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REPORT

of the Commissioner for Fundamental Rights

in case number AJB-1027/2015

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The initiation of the inquiry

I have learned from complaints and other indications that, in many cases the children living in Hungary with foreigners working in Hungary – mainly those living with Romanian nationals – do not participate in schooling as appropriate to their age, that is, they do not attend school in Hungary. Foreign national parents state, as a reason for this that they are subject to the rules of the education system of their native country and that their children study according to such rules, for example as home-schoolers. However, experience shows that the children of the families concerned fail to meet the obligation of compulsory education both in Hungary and in their native country. This gives rise to particular concerns, as it may further intensify their already vulnerable situation.

According to Section 1(2)(a) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter “ACFR”), in the course of his activities the Commissioner pays special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children. The Convention on the Rights of the Child, signed in New York on 20 November 1989 (hereinafter “Convention”) plays a key role in the ombudsman’s inquiries related to the protection of the rights of children. Pursuant to the provisions of Article 28(1)(a) of the Convention, the States Parties – including Hungary – recognise the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free of charge *to all*.

Having regard to the fact that based on the indications I received, it can be suspected that the right to education, protection and care of foreign children living in Hungary had been violated, I initiated an *ex officio* inquiry in accordance with Section 18(4) of the ACFR. The fundamental objective of my comprehensive inquiry was to reveal how the guarantees included in Article 28 of the Convention are enforced in Hungary in practice.

In order to conduct the inquiry successfully, pursuant to Section 21(1)(a) and 21(2) of the ACFR, I contacted the president of the Klebelsberg Institution Maintenance Centre, the State Secretariat for Public Education and the State Secretariat for Social Affairs and Social Inclusion of the Ministry of Human Capacities, the State Secretary for Regional Public Administration of the Prime Minister's Office, the head of the Kecskemét Police Headquarters, the director of the Nagykáta School District, the *Kék Vonal* (Blue Line) Child Crisis Foundation and *Menedék* Hungarian Association for Migrants.

To obtain an overall picture of the situation, I also found it necessary during my comprehensive inquiry to familiarise myself with the practice relating to compliance with the compulsory education of Hungarian children abroad, and therefore I contacted the government commissioner of the Győr-Moson-Sopron County Government Office and that of the Vas County Government Office. Based on the answers of the organisations I contacted, I considered it necessary to request further information from the head of the Bács-Kiskun County Police Headquarters, the government commissioner of the Bács-Kiskun County Government Office and the head of the Kecskemét Police Headquarters.

The relevant fundamental rights

- the requirement of legal certainty under the rule of law: *“Hungary is an independent and democratic state governed by the rule of law.”* (Article B paragraph (1) of the Fundamental Law);
- the right to education: *“Every Hungarian citizen shall have the right to education. Hungary shall ensure this right by extending and generalising public education, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education.”* (Article XI(1) and (2) of the Fundamental Law);
- the right of children to protection and care: *“Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development.”* (Article XVI(1) of the Fundamental Law)

Legislative instruments applied in the case

- Act LXIV of 1991 on the promulgation of the Convention on the Rights of the Child, signed in New York on 20 November 1989 (hereinafter “Convention”),
- Act LXVI of 1992 on the Personal Data and Address Records of Citizens (hereinafter “Records Act”),
- Act LXXIX of 1993 on Public Education (hereinafter “Public Education Act”),
- Act III of 1993 on Social Administration and Social Benefits (hereinafter “Social Benefits Act”),
- Act XXXIV of 1994 on the Police (hereinafter “Police Act”),
- Act LXXXIV of 1998 on Family Support (hereinafter “Family Support Act”),
- Act XXXI of 1997 on the Protection of Children and on Guardianship Administration (hereinafter “Child Protection Act”),
- Act LXIX of 1999 on Minor Offences (hereinafter “old Minor Offences Act”),
- Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence (hereinafter “Free Movement Act”),
- Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals (hereinafter “Third-Country Nationals Act”),
- Act LXXX of 2007 on Asylum (hereinafter “Asylum Act”),
- Act C of 2001 on the Recognition of Foreign Certificates and Degrees,
- Act CXC of 2011 on National Public Education (hereinafter “National Public Education Act”),
- Act II of 2012 on Minor Offences, Offence Procedures and the Registration System of Offences (hereinafter “Minor Offences Act”),
- Act V of 2013 on the Civil Code (hereinafter “Civil Code”),
- Decree 20/2012 (VIII. 31) EMMI on the operation of educational institutions and the name use of public educational institutions (hereinafter “EMMI Decree”),
- Law-Decree No. 13 of 1979 on Private International Law (hereinafter “Private International Law Law-Decree”),

- Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (hereinafter “EEC Regulation”),
- Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (hereinafter “EC Directive”).

The facts of the case as established

1. *I requested information on the participation of foreign children in Hungarian education from the State Secretary for Public Education of the Ministry of Human Capacities (hereinafter “State Secretary for Public Education”) and the president of Klebelsberg Institution Maintenance Centre (hereinafter “KLIK”). According to the answer of the state secretary for public education, 14,652 children of foreign nationality were receiving their compulsory education in primary and secondary schools in Hungary in the 2014/2015 academic year. Of these, the largest number of these children were Romanian citizens – there were 3,158 in total in Hungarian public education institutions (please see the Annex for the breakdown of pupils per country of origin and school type).*

a) *The state secretary for public education also mentioned in the information he provided that, in order to provide education to non-Hungarian minors, in Hungary there are schools where their main feature is teaching migrant children. These schools are those that provide education in foreign languages, pursuant to foreign laws and educational systems, and the “international schools”, accredited by an international school or education organisation. These institutions are not maintained by the state; typically they were founded by foundations or nonprofit business associations, and their registration and the authorisation of their operation fall within the powers of the minister responsible for education. There are also two state-maintained schools for migrants: the Hungarian-Chinese Bilingual Primary School, in which Chinese and other children from the Far East are taught, and Than Károly Eco-School, Grammar School, Specialised School and Vocational School, which has been integrating and teaching migrant pupils arriving from various countries for several years.*

The president of KLIK provided me with his survey embracing all educational districts of the country (except for Komárom-Esztergom county), and he also requested information from the president of the Education Authority. According to this, the Szent László Street Primary School in Békéscsaba has the teaching of migrant children as its main feature. The Gyula Primary Education Institution took part in a tender supporting the introduction of intercultural teaching and education; other schools in Gyula have also been receiving and are currently receiving migrant pupils. There is no designated institution in the Gyomaendrőd School District; at the time of the data supply, there were three foreign national children studying at one school.

The designated institution in Budapest is the Újpest Bródy Imre Grammar School and Primary School. There are four institutions in District VI in which foreign children study, but none of these schools has the teaching of foreign children as its main feature. There are large numbers of migrant pupils in the school district of District X. Nearly 10 per cent of migrant children study at Bem József Primary School in Kőbánya.

In Fejér county the Csokonai Vitéz Mihály School in Bicske has been designated for this purpose since 1 January 2015. The Csapókerti Primary School in Debrecen has ensured the compulsory admission of the school-age children at the Bicske and Debrecen sites of the Accommodation Centre of the Office of Immigration and Nationality (OIN) since 1999. In Nógrád county, a class has existed in Balassagyarmat since 15 October 2014, in which children

who seek asylum or are the beneficiaries of subsidiary protection as well as migrant children are taught.

b) the respondents confirmed, *regarding my question concerning the registration of school-age foreign children*, that their registration is no different from that of Hungarian citizens; the rules applicable to compulsory education are provided for in Section 45 of the National Public Education Act.

c) In his response, the state secretary for public education explained that *if a non-Hungarian pupil meets the requirement of compulsory education according to the rules of their native country, as a home-schooler, then he or she shall submit proof of their pupil status*; this, however, happens rarely. Furthermore, the state secretary referred to the provisions of Section 83(2)(b) of the EMMI Decree, pursuant to which a written statement of the pupil's parent must be obtained in cases relating to the establishment and termination of pupil status with regard to a minor age pupil.

d) *The state secretary for public education has no official knowledge of any official proceedings or child protection measures initiated in recent years for a failure to comply with the requirement of foreign children's compulsory education.*

According to the data collected by the *president of KLIK*, there were two cases at the Móricz Zsigmond Grammar School in Budapest where such measures had to be taken. The child of a refugee family failed to appear at Bajza Street Primary School in District VI during the 2014/2015 academic year, and the school reported the case. A child of Romanian nationality did not attend school in the school district of District VII in the 2012/2013 academic year; the child's taking into care was initiated. A Lebanese child failed to appear at the school on the first day of the academic year, which was reported to the guardianship authority. In District IX the child welfare service was informed of the unexcused absences of a Syrian refugee pupil, and the Office of Immigration and Nationality (hereinafter "OIN") and the child welfare service were contacted in the case of an Afghan refugee child.

