CPS. Runaway children, children on their way to their families and those who are involved in crimes are often left behind.

“For me, this raises the question of the responsibility of the adult population. How is it possible, that professionals are powerless? Many times they cannot give a good answer, or just give up. If we take a closer look at children who constantly run away from the children’s homes, the CPS practically abandons them. Except from some obsessed persons, CPS admits that it cannot do anything against it. CPS cannot protect children who use drugs, who run away 10-11 times, who are taken abroad, or who become sex workers, and discard these children. We, as a country, should give an answer to how do we want to handle or approach our children.” (NGO representative)

“The truth is that the proportion of runaways is very high in Hungary, and only the supporting talks and personal relations can convince children to stay. If the child needs to get somewhere for the exact request of the family, actually there is no chance to make him or her stay.” (NGO representative)

The Child Protection Act does not use the term “abandonment” when describing the reasons for placing a child in care. Thus, it is impossible to differentiate between the number of newborns who have been abandoned by their parents and the number of newborns who have been taken away by the authorities.¹¹² At this point, we have to consider the very particular case of abandoned children, when Hungarian speaking Romanian mothers had had a baby in a Hungarian hospital and then subsequently abandoned them. In these cases, the Hungarian authorities were basically creating statelessness.¹¹³

5.2.4. Children first

As mentioned above, inclusiveness of the CPS is often a matter of attitude. It is underlined by many interviewees, ombudsman reports or statements that CoM are children first, whose best interests should be a primary consideration. Everything comes after that.

¹¹¹ UNHCR (2012) *supra* note 84., p.20.; Hungarian Helsinki Committee (2011) ‘*Stuck in Jail: Immigration Detention in Hungary*’ (2010). p.11. at <http://www.unhcr.org/refworld/docid/4ed77ea72.html>, Accessed November 2013.

¹¹² For further details, see: Child Abandonment and its Prevention in Europe http://s3.amazonaws.com/rcpp/assets/attachments/1458_manual-of-good-practice_original.pdf Accessed November 2013

¹¹³ For further details, see: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?reldoc=y&docid=4d6d26af2> Accessed November 2013

*"Legal provisions treat the unaccompanied minors firstly as foreigners based on their legal status, and secondly as children whom are torn from their family and being in a crisis situation."*¹¹⁴

"Unaccompanied children are handled as an alien-policing matter, based on their immigration status instead of being regarded first and foremost as children who have special needs and special rights. So first the status is seen and only after that the child, which should be exactly the other way around." (Representative of an international organization)

This reverse attitude reflects that the best interests of the child are not a primary consideration when an unaccompanied child is addressed. UNHCR has made steps to establish a Best Interest Determination (BID) procedure in Hungary, based on their joint guidance with UNICEF.¹¹⁵

"Currently, the CPS does not need to determine the best interest of the child. It would significantly improve children's chance to receive a personalized decision that also takes into account the best interest of the child, if an Expert Committee existed, whose opinion should have been considered. BID procedure should be carried out as a routine." (Representative of an international organization)

5.3. Accessibility

When it comes to assessing the CPS in protecting CoM, not just the provided services should be examined, but also how accessible they are. Regarding accessibility, the different types of children leaving their homes face similar situations. In Hungary, asylum and child protection services are generally available for applicants. Their actual access, available information on the protection and asylum services, child-centeredness and legal and administrative obstacles all belong to the question of accessibility.

The law contains many guarantees and makes the protection system available to all children under Hungary's jurisdiction – including alien children. Although there are some concerns about ensuring its inclusiveness (*see chapter 5.2 in Part II*), there are not significant legal obstacles to access the services. As for administrative issues, bureaucracy and the unclear boundaries within the numerous actors in the system (*see them in italics on the flowchart*) hinder the progress in different procedures. The problem is not the administration in itself, but often only administration happens. Making services accessible requires intense cooperation among institutions, but the lack of capacities and the increased caseload often result in completing the paperwork, meeting the minimum requirements, but nothing more.

"CPS from an administrative point of view is dramatic. A lot of administration work needs to be done to 'save one's skin'. Children are there in need of help, but there is no place, no budget, and no time to do so." (NGO Representative)

Since 2011, the accommodation of asylum-seeker unaccompanied minors has been centralized in a separate children's home in Fót, 20 km away from Budapest.¹¹⁶ This decision

¹¹⁴ Szabó, M.- Hajas B. (ed.) (2013): *'Their Shield is the Law. The Ombudsman's Protection for Vulnerable Groups'*. AJBH Budapest. (English extract of the resource in *supra* note 10), p. 97.