There were four cases in District XI and two cases in both District XV and District XIX in which official or child protection measures were taken in cases of foreign children. A report was made in District XIII because of a migrant family moving without any prior notice, and the institution requested the government office to take steps in the case of two foreign children from outside the catchment area being enrolled. There were three such reports in Csongrád county. A Romanian citizen parent requested a statement of admission from the school but did not enrol the child. A Serbian citizen child went abroad without their pupil status being established. Finally, a German citizen child who was enrolled for the 2014/2015 year failed to appear on the first day of the academic year. Reports were made in Hajdú-Bihar county on two occasions, and there were six reports in Pest county, within the area of Nagykáta, in connection with pupils of Romanian nationality. There was one report in Tolna county and one in Veszprém county; there were no reports in the other counties.

e) *Based on the answers I received*, the administrators of the OIN *provide information to foreign parents residing in Hungary on the compulsory education of their children* simultaneously with issuing the residence permit or the registration certificate. Residents are informed of the school admission procedure in April every year by means of an announcement, and the head of the institution to which the pupil is requested to be admitted also provides information during the academic year.

According to the data gathered by *KLIK*, foreign parents living in Bács-Kiskun county usually contact the educational institutions – or, less commonly, the school district or the local child protection agency – themselves. A significant number of the parents are native speakers of

Hungarian and they are informed verbally. Families arriving from the south or from German-speaking countries are able to communicate with teachers from the national minority or foreign language teachers in their native languages in the towns of national minorities.

In Baranya county, depending on the school district concerned, parents receive information verbally and/or in writing, or by means of announcements. Announcements are translated into English if necessary.

Foreign parents are informed in accordance with the legal regulations and in the locally usual manner in Békés, Borsod-Abaúj-Zemplén, Csongrád, Fejér, Győr-Moson-Sopron, Hajdú-Bihar, Heves, Jász-Nagykun-Szolnok, Nógrád, Pest, Vas and Zala counties and in Budapest. Such information may be given in writing, verbally, on the website of the school, through announcements, on open days, by providing information on the school's regulations, through consultation with the child protection officer, through kindergartens, through the local press, during parents' meetings, through official information notes, and with the help of an interpreter if necessary. The Szent László Street Primary School in Békéscsaba is in daily contact with the Békéscsaba site of the Refugees' Detention Centre of the OIN.

According to the information received, parents classified as migrants receive the necessary information at the Bicske Accommodation Centre, and the educational institutions and the school district will also help if requested. There has been no inquiry regarding any cases of foreign national children in Szabolcs-Szatmár-Bereg county until now. According to the data from Tolna county, it falls within the competence of the OIN to refer school-age children to the school system. The government office informs the school district and the school if a foreign child establishes residence in the area of competence of the institution.

f) In his reply to my question relating to the admission of foreign children to schools, the assessment of their knowledge and the Hungarian language education provided to them, the state secretary for public education referred to the provisions included in Section 185 of the EMMI Decree, as well as to the fact that during the admission procedure, pursuant to Section 62 of Act C of 2001 on the Recognition of Foreign Certificates and Degrees, the school principal makes a decision on the recognition of studies pursued abroad, and may assess the knowledge and language skills of the pupil.

According to the information I received from *KLIK, in Bács-Kiskun county*, with regard to pupils whose native language is Hungarian or who speak Hungarian, after assessing the pupil's certificates and the academic requirements of their country of origin, and – if necessary – the individual skills and knowledge of the pupil, the school principal classifies the pupil into a grade in accordance with the Hungarian educational requirements. For children who do not speak Hungarian, no individual skills assessment is performed. The principal classifies such pupils into a grade on the basis of their certificates, with the consent of their parents. The school provides language education to these children in the afternoon, in one-to-one sessions. The language teachers who teach the language of the relevant national minority provide assistance in all cases. The pupil's score from their foreign school is not taken into account in the secondary school admission procedure; instead of this, the pupil's performance at the centrally organised written and oral entrance exams is taken into account.

- The school districts of *Baranya county* follow a different practice. There are places where there is no regulated practice, while at other places an educational programme is followed. It also happens that it is the institution receiving the child that assesses their knowledge and ensures their inclusion. However, according to the information I received, it also happened that pupils returning from abroad were required to take a special comprehensive exam.

- In one of the school districts of *Békés county*, the knowledge level of a pupil is assessed with the help of a social worker assigned to the pupil concerned. In a secondary school of another school district, pupils take a minimum written test in mathematics and in foreign languages.
- In *Borsod-Abaúj-Zemplén county*, pupils are admitted after gathering information about them during the admission procedure, asking them questions and based on proof provided in the form of documents.
- In the districts of *Budapest*, based on the provisions of subsections (9) and (10) of Section 92 of the National Public Education Act, children are classified into grades according to the educational programme of the school, taking into account the age and language skills of children and, with regard to children arriving from member states of the European Union, on the basis of their certificates. Children arriving from outside the member states of the European Union are classified into grades according to their age and after consulting the parents.
- In *Csongrád county*, children are usually admitted according to the National Public Education Act, but there are school districts where pupils take knowledge assessment tests and go to an admission interview.
- In *Fejér county*, the primary method of assessing the knowledge of children is an interview, which is also used for classifying them into grades.
- In *Győr-Moson-Sopron county*, children who speak Hungarian at a native speaker's level are enrolled in school in the same way as Hungarian children. If the family do not speak Hungarian, it will be checked whether the provisions of the Asylum Act are applicable to the child, whether the child exercises the right to free movement in Hungary or whether the child has a residence permit as a person arriving from a third country. It is also possible to use the help of the expert of the family support service who is responsible for the integration of foreigners. If necessary, pupils take a supplementary exam. Children can be enrolled in secondary schools in accordance with EMMI Decree 20/2012 (VIII. 31). New pupils to the school are supported by means of remedial classes and tutoring.
- Admissions take place in *Hajdú-Bihar county* in accordance with the provisions of the National Public Education Act. At Csapókert Primary School, the Debrecen site of the Bicske Accommodation Centre of the OIN sends the institution the list of the names of the children to be enrolled, and admission takes place on the basis of that list. Pupils whose language skills are not appropriate based on the assessment are put in a language preparation class where they study Hungarian in 70 per cent of the lessons.
- In *Heves county*, foreign pupils' knowledge is assessed, and an important aspect of this assessment is their knowledge of Hungarian. If it is deemed necessary, the pupil will attend remedial classes in the form of extra lessons.
- In *Jász-Nagykun-Szolnok county*, if the child has attended kindergarten in Hungary, admission will take place in the same way as for children who are Hungarian nationals. A problem arises if a child who has no residence permit and who is not a Hungarian national is requested to be admitted to the educational institution; however, the person providing the data has not explained the nature of this problem.
- According to the information provided by the Balassagyarmat school district of *Nógrád county*, children who do not speak Hungarian and study Hungarian as a foreign language are taught by teachers of the lower grades (grades 1 to 4) as there is no teacher of the appropriate level of qualification in the institution.

- *In Pest county and in Szabolcs-Szatmár-Bereg county* the admission of foreign pupils takes place in accordance with the legal provisions.
- *In Tolna county*, upon request, institutions recommend the services of an expert for children who do not speak perfect Hungarian, who teaches the children basic knowledge of Hungarian by the start of the academic year. At the request of the parents, children may also be classified into a lower grade.
- *In Vas county* parents contact their institution of choice, which provides them with information on the admission system. It is imperative to assess the language skills of children starting first grade. In order to classify children into grades, in addition to language skills, their general knowledge is also assessed, and the head of the institution also checks the necessary documents.
- *In Veszprém county*, the children and their parents are interviewed during the admission procedure and this is the time when language skills are assessed as well. If Hungarian language skills are lacking, schools provide remedial classes.
- *In Zala county*, admission procedures are conducted in accordance with the legal provisions. Pupils are assigned supporting teachers, and teaching in the native language is provided in the form of extra classes by teachers of the lower grades or by teachers of specialist subjects, with the participation of teachers specialising in skills development.

g) According to the information provided by the *State Secretary for Public Education*, the integration of foreign national children and pupils is promoted in accordance with the directive on the kindergarten and school *education of foreign national children and pupils on the basis of an intercultural educational system*. The directive is included in the annex of the notice of the Ministry of Education, published in No. 24 of 2004 of the Education Gazette (*Oktatási Közlöny*). The schools have integrated the directive into their educational programmes. There is no other programme applicable to this matter (the state secretariat enclosed the directive with its response).

According to the survey by *KLIK*, there are at least two hours of Hungarian language teaching per week at *Szent László School in Békéscsaba*, in addition to individual assistance during other lessons and the organisation of various events. There is one teacher who teaches Hungarian as a foreign language. There are two additional schools in Békés county, the educational programmes of which incorporate an intercultural educational system.

District X of Budapest participates in the project No. TÁMOP 3.4.1 B-11/1-2012-2009. *One of the schools in District XI* supports the pupils through a mentoring programme, and a “Syria project” was implemented in another institution in the 2014-2015 academic year.

The Szeged school district uses the “Mentoring Programme for Integration” programme (network of mentors, personalised mentoring, teaching materials, imparting cultural knowledge, help with learning Hungarian).

In Hajdú-Bihar county, Csapókerti Primary School supports children’s integration into the school through the special curriculum and teaching programme included in its educational programme. The school regularly participates in the tender projects of the refugee camp. The Karácsony Sándor Primary School in Debrecen and the *Menedék* Hungarian Association for Migrants organise classes within the framework of the “Rainbow” (“*Szivárvány*”) project.

In Veszprém county, the educational programme of the relevant primary school of the Pápa school district provides detailed provisions governing the education of children who live in

the households of the foreign officers of the Heavy Airlift Wing. Their intercultural programme includes a strategy for the “School education of foreign pupils”.

There is currently no special programme or project for the integration of foreign children in the rest of the counties.

h) In the opinion of the *State Secretary for Public Education*, *school attendance by the children of foreign workers is supported by the same means* as school attendance by Hungarian nationals. These are the following: providing information, communication, imposing a fine in the event of minor offences and, as a last resort, child protection measures or taking the child into care.

It has been expressed *in the survey by the president of KLIK* that school attendance by the children of foreign workers could be supported by improving cooperation between the authorities and organisations and by giving a more active role to registration offices, district offices, town halls, child protection services, schools and kindergartens. It was proposed that parents should be informed regularly, through written publications and the media. It was also suggested that family support services and NGOs should also be involved, that pupils should be exempted from marking for a certain time period and that one-on-one instruction, mentoring, family days and school programmes should be arranged for them, as well as language courses for their parents. There were some who stressed the importance of a welcoming environment, personalised school programmes, the use of language teachers and parental support. It would also help if social workers, teachers of Hungarian as a foreign language and experts with specialist skills were used and also if the organisation of schools was developed and professional conferences, sensitising programmes, CPD training programmes and forums were organised. According to others, the solution lies in mandatory kindergarten care for non-Hungarian children and the extension of the scope of social benefits. Others argued that the solution would be the extension of youth protection tasks, increasing the effectiveness of the child protection warning system, official measures and the establishment an appropriate legal framework. It could be a good solution if employers provided information to their foreign employees on the contact details of the school district and if parents received information materials simultaneously with the issue of their residence permits. Some mentioned a relaxed atmosphere and tolerance.

i) *To my question on the truancy of foreign national children, the State Secretary for Public Education* explained that, if it is found out that a foreign national child does not attend school, the practice followed is the same as for Hungarian nationals. Communication between the school and the parents is also the same: parents are informed of absences in writing.

On the basis of the information provided by *KLIK*, *such cases have occurred rarely in the counties' experience, but if such a case occurs, the child protection agencies and the authorities warn the schools*. In some places the school continuously informs the foreign parents of any unjustified absence of their children. In the event of serious absenteeism, the institutions also inform the child protection authority. Where no such cases have occurred, the discussion of the case at hand with the help of the family support and child welfare services, as well as family visits, would be proposed. It also happens that the assistance of the refugee agencies is used for communicating with parents. In Fejér county they inform the accommodation centre.

j) In my request for information I also asked *whether Hungarian teachers are provided with any training that promotes dealing with foreign national children from a migrant*

background, and whether there have been any sensitising workshops or any other assistance provided in schools where foreign national children study.

The *State Secretary for Public Education* has no information on whether Hungarian teachers receive any training during their instruction that facilitates dealing with foreign national pupils from a migrant background. This matter is not part of Bachelor programmes; *teachers may pursue such studies during further training.* Assisting foreign national pupils is part of our general teaching culture. Considering that it can be said that there is only a small number of migrant pupils in schools, this problem can usually be and is solved by schools without any special measures. The response contains a reference to Section 92 of the National Public Education Act, which provides for the compulsory education of non-Hungarian citizens.

The *president of KLIK* found the following information on teacher training programmes relating to migrants on the basis of the Accreditation System of CPD Training for Teachers, List of CPD Training Programmes for Teachers:

- Preparation for mentor teachers supporting the inclusion of migrant pupils (organiser: Jász-Nagykun-Szolnok County Educational Institution),
- Is Hungarian a foreign language? Preparation for teachers for teaching children and pupils from a migrant background (organiser: Jász-Nagykun-Szolnok County Educational Institution),
- Teaching Hungarian as a foreign language – a content-based approach to promote the integration of migrant children studying at primary and secondary schools (organiser: SULISZERVIZ Oktatási és Szakértői Iroda Kft.),
- Migrant children in kindergarten – Development of intercultural competencies (organiser: Menedék Hungarian Association for Migrants).

In addition, the situation of refugees and migrants in Hungary was the topic of the lectures at several professional conferences, and the employees of the Hungarian Institute for Educational Research and Development also examine this issue. Furthermore, the “*Dobbantó*” (“Springboard”) programme is also a part of the current public education system. Earlier there was a tender entitled “The promotion of the teaching and education of pupils from a migrant background”, announced within the framework of TÁMOP-3.4.1.B.

According to the *president of the KLIK*, *the above are of great significance mostly with regard to pupils who do not speak Hungarian.* It is much easier to integrate the mostly Hungarian-speaking pupils arriving from the neighbouring countries into the Hungarian public education system. Pupils arriving from the area of the European Union are treated in the same way as Hungarian pupils in all respects, and they receive the same benefits. A problem arises when these pupils are not visible to the system officially, for example because they have no permanent address or temporary address in Hungary. Pursuant to Section 22(6) of the EMMI Decree, it is also possible for parents to request the admission of their children to a school based on the fact that the habitual residence of the children is in the school’s district, provided that it can be proved that the pupils reside there. In such cases it may indeed happen that the requirement of compulsory education is not fulfilled or is fulfilled improperly, in which case the parents are always undoubtedly responsible.

The *State Secretary for Public Education* made the following comment in connection with the questions raised. There are two distinct groups of migrants working in Hungary: legal migrants and illegal migrants. With regard to legal migrants, no problem has occurred regarding compulsory education until now. There is a semi-legal, quasi nomadic group in between these two groups. As citizens of the member states of the European Union, they are free to stay in the territory of Hungary for 90 days, during which period, in principle, they are not allowed to work,

but they often violate this rule and also bring along their children. They return to their native country for a few days, then travel back to Hungary. Commuting back and forth, they live in Hungary permanently but they do not meet the conditions for taking out a registration card and a social security card, and therefore their children are not subject to compulsory education in Hungary. They have no registered address in Hungary, therefore the Hungarian authorities and the Hungarian state have no jurisdiction over them. The town clerk and the district office competent on the basis of their place of residence may only initiate child protection measures and immigration proceedings against these persons. The child protection system must act if it can be established that a child does not attend school and the parents fail to ensure the child's schooling, endangering the mental development of the child. In such instances it is probable that the offence of endangering a minor is committed, and therefore the minors concerned must be removed from their environment, and their temporary placement – and, within that, compliance with compulsory education – must also be provided for. At the end of the procedure by the guardianship authority, the child is sent back to their native country and the authorities of that country will proceed regarding their compulsory education.

2. In the course of fulfilling my request, *the State Secretary for Social Affairs and Social Inclusion* of the Ministry of Human Capacities requested information from the government offices responsible for child protection and guardianship cases on the proceedings initiated in connection with the endangerment of children relating to a failure to ensure schooling for foreign national children.

According to the results of a survey into the procedures conducted in the first instance by guardianship authorities in 2014, 27 cases were initiated in eight counties, concerning approximately 40 children, for the endangerment of children of foreign nationality. No proceedings were initiated in Baranya, Heves, Jász-Nagykun-Szolnok, Komárom-Esztergom, Somogy, Tolna, Veszprém and Zala counties.

- Proceedings were initiated in two cases in *Bács-Kiskun county*, on the basis of the reports of the child welfare services. One of the procedures concerned two siblings of Romanian nationality; the children were in an extremely neglected condition, and therefore they were placed with foster parents. With the help of a family carer, the parents obtained the missing documents, put their living environment in order, and, after the guardianship authority terminated the temporary placement, moved back to Romania. In the other case, the guardianship authority initiated a procedure in the case of four siblings, and the children were taken into care.
- In *Békés county*, procedures were also initiated based on the reports of the child welfare service with regard to two Romanian children, and in one of the cases, on the basis of the school's report as well. The guardianship authority took both children into care, and in one case it proposed the suspension of the education allowances.
- In *Borsod-Abaúj-Zemplén county*, based on the school's report of unexcused absence for more than 50 lessons, the guardianship authority took a child into care and made a decision on their temporary placement.
- In Districts VI, VII, XI, XIII, XIV, XIX and XX of *Budapest*, proceedings were initiated with regard to 17 children (of which 5 were Romanian, 4 were Turkish siblings, 2 were from Kosovo, 2 were Syrians, 1 was British, 1 was Algerian and 1 was Mongolian); all of these proceedings were started upon the schools' reports of unexcused absence for more

than 50 lessons. In addition to taking them into care, the guardianship authority also requested the suspension of their education allowances.