¹¹⁵ For further detail, see: <http://www.unhcr.org/50f6d27f9.pdf> Accessed November 2013

¹¹⁶ See: <http://www.wp.kigyk.hu/gyermekotthoni-ellatas/kisero-nelkuli-menekult-kiskoruak-gyermekotthona/> Accessed in October 2013

helped to avoid previously experienced situations when migrant children were rejected from children's homes with reference to the alleged lack of places. According to the inquiries of the Ombudsman, "children's homes designated for temporary accommodation in Hungary were not willing to admit one third of the unaccompanied minors with various reasons in spite of free capacity."¹¹⁷

In effect, centralization of certain procedures also raises some concerns. Since 1 January 2004, the Guardian Office of the 5th District of Budapest is responsible for the guardianship process related to every alien child residing in Hungary. Grounding on the desire to optimize, this 'monopoly situation' allows them a bigger flexibility in developing their processes.

"The centralization of the Guardian Office of the 5th District of Budapest often impedes making progress in a case. It is quite common that they delay issuing papers or issue only temporary documents and wait if the child runs away..." (NGO Representative)

This takes us back to the question of personal responsibility in facilitating the access to services.

"Basically there would have been no judicial obstacles of children's access to protection services. It does have lots of administrative problems and employees are very overwhelmed. But most importantly, the change of attitude would be necessary." (NGO Representative)

Occasionally, it is undoubtedly part of the system – not only at the institutional but also at a personal level. It equally applies to social workers, policemen, legal representatives, guardians ad litem, etc., who exert direct influence on the access to provision.

"Where and with whom the child ends up is absolutely occasional. Whether social workers can take on a role that substitutes the parents, that can correct dysfunctional operations, or if they are well-informed enough to take the child to professionals who can react on the special needs of children." (NGO Representative)

"Much depends on the police, who usually meets unaccompanied children first. It is not enough if they are informed about their possibilities when they first apprehend them. The question is how much they know the proper procedure and how much they adhere to it. It happens that they send back the child without any reason." (NGO Representative)

The report of the ombudsman also highlights the responsibility of the police and stresses that several young people were sent back to Serbia, where they had come from.¹¹⁸ These cases are not examined sufficiently and there is no guarantee that the best interests of these children have been considered.

CPS is responsible to reach children in need of help. Still, a common critique addresses the immobility of the system. As opposed to NGOs, social workers are not (or are not allowed to be) active in places where children are present, which means a great challenge in preventive and monitoring tasks. It was reported by the representative of an international organization, that social workers in certain detention facilities are not allowed to work directly in the area where asylum-seeker families with children stay. It causes

¹¹⁷ Szabó, M.- Hajas B. (ed.) (2013): *supra* note 105 (2013) p. 99.

¹¹⁸ Ombudsman's Report No. AJB-5723/2012. Resource (in Hungarian): www.ajbh.hu/documents/10180/111959/201205723.rtf Accessed in October 2013

a problem with Hungarian children who leave their homes, whose route into alternative care is more branching.

"There are not enough social workers who do outreach social work and can go to the street, to the school, or who can be reached after working hours. The family based services and alternative care exists like a mountain, and its workers do not go to the children." (NGO Representative)

Moreover, an accessible CPS would mean that children or people affected can also get into contact with protection services. During the research, we met some children who went to the welfare service and asked help by themselves, but in fact this counts as quite atypical.

"CPS does not access children and children rarely use this option. In practice, I do not see that the child would ask the CPS to help with their problems." (NGO Representative)

If we look behind this and examine why children are reluctant to ask for assistance, the answer is quite obvious. Most importantly, they do not know neither their rights, nor the channels and places to turn to. Unfortunately, lack of information is not just a characteristic for alien children.

"Accessibility is not only problematic regarding CoM but also for Hungarian children. Basically children do not know child welfare services. They get to know it when this service contacts them. The number of children who voluntarily go there and ask for help is very low." (NGO Representative)

Cross-border migrants usually are very poorly informed, too. Sometimes they only have a destination to join their families, sometimes they just look for a safer place than their home country, but they are rarely prepared for the procedures they 'bump into'. The advantage to declare themselves below eighteen years old is basically the only thing they are aware of.

"Unaccompanied minors know it well that if they say themselves as minor, they will be in a more favorable situation. But when they are got into the system, they do not know really their opportunities." (NGO Representative)

Children do not even ask for help when they have already gotten into the system. Distrust poses great barriers in front of communication, and employees are overwhelmed and often under-motivated or burnt-out.

"In order to be informed, first they need to be involved into the system. And when they get inside the system, they do not receive enough information not to run away." (NGO Representative)

The availability and the language used by information sheets and websites are not satisfactory either. So far, child-friendly publications are missing; and although the construction of cross-border migrants has not changed much in the last decade, they are only available at the alien policing offices in few languages.