- *In Fejér county*, a procedure was initiated in the case of a 17-year old pupil from Sudan because of the pupil's school absences; the guardianship authority took the above-mentioned measures.
- *In Győr-Moson-Sopron county*, official proceedings were initiated with regard to two Romanian children; with regard to four families, proceedings were initiated by a private individual; no official measures were taken after the on-site visits, and the families returned to Romania after the Christmas market. In the other instance it was the school that submitted a report as a result of the unexcused absence of the child.
- *In Hajdú-Bihar county*, the father requested the placement of a child of Romanian nationality with a relative living in Hungary, with which the guardianship authority complied.
- *In Nógrád county*, the father asked for help through the embassy in the case of a French and Hungarian dual citizen child; the authority temporarily placed the child in a children's home and, after the review of the case, the child was placed with the father.
- The guardianship authority proceeded in the cases of three Romanian children *in Pest county*. In the first case, the child welfare service reported that the child did not receive compulsory education; the guardianship authority initiated a procedure for temporary placement but the family moved back to Romania. In the second case, the school submitted a report because of the child's school absences; the measures of the guardianship authority were sustained after the review. In the third case it became necessary to appoint an appropriate school due to the child's special educational needs; the guardianship authority appointed a guardian for the child on the basis of the report of the child welfare service.
- *In Szabolcs-Szatmár county*, a procedure was initiated in the case of a child of Romanian nationality based on the school's report of absenteeism. The family did not apply for educational allowances with regard to the child, therefore the family are dealt with within the framework of basic services.
- *In Vas county* a procedure was initiated because of the absenteeism of a Spanish national child, but the family returned to Spain.

In the experience of the first-instance official of the guardianship authority, it often happens that children enrolled in school do not receive any educational allowance. The reason for this is that although the children are included in the register of the Educational Authority, the Hungarian State Treasury does not pay any allowance regarding such children as the parents fail to apply for it. In order to disburse the educational allowance, a social security number must be issued for the minor; however, when issuing such a number, the health authority examines (on the basis of documents) the legal grounds for the parents' residence in Hungary.

In several cases, it caused a problem to the guardianship authority in connection with the guardianship proceedings initiated as a result of absenteeism that these families keep changing their place of residence within Hungary, or are constantly coming and going between their country of origin, Hungary and the member states of the European Union. In several cases, the procedures for taking children into care were terminated because the family raising the minor concerned left the territory of Hungary according to the data established from the evidence presented. They fail to inform the educational institution, the district office (registration office, government window) or their consular official in Hungary that they are leaving the country.

In the southern counties, according to the experience of the family carers of the child welfare service operating within the area of jurisdiction of the first-instance guardianship authority, *there are guest workers of Romanian nationality who have no registered address in Hungary and are not entitled to any family support benefits regarding their children.* According to the information provided by the guardianship authority, these families are dealt with by the local family carers within the framework of basic services if they are informed that the family reside in Hungary and the issue of the endangerment of children arises, even if temporary placement is not justified with regard to them. The problem of the schooling of foreign children is the most prevalent in Budapest and in Pest county, since foreign families with children reside in the central part of the country on the most diverse legal grounds.

In those cases where children are taken into care, the parents of the foreign national children state as the reason for their failure to comply with the requirement of compulsory education that *the public education institution would not admit the child without the required vaccinations and the presentation of the appropriate documents (valid personal identification document, address card).* The family carer gives assistance to the parents in obtaining the official documents during the procedure for taking the child into care, step by step, setting short deadlines. It is, however, the parents who must pay the often quite substantial costs, which slows down the procedure.

On the basis of the reports of the guardianship authorities, the state secretary *considers it necessary*, for the purpose of establishing a uniform legal practice, *to prepare methodological material – primarily for the child welfare services – so that the experts can perform their tasks relating to the care of foreign families with children residing in Hungary effectively, enforcing the rights of children.*

3. I requested *the State Secretary for Regional Public Administration at the Prime Minister's Office* to provide me with information – with the cooperation of the county government offices, in a breakdown by county – on whether any procedure was initiated in the last five years before the Hungarian authorities dealing with minor offences for the commission of the minor offence of violating compulsory education (provided for in Section 247(a) of the Minor Offences Act) with regard to children who had been residing in Hungary for an extended period, and if such procedures were initiated, on the number of such cases and on the type of the decisions made. In his reply – referring to the fact that neither the old Minor Offences Act (effective until 14 April 2012) nor the new Minor Offences Act (that entered into force on 15 April 2012) orders the management of the personal data of children – the state secretary informed me that *the district (Budapest district) offices acting as authorities dealing with minor offences cannot have any relevant data as regards the nationalities of school-age children.*

4. I asked the *head of the Kecskemét Police Headquarters* if the issue of the compulsory education of the foreign national pupils previously detected in their area of competence had been resolved, and if in the meantime they had been informed of any school-age foreign children in their area of competence who do not attend a Hungarian school, and if so, how many. I also asked the head of the police headquarters to kindly provide me with the data relating to the children if he had knowledge of any such case.

According to the information provided by the head of the police, the area of competence of the Kecskemét Police Headquarters is nearly 1,500 square kilometres and the number of residents is nearly 160,000. There are 16 municipalities in the area, four towns and twelve villages. The fact that there are *many large farms and developed agriculture* in the police

headquarters' operational area means that *it attracts a lot of seasonal workers*, mainly foreign, typically Romanian nationals. Previous experience has shown that family members and school-age children also moved to Hungary with the seasonal workers, and these children did not always meet their obligation to attend school because their parents stated that they were subject to the educational rules of their native country and that the children studied according to those rules, as home-schoolers.

In the opinion of the head of the police, it is a problem that the rules for the protection of children's right to – compulsory and free – education do not prescribe the enforcement of the related obligation on the part of the parents.

In 2015, the police headquarters expects the start of an influx of foreign workers concurrently with the start of spring work; it therefore plans to implement a joint action with the competent local government and the partner organisations in order to map the foreign workers. During this it will record the data of school-age children so that the local government can take any possible steps to ensure their school attendance.

Order 22/2012 (XII. 22) ORFK of the National Police Headquarters provides for the detailed rules for police measures that can be taken against minors playing truant; pursuant to section 5, a measure may be initiated if it can be concluded from the given circumstances or information is available that a minor who is in a public place without the company of an adult is absent from or left a lesson on a school day or a mandatory activity organised by the educational institution without permission.

According to section 11, in the absence of a student card or school report, the pupil status of the minor is established through checks through the Educational Authority (over the phone, according to Section 44(6a) of the National Public Education Act).

When contacting the educational institutions, the data of the “Official public education institutions” available from the website of the Public Education Information Office must be used (<http://www.kir.hu/intezmeny/kereses.asp>); according to Order 59/2013. (XII. 21.) ORFK of the National Police Headquarters, the educational institutions may only be contacted via the operations management centre of the police.

According to the head of the police headquarters, it would be advisable, for the purpose of providing a statutory guarantee for children's right to education, to extend the obligation of parents (to participate in ensuring the fundamental rights and equal opportunities of their children). He suggested that the regulation should be amended and the deficiencies should be terminated by prescribing a statutory obligation for parents to prove the home-schooler status of the child as a condition for exemption from compulsory education prescribed in the National Public Education Act. He also proposed that the presentation of a certificate of passing the required exams as a home-schooler during the pupil's residence in Hungary (for example, to the educational institution or the town clerk with competence according to the place of the pupil's habitual residence) should help to identify truant minors and should give rise to an exemption from any measures for those who are not truanting.

If the parents fail to prove the home-schooler status of their children and the minors concerned are of school-age, the scope of the rules applicable to minors who are absent from school for no good reason can be extended to them. A sanctions regime must be developed for penalising failures to fulfil the requirement of compulsory education. It could perhaps be incorporated in the criteria for issuing a residence permit, without having a significant effect on the matter of the harmonisation of educational rules between the different countries.

Upon my additional request for information, the police headquarters informed me that it carried out inspections in several municipalities in 2015, on five occasions (twice in Jakabszállás,

Orgovány and Ballószög, and once in Helvécia and Ágasegyháza), but no measures were taken against any non-Hungarian school-age children during these inspections.

5. In my requests for information, I asked the managing director of the *Kék Vonal* (Blue Line) Child Crisis Foundation and the president of the *Menedék* Hungarian Association for Migrants questions with the same content.

In response to my request, the *Menedék Hungarian Association for Migrants* reported that the Association's information from Bács-Kiskun county coincided with the other reports submitted to my Office, relating to *the problem of the schooling of minors of Romanian nationality*. The Association informed the head of the Border Control Service and the head of the Crime Prevention Department of the Bács-Kiskun County Police Headquarters of my request, and also stated that, in its opinion, the Department for Social and Guardianship Affairs of the Guardianship and Justice Division of the Bács-Kiskun County Government Office was competent in the matter.

The managing director of the *Kék Vonal* (Blue Line) Child Crisis Foundation informed me that the Kecskemét clubhouse of the Foundation was contacted by the representative of the local police in 2013 in connection with this phenomenon, regarding which they prepared a recommendation back then. According to their recommendation, the Romanian nationals residing in Hungary with the right of free movement may not refer to the fact that they are subject to the Romanian Public Education Act, considering that they reside in Hungary and the scope of the Hungarian Public Education Act is applicable to them, pursuant to which their children as persons with the right of free movement are subject to compulsory education. Furthermore, they stated that if the parents refer to the fact that their children are home-schoolers in Romania and fulfil their compulsory education there, this fact must be proven by the parents through documents.

The focus of a professional conference organised by the Crime Prevention Department in Kecskemét in 2014 was also this topic and then, in 2015, they worked on a project with the Antropolis Foundation in Bács-Kiskun county, together with the crime prevention department of the county police headquarters, on the topic of human trafficking, entitled "Timeless Slavery". In connection with this, the police repeatedly informed the Foundation of child protection and other problems relating to families "immigrating" from Romania.

6.a I requested data from the *government commissioners of the Vas County Government Office and the Győr-Moson-Sopron County Government Office* on the number of Hungarian children who live in the county and meet the requirements of compulsory education abroad.

- In *Vas county* there are 212 children who pursue their compulsory education abroad. The Celldömölk District Office has official information on 15 children. No reports were received of another 10 children included in their records, and they are also not included in the records of the schools; presumably their families went abroad. The number of children studying abroad according to the records of the districts are as follows: Körmend District: 17; Kőszeg District: 26; Sárvár District: 4; Szombathely District: 107; Szentgotthárd District: 31; Vasvár District: 2.
- In *Győr-Moson-Sopron county* there are 419 children who meet the requirements of compulsory education abroad, of whom 323 have no pupil status with any Hungarian public education institution. Twenty children from the Csorna District study abroad and none of them has pupil status with any Hungarian public education institution. Based on the parents' reports, there are 28 children in the Kapuvár District who attend school

abroad; the places of residence of these children are known. In respect of 20 children, there is no information about their schools or the submission of the relevant information is in progress. Thirty children from the Mosonmagyaróvár District and 4 from the Tét District study abroad; none of them has any legal relationship with any Hungarian public education institution. Of the 273 children from the Sopron District who study abroad, 157 have no legal relationship with any Hungarian public education institution. There are no children in the Pannonhalma District who attend a public education institution abroad.

The head of the *Győr-Moson-Sopron County Government Office* called my attention to the fact that, according to the amendment of the National Public Education Act (effective from 1 January 2013), the registration of school-age children and the supervision of compliance with the requirement of compulsory education have been removed from the powers and responsibilities of town clerks and assigned to the district offices established at the same time. The standardisation, clarification and updating of the records received from the town clerks of local governments presented the district offices with a serious task and made it necessary for them to consult, ask for help from and closely cooperate with partner authorities and partner agencies – such as the Educational Authority, the KLIK school districts and the public education institutions. Based on the experience gained during the two years that have passed since then, the records have become much more reliable and accurate than before, but their continuous, up-to-date data content has not yet reached the desired level in full.

According to the government commissioner, the main reason for this is that *the district offices are unable to gather information from any official sources about any changes in connection with the compliance of the requirement of compulsory education by Hungarian nationals who comply with such a requirement abroad*. Parents only make such reports to the Hungarian authorities occasionally, and such reports are not typical. The Hungarian authorities cannot follow what happens with regard to school-age Hungarian children who leave Hungary. The issue of whether a specific child indeed complies with the requirement of compulsory education can be clarified according to the applicable rules of the host country, about which the Hungarian authorities have no information.

According to the professional position of the Ministry of Human Capacities expressed in its letter No. 49710-1/2013/KOIR [...] *“In the event that a student lives abroad with their parent and wishes to continue their studies there, it is sufficient to submit a written statement of this fact. The Act (National Public Education Act) does not require enclosing proof of a kindergarten-age child’s kindergarten attendance or a school-age child’s school attendance. If the child, the pupil and the parent exercise the right of free movement and right of residence, it will be sufficient to report this fact. There is no legal regulation requiring anything else in addition to this obligation... [...] In our opinion, it is unnecessary to request an original certificate from the child’s foreign school and the official translation of it as, first, it would be impossible to apply any legal consequence against parents residing abroad for their failure to do so; second, parents mostly look for and find a school for their children after moving abroad; and third, there is compulsory education in most countries of the world, and the authorities of the host countries also require migrant children to comply with this requirement.”*

6.b I also requested information from the government commissioners of the Vas County Government Office and the Győr-Moson-Sopron County Government Office on *how Hungarian national children who comply with compulsory education abroad are registered in practice*.

According to the information from *Vas county*, the district offices keep records of school-age children who have an address in the district, based on the data of school-age children who

have a pupil status with a public education institution as requested and submitted by such institutions operating in the area of the district, as well as on the basis of reports made by parents. There is a “special notes” box in the records for specifying at which Hungarian or foreign school the child complies with compulsory education. The records relating to school-age pupils who comply with compulsory education abroad are based on reports made by the schools and the parents. For children reaching school age in a specific year, parents are obliged to report if their children begin their studies abroad. With regard to pupils previously enrolled in a public education institution, the schools report if the pupil status with the institution of a specific pupil is suspended, and, concurrently with this, they also forward the copy of the acceptance letter (certificate of school attendance) issued by the foreign school and submitted by the parents. *However, the National Public Education Act establishes no obligation for schools to do so, and therefore the district offices are not informed of all cases.* The offices may learn about school-age pupils studying abroad during the regular annual data reconciliation with the principals of the institutions. If the district office receives no information on where a school-age child complies with compulsory education, it will contact the parents in writing in order to request information on whether the child has been enrolled in a public education institution and if so, on where the child goes to school.

In Győr-Moson-Sopron county, the registration office provides the list of first-grade school-age children to the Regulatory Department from the Municipal Service System (hereinafter “MSS”). The schools located in the area of the district send the list of the names of the children enrolled in their institutions. The town clerks forward the list of the names of school-age children who stay in kindergarten for an additional year. After comparing these three lists, it can be established which children have not been enrolled in any of the public education institutions in the area of the district. The office calls on the parents to prove that the children have been enrolled in an institution outside the district or abroad, by submitting a statement in Hungarian and/or a certificate of school attendance in a foreign language.

The person providing the data mentioned that in many cases it is the town clerks who provide information on children residing abroad since, as a result of the obligation to attend kindergarten after reaching the age of 5, in theory the town clerks have the data relating to prospective first-graders. In many cases, the parents residing abroad or relatives living in Hungary cannot be contacted. According to the above-mentioned professional position of the Ministry of Human Capacities, it is not necessary to request a certificate of school attendance of studies pursued abroad; a statement from the parents is sufficient. This does not preclude parents declaring that they sent their children to a foreign school but in fact the children are not enrolled in school. The government office has no means of checking this. Minor offence proceedings may be initiated against parents who fail to submit a certificate or make a statement.

With regard to children who are not in the first grade, the registration office also provides the list of school-age persons to the Regulatory Department on the basis of the MSS. By means of domestic legal aid, the district office requested data from the Educational Authority as the operator of the Public Education Information System (hereinafter “PEIS”) on the attendance of the institutions by children who have a registered address in the area of the district. The office calls on the parents of children who have no legal relationship with any Hungarian public education institution to prove that their child(ren) comply with compulsory education, by submitting a statement in Hungarian and/or a certificate of school attendance in a foreign language. However, in many cases the parents residing abroad or the relatives living in Hungary cannot be contacted. It may also happen that a parent makes an oral statement that the family will

move abroad, but as their place of residence is unknown, the written statement cannot be obtained in all cases. The government office has no means of addressing the above problems.

According to the information I received, minor offence proceedings may be initiated against parents who fail to submit a certificate or make a statement. The success of a minor offence procedure initiated against parents who live abroad but have a registered address in Hungary is questionable because of the parents' unknown place of residence abroad and their unavailable contact details. The competent district office keeps the records in an electronic format.

6.c Finally, I wanted to find out how the Hungarian authorities learn and what measures they take if a child of Hungarian nationality moves abroad and fails to comply with compulsory education both in Hungary and in the other country.

In Vas county, there is no established practice for monitoring compulsory education after a child has left Hungary. No information has been received from any foreign authorities stating that any school-age children of Hungarian nationality fail to comply with compulsory education. In 2014, the Kőszeg District Office initiated an administrative procedure in the case of a school-age child when it learned, from the information provided to it by the child welfare service competent according to the child's place of residence, that the parent did not enrol the child concerned in school, either in Hungary or abroad. The parent was ordered in a decision to ensure that the child complies with compulsory education (the parent was ordered to enrol the child in a Hungarian public education institution specified by the expert committee in its expert opinion), which the parent fulfilled. However, experiences can be different in each case; in many, even the family of the school-age child cannot be found at their registered address, and therefore the Office is unable to take any minor offence or child protection measures. According to the government commissioner, in the case of a Hungarian family living abroad, in what way and how effectively the decision of the Hungarian authorities can be enforced abroad is questionable. It could be verified in cooperation with the host country, through its institutional system, whether the Hungarian national living abroad complies with the requirement of compulsory education.