"Many children do not know what refugee status means. Information sheets about their protection use a formal, judicial language and are available only in limited amount." (Representative of an international organization)

"Information sheet are in majority in Hungarian, but ordering an interpreter to the asylum interview is an obligation. In fact, children do not understand the process at once clearly, as they are so exhausted. In detention facilities, information sheets are already available in more than 10 languages." (Representative of the alien policing)

CPS is responsible for supporting children in becoming more proactive and in asking help, but a reliable information system would be essential in enhancing the accessibility of the protective services. It is clear that greater patience and a child-centered approach should be adopted in providing information to children.

"CoM went through some forms of trauma, they are tired, insecure, and therefore it is not sufficient to tell them their opportunities when they first catch them. It is not enough to tell it once and to feel offended when the clients do not understand it or really perceive it. If they are also informed at the asylum interview and when they receive the status, it is not enough either. These information should be repeated sometimes also after years." (NGO Representative)

Furthermore, an accessible CPS also means that available services are tailored to the needs of CoM.

"Children's needs are not coherent with many legal provisions that would be in fact looked for as a help to react on them." (NGO Representative)

Children articulated clearly that they did not want to go to interviews and interrogations all the time, where they are asked to repeat the same stories to different people. It is quite controversial, that while there is a requirement to take part in such time- and energy-consuming processes, namely in the best interests of the child, no priority is given to providing children with child-friendly information about their rights and the procedures they are involved in. Some of the interviewed children in temporary placement could not answer for how long have they been waiting for their permanent placement or when they will get to know it. Those who knew it were also unaware of or at least unsure about the procedure and the reasons behind the length of this temporary period.

The question arises: why would children make steps to access these services when even those who are already within the system are not adequately informed about what is going on with them? Communication and information sharing is the basis of trust, and are the only ways to ensure that the needs of children are taken into account in the provision of available services.

"It should be borne in mind how to convince children that they are in safety, cared about, and that they believe that their needs and desires can be taken into account." (NGO Representative)

CoM and their families have limited knowledge about the access to health care and education. Where can children go to school or where could they find a GP is not so obvious for them. *Menedék Hungarian Association for Migrants* and the *Refugee Mission of the Reformed Church* provide fundamental support on this. Their help remains fundamental, as Hungary still falls short of ensuring the full participation of foreign children, including CoM in mainstream education. *"Authorities provide limited and outdated information regarding educational programs",*¹¹⁹ and the education system is not prepared for their integration. Due to funding problems, schools cannot address their special needs

¹¹⁹ UNHCR (2012) *supra* note 84. p.21.

(language course, cultural orientation, teachers' training), and make the enrolment of asylum-seeking and refugee children subject to external financial support. Regarding access to health care, lack of information and the above detailed communication problems represent the greatest challenges.

5.4. Adequacy, efficacy

In this research, these indicators (adequacy, efficacy) are part of an *evaluation* that provides information necessary to examine how well the CPS is working and whether it can achieve its desired goals. Of course, efficacy and adequacy are in close relationship with other indicators, like capacity. Evaluation is critical for "*the demystification of the child protection system*"¹²⁰, meaning the need for the evidence-based and standardized workings of the CPS.

Evaluation is essential particularly in "CoM" cases, i.e. those involving multiple child protection-related problems, like violence, trafficking, child labour, sexual exploitation, and migration. Traditionally, the CPS provides services that focus on particular issues or specific groups of vulnerable children. While the result of vertical, issue-focused programming¹²¹ can be very effective in serving the specific cohort of children targeted, this approach has serious limitations. The "CoM" cases are in need of a holistic approach and multi-sectoral cooperation, whereas fragmented child protection responses, which deal with problems individually, rarely provide a comprehensive solution. Focusing on single issues on their own may result in the ineffective operation of the CPS, which is neither sustainable nor truly able to respond to the needs of all CoM.

Unfortunately, there are practically no evaluation findings available regarding the effectiveness of the CPS or ones that appraise the challenges faced by researchers evaluating CPS services in Hungary. For that very reason we were not able to compare the results of this qualitative research with other ones. However, there are some articles where field professionals "evaluated" the workings of the CPS similarly to the way our interviewees went about it in this research. The limited evidence available seems to suggest that CPS services have made a variable impact both on the children's development and on the functioning of the family, which obviously influence both the adequacy and the efficacy of the interventions.

*"The funding of services is fragmented and inadequate, access to them is limited, programs tend to emphasize problems rather than children's strengths, and interventions seldom focus on the family as a unit."*¹²²

The problems of adequacy and efficacy highlighted in the interviews were:

- Substandard professionalism

"The system does not have enough tools and, therefore, they postpone taking appropriate measures as best as they can." (NGO representative)

¹²⁰ It was the title of R.S. Levin's revolutionary article in the University of Pittsburgh Law Review in 1973.

¹²¹ Read more about it in Part II, i.e. the 'Prevention' chapter.