In Győr-Moson-Sopron county, with regard to parents residing at unknown places abroad, the district offices do not have any means in practice of checking if the children meet the requirement of compulsory education or to initiate a minor offence procedure against parents who fail to meet their obligations. The government commissioner also described a few specific cases in order to underline the problem that the county government office does not have any appropriate means of verifying whether school-age Hungarian nationals who move abroad comply with compulsory education or of successfully conducting the minor offence procedures that have been or are to be initiated.

- The Office has information about a case where a child of Hungarian nationality complied with compulsory education in Hungary, then left the country with their family. In this specific case, the parents did not prove but only informed the principal of the educational institution verbally that they took the child abroad and enrolled him in school there. The principal asked the parents to prove in writing that the child studied abroad. Considering that the parents have not done this until now and the child does not comply with compulsory education in Hungary, the principal reported the parents of the minor for committing a minor offence. A minor offence procedure was initiated in the case, which was still pending at the time of the response. However, the outcome of the case is highly doubtful, since the parents do not reside in Hungary and their contact details abroad are not available (Csorna District Office).

- With regard to pupils who study abroad, the authority can establish whether those concerned meet their obligations on the basis of the certificates of school attendance submitted by the parents. In these cases, monitoring the changes occurring in the meantime pose a big problem, considering that foreign schools do not provide any data to the authority (Győr District Office).
- Minor offence procedures may be initiated against parents who live abroad but have a registered address in Hungary, but the success of such procedures is doubtful because of the fact that the parents reside abroad (Kapuvár District Office).
- Taking into account the above-mentioned professional position of the Ministry of Human Capacities, the district office accepts the reports made by parents regarding their children's studies abroad. In the absence of a certificate of school attendance, it may happen that parents fail to enrol their children in an educational institution abroad, but the district office will not be informed of this (Mosonmagyaróvár District Office).
- According to Section 91(2) of the National Public Education Act, if a pupil fulfils compulsory education abroad, it must be reported to the district office (for the purpose of record-keeping); however, the law does not specify who is obliged to make such reports. No methods have been developed to deal with cases where this obligation is not fulfilled, and it is unclear how the district office learns about school-age persons who do not complete compulsory education abroad either (Pannonhalma District Office).
- According to the law, it is sufficient if the parent "reports" the suspension of the legal relationship. The head of the institution may acknowledge the report. The parents will inform the district office of that report if the institution informs them of this. Calling on the parents of children who went abroad but have an address in Hungary is also difficult. Parents who did not accept the letters sent by the authorities in Hungary (the letters were returned marked "unclaimed") will also not accept any mail from the Hungarian authorities abroad. In such cases, the initiation of a minor offence procedure will also be unsuccessful (Sopron District Office).
- In the area of Mosonmagyaróvár, problems arose in relation to the kindergarten and school education of the children of persons coming to Hungary from Romania, carrying out trading activities. It can be established on the basis of everyday practice that these families do not set up an address and they travel around the country or the administrative area of the district but their children do not attend educational institutions (Mosonmagyaróvár District Office).

7. To my request for information, *the government commissioner managing the Bács-Kiskun County Government Office* explained that the problem relating to the fulfilment of compulsory education by foreign national children mainly concerns Romanian children. The Romanian families that raise these children often come to Hungary for seasonal, agricultural jobs and stay in a town from March to the end of September. It is a general problem that *they do not have official documents or documents in Hungarian*; obtaining or replacing such documents often takes years. However, without such documents, kindergarten or school education and health care services are not available, and therefore *these children are left unprovided for*. There are public education institutions that admit children even without official documents, in order to minimise their endangerment, but in the government commissioner's experience most schools refuse to do so.

They know from the information provided by the child welfare service that if children become ill, parents try to use the various loopholes in the system in order to use the health care

services, for example, the child gets medical care under the name of another child who has a social security card. According to the data there was one foreign child who became ill with an infectious disease so far. According to the information received from the child welfare services, there are families who have been living in the town for years and have not legalised their residence, although it is true that they are unable to legalise it as they cannot prove that they work, since most of them work in unregistered jobs.

The government commissioner also mentioned that the office contacted the OIN in April 2015 in order to address the situation of foreign families living in Hungary for more than 90 days without registration as well as the situation of the children in such families. According to the information provided by the OIN: *“Pursuant to the effective laws, alien policing expulsion may only be ordered – using discretionary powers – if the EEA national fails to comply with their obligation to leave the country and, according to Section 33 of the Free Movement Act, the right of residence may be limited in compliance with the principle of proportionality and only on the basis of the personal behaviour of the person concerned that poses a real, direct and serious threat to public order, public safety, national security or public health.”* Considering that the threatening nature of the behaviour of these persons does not reach the level required for expulsion, their illegal residence in the country cannot be terminated or eliminated. According to the verbal information received from the head of the board of directors of the OIN, it happens rarely in practice that the court orders expulsion.

The government commissioner also explained that the Romanian families appearing in the towns of the county not only form a relatively closed community and support each other as much as they can, but also protect each other, which makes it difficult to find those children who do not comply with compulsory education. The office also had to face the fact that the parents freely change the names of children as they have no documents, which makes it even more difficult to investigate endangerment. Their housing conditions are typically of a low but still acceptable level. The majority of them live in rented accommodation or in accommodation provided by their employers, but there are also a lot of migrant families who move to an unknown place after two or three visits by the family carer. They mostly live on farms; therefore it is difficult to establish the number of children and to which family they belong. As a result, there are substantial grounds for believing that the endangerment of many children remains latent.

The endangerment of foreign children is mainly addressed within the framework of basic child welfare services and family support, during which the families ask for and get help primarily with matters relating to their official documents, their settlement and the acquisition of citizenship. Four children of a family were taken into care for a failure to fulfil compulsory education; this proved to be unsuccessful, and therefore the child welfare service proposed taking further official measures. According to the feedback from the child welfare services, no serious endangerment occurred at a level that would have justified removing children from their families.

However, their experience shows that *there is great uncertainty* in addressing the endangerment of foreign children or children with multiple citizenship. It may happen that although a member of the warning system knows of a school-age foreign minor who lives in the town, the child welfare service does not. In his opinion, especially in small towns, where the family carer is employed by the child welfare service on a part time basis for a few hours per week, the family carer has no time to act effectively with regard to foreign families living in the town illegally. *There is hardly a place where the problem was addressed through the collaboration of the organisations involved in these matters, although the OIN offered the opportunity of joint on-site inspections.*

Attached to his response, the government commissioner provided me with a statement including the names and data of non-Hungarian children who do not fulfil compulsory education in the county, specifying the cases arising in connection with them and the possible measures of the organisations acting in such cases. According to the statement, they found out about the presence of 26 Romanian children and about another 30 children who came to the county with their families for the purpose of seasonal jobs and who failed to comply with the requirement of compulsory education.

8. *The head of the Bács-Kiskun County Police Headquarters* informed me that, for several years, they have paid special attention to the situation of Romanian citizens residing in the county. This increased attention dates back to the period before the integration of the border guard with the police, and its reason was that they recognised the special importance of the region and the county within that. Jobs in agriculture and manufacturing industry attract the typically low-skilled Romanian workers to the county, who bring along their children from the dire conditions prevailing in their native country.

The police continuously cooperate with the bodies of the local governments of the county as well as the child protection authorities and organisations, and they constantly monitor the migration processes in the county by means of criminal and law enforcement analysis and assessment. In recent years, in particular since Romania's accession to the EU in 2007, some positive developments have started among those coming to Hungary for the purpose of seasonal work in agriculture. On the one hand, through continuous and targeted inspections performed jointly with several partner authorities (the National Tax and Customs Administration; the labour, guardianship and public health administration agencies of the government offices; and the OIN), they have *started to transform jobs that used to be performed illegally into legal ones*. This also manifested itself in the form of legal residence, taxed income and property rental in accordance with the rules and traceable address data. The other positive development in this respect is that more and more Romanian citizens of those mainly arriving from Arad county and Mures county take the opportunity of becoming a Hungarian citizen within the framework of *simplified naturalisation* if they are entitled to it.

Regardless of these *favourable trends*, during the inspections performed jointly with the partner authorities, they can see cases where the Romanian nationals arriving for the purpose of seasonal work or residing in the country do not ensure the schooling of their underage children in the appropriate manner. One such town "infected" in this respect is Mélykút, falling within the area of competence of the Kiskunhalas Police Headquarters. Due to the reasonable property prices, a significant number of Romanian citizens settled in this ageing town, from which many original residents had already left. The prices of detached houses are affordable to them, and the region operates as a kind of organising and distribution point for seasonal workers, from where they are sent to jobs in the region of Kiskőrös, Kecel, Soltvadkert and Kiskunhalas. Their children with their limited school qualifications will probably also be unable to break out of this way of life, thus the problem will be "reproduced".

Recently *several inspections have been performed in this area*, the *results* of which can be summarised as follows. During one inspection a 16-year-old and two underage Romanian citizens were present; they had lived in the property for a long period but could not tell for how long. Presumably they stayed there after the deadline but this was not provable, and therefore it was impossible to take any minor offence measures. The vaccination books of the children were not available, and the Jánoshalom District Office of the Bács-Kiskun County Government Office established that the children did not attend any Hungarian school. They said that they used to

attend school in Romania until last summer, and as far as they knew, their parents requested deferment at their Romanian school. At the other site they also found a young Romanian who was taking care of an underage child. The young girl said that she had completed 7 grades in Romania and that currently she did not study but she wanted to. However, she did not know in what school and what she wanted to study. In the meantime, two other children whose parents were working during the day arrived from a farm further afield. They said that in Romania they used to attend kindergarten or school but here they did not attend any institution, meaning that these school-age children do not study in any Hungarian school, as they do not meet the requirements specified in the Public Education Act; since they have no registered address, their parents cannot enrol them in school or kindergarten, and without social security, they do not receive health care services either.

The head of the police said that this was *a special migration phenomenon among EU citizens*, motivated by supply and demand in the labour market. A suction effect can be seen with regard to the existing demands of counties where the Hungarian labour force cannot be used for certain jobs; under a certain wage level (HUF 600-800 per hour) only unskilled, undereducated workers can be involved. This may be favourable to local businesses but workers employed at such a wage level are unable to establish adequate living conditions; they have no money for anything other than everyday necessities, and sometimes they do not even have the need for anything else. In many cases, as a result of the negligence of their uneducated parents, their children have no chance of breaking out, through studying, of habits deeply ingrained for generations. Romanian/Hungarian dual citizen children or those of Romanian nationals currently “only” generate child protection, family law or guardianship problems, but in 10-15 years they will also cause social, public order protection and demographic difficulties.

The police make every effort to sensitise the partner authorities and the non-governmental organisations concerned to these problems and to ensure that their activities are performed with the same aims in mind, but the police *are unable to resolve the situation on their own*. It is necessary to rationalise the powers and rights of authorities involved in controlling seasonal employees and their employers, and to develop effective official proceedings that treat the best interests of children as a priority, as well as to develop an up-to-date and regularly revised protocol which can be operated effectively and which provides for such proceedings.

The following can be mentioned among the *specific actions of the police headquarters*: organisation of professional forums on crime prevention and child protection issues, involving the relevant organisations (for example Kék Vonal (Blue Line), Menedék Hungarian Association for Migrants, Cordelia Foundation, etc.). They conduct specific professional consultations with the local governments concerned and with the bodies and heads of institutions of such local governments (for example in Kerekegyháza and Kecel), and there are constant professional discussions and consultations with the representatives of the partner authorities participating in the inspections (especially with child protection experts). According to their professional position, it would be necessary to apply the Free Movement Act more effectively against Romanian citizens who violate the residence rules. Based on the findings of the official inspections and controls, if the required conditions exist, the initiation of criminal proceedings may also be justified to protect the best interests of the children (for example in cases of the endangerment of minors). As a last resort, the children concerned need to be taken into care.

9. According to the content of the response given by the *director of the Nagykáta school district*, several pupils of foreign nationality (Austrian, Albanian and Romanian) study at the Földvály Károly Primary School in Tápióbicske in the area of the school district. A problem occurred

regarding the Romanian pupil in relation to compliance with the requirement of compulsory education. The head of the institution contacted the family support service, which, however, turned out to be an ineffective solution. It has occurred in the practice of the head of the school that the parents requested the enrolment in the first grade of two Romanian siblings with an age difference of 2 or 3 years, or of a pupil who was 12 years old. Six months later, the parents took the boy out from school; the child has been living in the town ever since then. The school has no professional capacity or any separate programme for receiving foreign pupils. As far as we know, there are several Romanian families living in Tápióbsike who have no official Hungarian address, no social security and do not receive child protection care. The school has/had 5 pupils who are/were in a similar situation. As far as the director knows, if the children attend school but are absent unjustifiably, there are no means of forcing the parents to comply with the rules because they do not receive any education allowance with regard to the children which could be withdrawn from them.

The findings of the inquiry

I. As regards my competence

My tasks and competences and my rights to conduct inquiries for the purpose of performing my tasks are provided for in the ACFR. Pursuant to Section 18(4) of the Act, the Commissioner for Fundamental Rights may conduct *ex officio* proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. *Ex officio* proceedings may be aimed at conducting an inquiry into improprieties affecting *not precisely identifiable larger groups of natural persons* or at conducting a comprehensive *inquiry into the enforcement of a fundamental right*.

Furthermore, Section 1(2)(a) of the ACFR provides that, in the course of his activities, the Commissioner for Fundamental Rights will pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children. Having regard to the fact that the existence of every condition of *ex officio* inquiries can be proved, I initiated a comprehensive inquiry on the suspicion that the right to education, protection and care of foreign children living in Hungary had been violated. It should also be stressed that, pursuant to Section 18(1) of the ACFR, the scope of my inquiry covered all relevant authorities of local or national competence as well as organs performing public services.

It can be stated in connection with the framework of the inquiry that the act provides an opportunity for the Ombudsman to examine a certain legal regulation in respect of the fundamental rights, and to specify measures relating to the deficiencies or errors in the laws' content. Based on the fact that in his practice, the Ombudsman also emphasises the importance of the *preventive protection of fundamental rights*; the commissioner stays within the framework of his mandate when during an *ex officio* procedure, for the very purpose of preventing concrete violations of the fundamental rights and complaints based on such violations, essentially to an inquiry conducted in respect of fundamental rights; he reviews certain elements of the relevant legal regulations, maps any concerns arising in this context and reports the same to the bodies responsible for legislation.

II. Regarding the fundamental rights and the principles examined

In the course of investigating the context of a social problem, the commissioner for fundamental rights performs his mandate autonomously, objectively and neutrally, only by listing and comparing arguments relating to fundamental rights. Since the establishment of the institution of the ombudsman, the commissioner for fundamental rights has consistently relied on and used as a standard the findings of matters of principle of the Constitutional Court in connection with the guarantees under the rule of law and the content of fundamental rights, and – in accordance with the special features of the legal protection provided by the ombudsman – he has applied the fundamental rights test aimed at establishing whether the limitation of a fundamental right is constitutional.

In connection with the findings of the ombudsman report I repeat that, after the Fourth Amendment of the Fundamental Law, the text of the relevant provisions of the Fundamental Law mostly remained identical to the provisions of the Constitution; it contains no provisions relating to constitutional requirements and fundamental rights that are contrary to the text of the previous constitution. In its Decision 22/2012. (V. 11.) AB, the Constitutional Court pointed out that *“in cases where the content of certain specific provisions of the previous Constitution and the Fundamental Law are the same, it is not the acceptance of the legal principles appearing in previous decisions of the Constitutional Court that must be justified but their non-observance.”* However, the Constitutional Court stressed in its Decision 13/2013. (VI. 17.) AB that, with regard to the legal provisions examined in the Decision in question, they had already acted on the basis of the Fourth Amendment of the Fundamental Law as regards the usability of the provisions of previous Decisions of the Constitutional Court. In connection with this, the Court declared as a principle that *“the Constitutional Court may refer to or quote the content or the text of its arguments and legal principles developed in its previous decisions to the extent and scope required for deciding any substantive constitutional question arising in the case at hand, specifying the repealed decision of the Constitutional Court. The reason for this is that the statement of reasons and the constitutional sources of the same must be available to and verifiable by all in a democratic state that is governed by the rule of law, and legal certainty requires that the bases of decision-making are transparent and traceable. Public argumentation is the essential basis of making a decision. The Constitutional Court always examines whether arguments presented in previous decisions can be used on a case-by-case basis, in the context of the specific case.”*

If we compare the provisions of Article B(1), Article XI(1)-(2) and Article XVI(1) with the text of Section 2(1) of Act XX of 1949 on the Constitution of the Republic of Hungary, Section 67(1) of the Constitution and Section 70/F(1)-(2) of the Constitution, it can be established that the text of the Fundamental Law did not introduce any changes regarding the principle of the rule of law, the right to education and children’s right to care and protection – which are the subject-matter of this inquiry – that would justify the rejection of the previous practice of the Constitutional Court or a major revaluation of the content of such practice. Accordingly, in the course of formulating my theoretical findings and interpreting fundamental rights and constitutional principles, I regard the findings and conclusions presented in the decisions (and the relevant statements of reasons) of the Constitutional Court made both before and after the entry into force of the Fundamental Law as authoritative.