¹²² Herczog, M. – Neményi, M.: '*Romani Children and the Hungarian Child Protection System.*' In: Roma Rights Quarterly. Vol. 2007. No. 4., p. 3-14.

"Nothing seems to be working if we see the CPS from the children's point of view. I mean it is not able to respond to the needs of CoM. There are no adequate or effective answers to the children's needs for attention, security, trust or protection." (Mediator of cross-border family cases)

– System abuse

"Some things seem to be working on the level of the professionals involved if they are sensitive enough, but there is hardly anything being done adequately or effectively at the institutional level." (Adult stakeholder)

"The CPS is not adequate to its task at all. I know that sometimes my colleagues work hard on how they could possibly 'remove' the child from our system because they know that it will abuse the child for sure and it is better for the child to disappear..." (Social worker)

Several interviewees (both children and stakeholders) pointed at the problem of fortuitousness. In the majority of cases, only chance determines the quality and efficacy of the intervention.

"I think the efficacy of the system depends on the personal skills of the professional and the so-called well-matched relationship between the professional and the family. The intervention will work if the family meets a professional who is in harmony with them." (Psychologist)

– Bad attitudes towards children

"The professionals do not think that these children are victims indeed." (K., 15)

"Nothing seems to be happening for a long time. Then they just drop in on us. Next a police car arrives all of a sudden and takes us away. We (I and my brothers) were afraid of the whole procedure. I hated them (the social workers and the police officers), even though I knew that my parents were not perfect." (D., 12)

"Many children believe that it is the people closest to them who will worry the most about them if and when they run away. However they sense that most professionals are concerned only because it is part of their job and are not really worried about the child by itself." (Mediator of cross-border family cases)

In case of CoM, accurate risk-assessment techniques are needed to identify the best interests of the child. Handling borderline cases appears to be very complicated, even though they are easily manageable with appropriate attitudes and by observing the fundamental principle of the "best interests of the child".

– Obstacles in the legal system

"Child protection and alien policing follow and are governed by separate laws, their sole consideration being what is within and what is outside their remits" (Hungarian representative of an international organization)

"I do not think that the legal backdrop works appropriately, for it does not let CPS professionals respond properly to the needs of the child." (Á, 17)

Concerning legal issues, the possibility of detaining asylum-seeking families with children for up to 30 days is contrary to the UN Convention on the Rights of the Child, and it is also at odds with the “best interests of the child” principle, as well as with the guidance of the European Court of Human Rights.

- Financial issues

“It is often undecided who or which organization a given case belongs to or how it is funded. Typically, families with children, who automatically become homeless after leaving their designated accommodation, are considered a very controversial issue.” (NGO representative)

Of these problems, the interviewees also pointed out some other contentious issues, like the centralization of services dedicated to CoM. Some stakeholders and respective authorities, law enforcement and government agencies went along with the idea of centralization. However, NGO representatives and field workers were against the idea of further centralization, being much more aware of the operations of outreach social workers and school-based social work.

“The best way to prevent children and young people from running away from a placement they can’t cope with is for the staff to ask about and listen to their problems and try to solve them (even if it means a change of placement) before the child comes to feel like running away. And to prevent the child running away again after returning, the staff should ask about and try to solve any of its problems that caused it to run.” (Mediator of cross-border family cases)

Looked at from the researcher’s angle, the answers related to “efficacy and adequacy” of both children and stakeholders varied according to the interviewees’ personal views and experiences. The absence of requirements to regularly review the adequacy of the Hungarian CPS services results in the lack of any standards or comprehensive approach in this field. These shortcomings lead to depressing consequences for practice, as the professionals are not compelled to reflect upon what went well and why or specify and take care of areas where improvements are required. So, in many cases, good outcomes appear to manifest themselves accidentally.

5.5. Prevention

Prevention is not a new term in the field of human services, but only recently has it been getting attention as a viable intervention strategy. It is based on the belief that we are capable of preventing problems from occurring either on an individual basis (direct intervention) or as a consequence of a wider system.

The Hungarian CPS, like every CPS in developed countries, focuses on preventing endangering situations in families at risk of abuse, e.g. maltreatment of children. Both prevention and intervention is key for an effective and successful CPS that is competent not only in the case of high-risk families but also delivers services to children at lower risk level. From this point of view, CoM are referred to as a high-risk group. Cases of trafficking, forced begging, or sexual exploitation, maltreatment and abuse are also causes for concern and it is unquestionable too that prevention measures are crucial in the long run for eliminating these types of endangering situations.

Migration is a process that begins with the decision of the child or of the family to migrate, moving typically through the various stages of travel, entry, settlement, etc. At the very

beginning of this process, children already are at risk and in need of services to prevent the harmful consequences of unsafe migration.

In general, the preventive services of CPS are

- Parenting education,
- Case management,
- Supervision,
- Individual and family counseling,
- Housing assistance,
- Distribution of benefits,
- Substance abuse treatment,
- Child care and,
- Home visits.

Looking at this research from a distance, we have found that many preventive measures appear to be of only limited relevance, like e.g. family-based services aimed at unaccompanied minors or other children that are on the move all alone. Viewed from the children's angle, prevention is not about plumping for one particular measure expected to guarantee that a child will not be moved (trafficked, spirited away, etc.) or exploited, but rather about putting in place a series of preventive measures which, taken together, make these endangering and harmful actions more difficult to carry out. It means that co-operation between agencies within the CPS and among other sectors is crucial.

Like other responses to endangering situations, preventive measures need to be integrated so as to be effective. In the CPS, professionals working to prevent child abuse have to cooperate with those representing other disciplines (public health, education, law enforcement, etc.) in the framework of a mandatory reporting system. Thus professionals with various competencies develop a so-called prevention network.¹²³

Unfortunately, there are only a few Hungarian research projects that deal with prevention issues and, on top of it all; researchers find little evidence to prove that the above-mentioned services will reduce the risk of ongoing maltreatment.¹²⁴ Moreover, the research findings appear to suggest that many families in need of assistance are rendered scant CPS services over and above periodic visits by usually overburdened caseworkers and the help they get is very often of poor quality.¹²⁵ Despite all this uncertainty and evidence, prevention still seems to be the cornerstone of the CPS. In relation to the CPS and CoM, we have to analyze the possible prevention measures at three levels, i.e.

- Comprehensive prevention at state level;
- Secondary prevention of children at risk from illegal or endangering movements;
- Damage control in cases of CoM.

¹²³ This network consists of 3 levels of services. Primary or comprehensive prevention is the one that is aimed at the general public intended to prevent maltreatment before it occurs. Secondary prevention is targeted at endangered children or high-risk families. Tertiary prevention is intended for families in which child abuse has already occurred.

¹²⁴ Csurgó, B.- Hodosán, R. – Rácz, A. – Szombathelyi, Sz.: '*Gyermekevédelemben nevelkedettek társadalmi integrációs esélyei.*' In: *Gyermek és Ifjúságvédelmi Tanulmányok*. Rubeus Egyesület. 2012. Resource (in Hungarian): http://rubeus.hu/wp-content/uploads/2013/09/24428_gyermek_es_ifjúságvédelmi_tanulmányok_első_kötet.pdf Accessed in October 2013

¹²⁵ For further details, see: Herczog, M. – Neményi, M. (2007) *supra* note 112.

International migration and “CoM” cases usually need cross-border prevention programs that get under way long before the actual movement of the child. Early intervention/prevention typically kicks off with actions taken to reduce the risks of children migrating unsafely, running away, being trafficked or displaced, etc.

In the last 5 years, three national-level awareness-raising campaigns have been conducted in this country with the aim of preventing cross-border trafficking, slavery and forced prostitution.¹²⁶ The last one was managed by the Hungarian Government in the framework of an ISEC project in June-July 2013. The main goal of the campaign was “to increase the awareness of the population, policy makers, potential victims of human trafficking of the dimension and various forms of labour exploitation.” The message of this month-long campaign was “To work is a right, to exploit work is a crime! Together we can fight human trafficking”.¹²⁷ Unfortunately, there was no data accessible regarding the monitoring or evaluation of this campaign or the previous ones.

Our research findings appear to suggest that the professionals appreciated the necessity for, as well as the cross-border character of, primary prevention.

“I see child migration as a global challenge. We need a global strategy, a European strategy that responds to the humanitarian and also to the economical needs. In my opinion, we (in Europe) have a massive fear of migration and its consequences because we have no appropriate information about the real face of this phenomenon.” (NGO representative)

“Prevention is more complex than the field workers believe it is. Such as prevention as source country (prostitution, trafficking – reducing risk factors), prevention as target country (migration/ internal CoM or running away), prevention as transit country (migration, trafficking). We have to provide services (I mean preventive measures) to improve access to information, prevent subsequent harm and child right violations.” (Human Rights Lawyer)

On the other hand, no children in our research sample have ever heard of these campaigns or any other measures taken in the name of primary prevention.

Concerning prevention in general and primary prevention in particular, the professionals pointed out the reasons for missed efforts as follows:

- No need for primary prevention at all (“We can’t talk about prevention in case of migrant children because we encounter children who have already left their home country. Prevention has a meaning in respect of Hungarian migration, i.e. in preventing Hungarian children leaving this country.” (Representative of a residential home for foreign children))
- Hungary is a transit country (“In the majority of the cases, prevention is not reasonable in the country where the child actually lives. We can talk about prevention only with regard to the source country.” (NGO representative))

¹²⁶ Resource (In Hungarian): <http://www.jogiforum.hu/hirek/20051>, <http://www.belfoldihirek.com/kek-hirek/emberkereskedelem-elleni-keresletsokkento-kampany>, <http://emberkereskedelem.kormany.hu/jelentes-az-integralt-megkozelites-a-munkaero-kizsakmanyolas-megelozesere-a-szarmazasi-es-celorszagokban-cimu-jls-2009-isec-ag-207-azonosito-szamu-projekt-kereteben-folytatott-megelozokampanyrol> Accessed in October 2013

¹²⁷ Resource (In Hungarian): <http://thb.kormany.hu/report-on-the-implementation-of-the-prevention-campaign-of-jls-2009-isec-ag-207-integrated-approach-for-prevention-of-labour-exploitation-in-origin-and-destination-countries-project> Accessed in October 2013

- Hungarians are not aware of the problem of CoM. (*"Looking at the issue of migration from the angle of prevention, we sense as the real problem the fact that the public is not really supportive. People do not care about migrants. Practically, there are not enough migrants for attention to be drawn to them."* (Social worker)
- Not even the CPS is aware of the problem of CoM (*"It is hard to talk about prevention if the child is not to be seen. I mean, CoM remain invisible for the professionals either in the CPS or, for instance, in the educational sector...their identity is often unclear as they possess no documents of any kind."* (Human rights lawyer)

Obviously, it is a very complacent approach to suggest that CoM are simply non-existent in the Hungarian CPS, and it is not true. Based on the official database of Hungarian Central Statistical Office, 882 foreign children showed up in the Hungarian residential homes in 2012. Regarding these children, we have to talk about secondary prevention, i.e. to take special measures to stave off very real risks.

On the children's behalf, preventive measures were practically undetectable. When asked about their views and experiences in this field, they threw light upon the basic inadequacies and shortcomings of the CPS as a whole. Such are

- Lack of appropriate information (*"I have never had enough information. Of course, language was an issue but the real problem was that I never felt safe. They started off by taking my fingerprints, and they also deprived me of my freedom...they never even tried to convince me to trust them..."* (X., 15)
- Lack of adults in the staff worthy of the children's trust (*"In my opinion, children run away because they do not feel at home in the institute."* (D., 12), (*"I would like to feel at home. I escape because I want to be with my mother. They can't stop me from running away."* (Á., 17), (*"I just do not trust adults. They are not able to prevent me running away because I do not feel trust towards them..."* (M., 16)
- The general resistance of children in care (*"I do not think that they can prevent me running away. I like the other kids but I can't stand the place at all."* (A., 17)
- Lack of knowledge about the risk factors involved (*"I think children migrate because they do not know how it really works..."* (L., 12), (*"Running away is relative...For instance, the staff know that I am with my boyfriend and they also know that I will come back if I need something."* (X., 16)
- Lack of practical information and help (*"I knew someone who didn't want to run away. He just didn't know the way back to the residential home..."* (K., 15)
- The problems of asylum and CPS procedures (*"I am sure that if this whole procedure had been shorter and less demanding, children wouldn't want to escape."* (B., 14), (*"I think it would be enough to hear the child only once. I was interrogated at least a hundred times and I had my status decided upon after 2 years. They should have made this decision faster, in 5 months at most."* (N., 15)

It was so difficult identifying the best practice in terms of secondary prevention that we had to put additional questions to the children and also to the professionals. Judging by the answers, we found that a mandatory reporting system, some related NGOs and primary services of the CPS should play a specific role in this field.

"I think good cooperation would be the best way of prevention...and an appropriately working of mandatory reporting system too." (Representative of Ombudsman's Office)

"NGOs are more flexible. We are not part of the rigid centralized institutional framework." (NGO representative)

"I really believe in primary services. Prevention is totally irrelevant in the framework of out-of-home services. For instance, in case of a child begging, primary services appear to be more flexible and apt for prevention while the out-of-home service does its job only within its framework." (Social worker)

When we talk about prevention, all professionals working with families and children or taking part in some way in the settlement of an "on the move" situation can have a role. The CPS flowchart (see p. 25) illustrates the scope of prevention possibilities worth considering. Talking about the prevention of endangering movements, this report extends the notion of prevention to cover the actual protection of CoM with a view to heading off any additional psychological or other harm inadvertently done to the child by the workings of the CPS. It is more or less a novel approach that allows for the potential system abuse caused by the CPS itself.

"It is hard to prevent them from going away...you know we are not a closed institution, so we have to convince the kids to stay with us. We organize free time activities for them, e.g. sports or culture-wise. I have realized that we cannot make them stay, using police force." (Residential home representative)

"I think it is a real tragedy that professionals working in out-of-home care do not think that they have a role to play in the field of prevention..." (NGO representative)

On the tertiary level, prevention means damage control, which is supposed to mitigate harm after "the move" or eliminate additional risks caused by the CPS as system abuse. Runaway children are not natural parts of the child care system and neither are migrant children or those simply disappearing. We use the word "disappearing" on account of the evidence derived from the database of official statistics indicating that of the 882 foreign children none had "permanency placement order" in 2012. If we were to consider Hungary as merely a transit country or if we were to think that running away or heading for a target country was more or less normal, we would not be able to give appropriate answers to the phenomenon of "CoM".

"If something definitely does not improve the situation of these children, it is the resigned thought that Hungary is "merely" a transit country. The Ombudsman also refers to Hungary as a transit country, but I think this, in fact, is a very risky idea. By declaring and putting up with this transitory situation, we condone the mistakes and the imperfections of the system. We need to lay bigger emphasis on the critical first 3-4 days, when the child is to decide to stay or to leave. This period is crucial to build trust and give children real and promising prospects." (Hungarian representative of an International Body)

GENERAL RECOMMENDATIONS

1. The “best interests of the child” shall be a primary consideration / Implementing a child rights based approach in all actions

Besides all the efforts of the child protection systems and human rights treaties, the best interests of the child often come second to habitual or pragmatic considerations, and children’s rights are still many times just an issue for an insignificant group of human rights advocates. Children’s voices are rarely heard and their special needs often remain unseen and unresolved in the Hungarian CPS. However CoM are children first by all means.

2. Holistic approach and multi-sectoral cooperation with all competent actors

CoM are children primarily. The circumstances in which they find themselves and the challenges they face are diverse and complex, requiring multilateral, multi-sectoral, comprehensive and holistic lines of action.

More research is needed to prove information about the obstacles of cross-sectorial cooperation.

3. Proper translation and raising awareness on “CoM”

The umbrella concept of “CoM” itself is a relatively new coinage and no term exists in either the Hungarian legal terminology or in the vocabulary of field workers. We, unfortunately, couldn’t identify a fitting term for it. In the research, we focused on the list of children we understood were covered by the English term. Obviously it was not the best way to keep the interviewees focused on the holistic meaning of ‘CoM’.

4. More systematic research / valid statistical database

There is a need for more systematic research on the effectiveness and adequacy of CPS and the characteristics of CoM, as there is hardly any high-quality research in this field. There is a massive need for valid, comparative statistical database. (same terms, definitions and methods are also required in this field).

5. Close and continuous monitoring of the conditions / efficacy of CPS (with special focus on the adequacy and efficacy of preventive measures)

There is a need for a more systematic monitoring and evaluation of the Child Protection System in Hungary. The absence or inadequacy of such processes is currently hampering the capacity at the institutional level to reflect on good practices or failures, and adjust interventions and procedures accordingly.

SPECIFIC RECOMMENDATIONS

1. **An overall assessment of the staff likely to come across cases of trafficking in children should be undertaken**, including an evaluation of their needs and the provision of trainings.

2. **The overall anti-trafficking framework should also be evaluated against the standards of the EU anti-trafficking directive**, for which provisions should have been transposed by April 2013.

3. **The need for improvement in the collection of accurate and disaggregated statistical data is obvious.** The fact that not only important discrepancies appear between figures provided by different stakeholders but also that either no data is made available for specific categories of CoM, or that the validity of the data is easy to challenge, makes this need crucial in Hungary. Putting in place a valid and sustainable data collection system in all policies affecting CoM (Anti Trafficking field, Asylum and other alien policy fields, child care system etc.) will not only help better target the interventions of the Hungarian CPS but also ensure a proper allocation of resources and development of evidence-based policies which are lacking so far.

4. The failure to comply with the mandatory reporting provision of the law may put CoM in situations where they face the risk of being subjected to violence, abuse, exploitation and trafficking. Mandatory reporting of a child going missing is part of the protection process of CoM while the consequences of not reporting a child going missing may be disastrous. Therefore, **proper accountability measures should be put in place in cases where statutory professionals fail to comply with such an obligation.**

5. The absence of long term perspectives as expressed by children on the move hampers their potential for development. The inability of the social care and other statutory stakeholders to ensure that children find a sense of stability allowing them to reflect on their future should be remedied. **Training of specialized staff and proper allocation of resources should be provided in order to fill in this gap.**

6. **Social and child care systems should be allocated appropriate resources, be it financial, human or technical**, to cope with their mandate of ensuring the protection of children on the move as well as prevent them from falling into situations that put them at risk of violence, abuse, trafficking and exploitation. The current allocation of resources on a per capita basis for unaccompanied foreign children should not show an important discrepancy with the allocation made for national children, as that demonstrates a discriminatory practice in catering to the needs of children on the move on the basis of their origin. Services such as psychological assistance, crisis intervention, etc. are not provided due to lack of resources while the intervention remains crucial.

7. **Specific services available for foreign children should be disconnected from the asylum application process.** Too many children fall short of services as a conse-

quence of not falling in the latter category, while their needs are, if not identical, very similar. A compelling example lies in the translation services provided to children who do not speak Hungarian, which are mostly available throughout the asylum procedure, but which rarely benefit those children who do not apply for asylum.

8. The background of statutory professionals who are likely to come across cases of children on the move from abroad should be in line with their mandate.

Ensuring that both university and on the job training(s) of these professionals cover working with children and working with migrants is fundamental in enhancing the capacity of professionals to cater to the needs of all children on the move.

9. Age assessment procedures for foreign children on the move do not comply with international standards. **Hungary should adopt a multi-disciplinary approach and, in any case, the currently used Greulich-Pyle method should be abandoned while the benefit of the doubt principle should be applied in all cases of foreign children whose cases give rise to suspicions that they may be over 18 years of age.**

10. **Hungary should ensure that services available reach out to all children.** That includes reinforced access to the asylum procedure, especially in the case of foreign unaccompanied minors arriving at the border with Serbia, and the enhancement of existing 24 hour services and services which reach out to children in street situations. That also includes the improvement or creation of child-friendly materials on procedures and available services in both Hungarian and the most common foreign languages children use.

11. **Prevention of unsafe movement should be seen as an important segment of the CPS intervention.** The research findings demonstrate not only the lack of a real prevention strategy to ensure that children on the move do not fall into unsafe movement channels. Moreover, the absence of monitoring and evaluation of previous awareness raising campaigns sheds light on the limited ability of the CPS to figure out whether they really reached out to the most in need.

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APPENDIX

Interview questions:

- Please, define what does 'CoM' mean? What do you think about 'CoM'? What kind of children are at risk to move or to be moved? (Target: test the fundamental attitudes and knowledge of the interviewee)
- How do you rate the working of CPS in the CoM cases? What works? What are the most important challenges? Why? (Target: giving a chance for ventilation, collecting personal opinions, mapping the strengths/problems, reflecting to the research goals: inclusiveness, effectiveness, etc.)
- What do you think about prevention? How can CPS prevent an unsafe move of the child? What are the best practices?
- How do you rate the accessibility of CPS – from the children's point of view? What works/does not work? Your suggestions...
- What are the most important legal, administrative or practical obstacles that CoM may face in accessing services? How are CoM and their families informed about the availability of services? (What kind of services is available for them?) Are available services tailored to the needs of CoM?
- What are your suggestions for improving the CPS in this relation (prevention, activity, pro-activity, follow-up, etc.)?
- What do you think about the role of NGOs in this field? Could you name some NGOs in the field? Do you have any experience about NGOs?
- Please, imagine the ideal model of CPS!
- Is there anything else you would like to add to what you have already said? For instance, generally speaking do you believe that services work well for the marginalized children such as the ones on the move?
- Any other details, comments, etc.

Questions to the field workers/experts:

- Could you tell me your latest or most determining case?
- How can you get wise to the risk factors of the child to move or to be moved? What works/does not work?

- What are the CPS' ways that allows professionals to prevent the unsafe movement of children (which may result in being abused or exploited)? What are your best tools, methods?
- Could you tell me something about your cooperation network, partner organizations, institutions, lacks and problems in the legal framework and in the practice, etc.?
- Could you tell me what kind of protocols, standards or recommendations are used in CoM cases? Do you feel those standards work?
- Are any groups of children excluded? If so, who are they and why?
- Has your workplace allocated a suitable budget?

Questions to parents, other adult relatives of CoM:

- Please tell me your case...
- How do you rate the working of CPS in your case? Do you consider the system inclusive? Is it easily accessible? Is that effective? Is that child-friendly / child-centered?
- What do you know about CPS in general? Where can they be found? What is their mandate? Do you know what they do?
- Have you ever met CPS before? In other case? How did you rate the working of CPS in that case? Was there any difference how CPS worked in your cases?
- Please indicate your satisfaction in a 1-5 scale (1=totally dissatisfied, 5 = totally satisfied). Could you explain me your decision?
- What do you think about the risk factors of move /to be moved? What was the most important risk factor in your case? Why did the child move? How could you prevent the move of a child?
- Any other detail, comment...

Questions to children:

- Do you think it would be good or bad to go somewhere else? Could you explain why?
- Do you know a child on the move? He/she comes from... CoM are...
- A child is risked by trafficking, because... (By exploitation, missing, to be moved, migration, etc.)
- Are any kind of organizations helping or doing anything else with CoM? Explain what...
- Any other detail, comment...