1. Pursuant to Article B paragraph (1) of the Fundamental Law, *Hungary is an independent and democratic State governed by the rule of law.* The Constitutional Court emphasised in many of its decisions that legal certainty is an indispensable element of a state governed by the rule of law. In its Decision 30/2012. (VI. 27.) AB, the Constitutional Court declared that Article B(1) of the Fundamental Law and Section 2(1) of the Constitution contain

the rule of law clause in the same manner; the practice of the Constitutional Court established so far therefore continues to be relevant. According to the Constitutional Court, legal certainty requires the state to ensure that the law as a whole, the individual fields of law and also the individual regulations are *clear, unambiguous, and reliable* and that their impact is *foreseeable* for those bound by the rules. According to the prevailing argument of the Constitutional Court, it is a requirement arising from the principle of the rule of law that the power of the state and public administration are subordinate to the law: bodies exercising public power shall perform their activities *in an operating order established by the law, within limits* regulated in a manner that citizens can understand and predict.

It should not be overlooked that *predictability – including the uniform application of the law – and the provision of procedural guarantees are closely related to the protection of the various fundamental rights and freedoms*; they quasi presuppose each other. The real enforcement of fundamental rights may be rendered meaningless by the unpredictability arising from the errors and problems in the application of the law or by disregarding and ignoring the rules for procedural guarantees. In this context, it is worth mentioning the principle of the Constitutional Court, according to which the direct constitutional guarantees *shall not be disregarded even for the purpose of economic efficiency or expediency*, on the grounds of simplifying the procedure or enforcing the requirement of timeliness.

2. Pursuant to Article XI(1)-(2) of the Fundamental Law, every Hungarian citizen has the right to education; Hungary shall ensure this right by extending and generalising public education, providing free and compulsory primary education, free and generally available secondary education, and higher education available to every person according to his or her abilities, and by providing statutory financial support to beneficiaries of education. The Fundamental Law *recognises the right of all Hungarian citizens to endeavour to become educated* as a basic condition of developing their personalities and becoming responsible and informed citizens. The enforcement of this right necessarily requires state actions: the state ensures the acquisition of essential knowledge and the appropriate development of children through compulsory *primary* education that is available free of charge to every person.

In its Decision 3046/2013. (II. 28.) AB, the Constitutional Court emphasised that it already discussed the content of the right to education and the state's obligation to protect this right in several decisions and that it maintains its position explained in such decisions also in connection with Article XI(2) of the Fundamental Law. It stresses that it is the constitutional right and obligation of the legislative power and the executive power to monitor the operation of the education system constantly, to correct any errors that arise, to correct any deficiencies, to prevent operating problems and to prevent the operation of the system from becoming impossible. Within the framework of the requirements of the Fundamental Law, in justified cases the legislator may amend or change the system of educational institutions. The responsibility for any steps taken and for any failure to take the required measures will always lie with the ruling government.

3. The right to education is closely related to children's right to protection and care, and therefore, in relation to the international aspects, it is worth highlighting Article 4 of the Convention on the Rights of the Child, according to which states parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention. Pursuant to the provisions of Article 28(1)(a) of the Convention, the States Parties recognise the right of the child to education, and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all.

Pursuant to Article XVI(1) of the Fundamental Law, every child shall have the right to the protection and care required for his or her proper physical, mental and moral development. The obligation laid down in paragraph (3), according to which parents shall be obliged to take care of their minor children, is related to this right. This obligation also includes the provision of schooling for their children. The quoted provision is the *constitutional basis for the protection of children*, according to which all children have the right to receive protection and care primarily from their family, secondarily from the state and, in exceptional cases, from society as necessary for their appropriate physical, mental and moral development. The Fundamental Law also specifically mentions compliance with compulsory education among the special civic obligations of parents. According to the Constitutional Court, participation in compulsory primary school education is not only a right but it is also formulated as the obligation of parents to provide education to their children. Prescribing compulsory education is part of the objective obligation of the state to protect fundamental rights in relation to ensuring access to public education without discrimination. Thus, on the one hand, the aim is to fulfil the objective obligation to protect fundamental rights in relation to compulsory education or to protect public order.

In its above-mentioned Decision 3046/2013. (II. 28.) AB, the Constitutional Court also pointed out that parents' right to choose their children's education cannot be interpreted independently of the obligations of the parents and the rights of the children. It must also be mentioned that paragraphs (1) to (3) of Article 18 of the Convention also emphasise the parents' responsibility (obligation) as the most important element in the education of children, which is motivated by the best interest of the children, and the state must give assistance with this by providing an appropriate institutional background.

The Preamble of the Convention cannot be overlooked either; according to it the child, by reason of their physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. As a state party to the Convention, Hungary is obliged to ensure that all Hungarian institutions and authorities that come into contact with children act and make decisions according to the child's best interests, irrespective of the nationality or other legal status of the child.

III. Basic findings in the previous practice of the ombudsman

1. The report issued under No. *AJB-2600/2011* revealed, from examining the regulations then in force, that despite the general requirement of compulsory education, pursuant to Section 66(2) of Act LXXIX of 1993 on Public Education (hereinafter: the Public Education Act), a primary school is only obliged to admit or take over school-age students whose *permanent place of residence* or in the absence of that, *temporary place of residence is located in the district*. Since, pursuant to the Public Education Act, admission to primary school is dependent on the child's permanent or temporary place of residence – despite the general requirement of compulsory education – institutions are only willing to accept the enrolment application of children who are able to prove one of the conditions listed in Section 66(2) of the Public Education Act.

Pursuant to the report, in the provisions of Article 28(1)(a) of the Convention, the States Parties recognise the right of the child to education, and, with a view to achieving this right progressively and on the basis of equal opportunity, they agree to make primary education compulsory and available free to all. Under Article 2 point 1 of the Convention, states parties must respect the rights set forth in the Convention – including the right to primary education that

is compulsory and free to all – and *guarantee such rights to the children within their jurisdictions* without discrimination of any kind, that is, irrespective of the grounds of their right of residence.

Based on all this, in the commissioner's opinion it gives rise to concerns in terms of the consistency of the national law with the obligations under international law and causes anomalies in connection with children's right to care necessary for their proper mental development that Act LXXIX of 1993 on Public Education does not guarantee the compulsory admission to primary school of school-age children who are subject to the jurisdiction of the Republic of Hungary but have no documents certifying their permanent or temporary place of residence.

The commissioner initiated the amendment and supplementing of the then effective Public Education Act with the minister responsible for public education so that school-age children under Hungarian jurisdiction may access free primary education even without documents certifying their official permanent or temporary place of residence.

2. The report issued under No. *AJB-733/2012* recorded the results of the inquiry relating to *the education of unaccompanied minors* placed in the Károlyi István Children's Centre in Fót.

The inquiry revealed that education is provided to children in Fót under the Minister of Education Directive on the kindergarten and school education of foreign national children and pupils on the basis of an intercultural educational system, applicable since 2004. The report pointed out that the pupils living in the Children's Centre suffered from some kind of post-traumatic symptom; such symptoms are particularly striking in newly arrived unaccompanied minors. Symptoms range from unexplained and significant weight loss through chronic headaches to unexpected and uncontrollable outbursts. Children who have spent longer or shorter periods in the Children's Centre and who attend the school sooner or later become more talkative and talk about the traumas they have experienced. The situation is further aggravated by the fact that it often happens that, due to the emotional bond developed, the lack of information about the foreign children's country of origin and the fact that there is no appropriate supervision of these conversations, the teachers themselves are unable to cope with what they have heard, which means that the minors' *right to the highest possible physical and mental health* may be violated.

In view of all this, the commissioner requested the Director-General of the OIN to organise training programmes for teachers dealing with unaccompanied minors and young adults receiving post-care support in connection with the countries of origin of the persons concerned, also providing information on the asylum procedure.

3. It must be emphasised that *among its closing remarks* on the third, fourth and fifth consolidated periodic reports on Hungary, adopted in September 2014, *the UN Committee on the Rights of the Child* – similarly to others – expressed its concerns *in connection with the right to education*, because of the limited access of asylum seeking children to education and because of the lack of special integration programmes and intercultural education focusing on the individual needs of migrant children. Therefore, in its closing remarks the Committee highly recommended that Hungary as a state party should take measures in order to guarantee that all children living in its territory have access to education, and that it should arrange further integrated classes and intercultural education in order to meet the individual needs of children who attend school, in particular for migrant children.

IV. International outlook: compulsory education of foreign national students

1. Pursuant to Section 8 of the Education Act 1996¹ (hereinafter: the Education Act), education is compulsory between the age of five and the age of 16 *in the United Kingdom*.

School absences are continuously monitored and evaluated in the country. Section 7 of the Education Act provides that the parent of every child of compulsory school age shall cause them to receive full-time education suitable to their age, ability and aptitude. Section 436 emphasises that Local Education Authorities shall establish the number of children of compulsory school age who live in their respective areas but have not been registered at the schools and would not receive suitable education otherwise. Section 437 of the Act adds to this that local authorities shall locate any children who do not fulfil the requirement of compulsory education. If they find such a child, they shall serve a School Attendance Order on the parent, after serving a notice on the parent. If there is no change within the time specified by the Act, a school will be appointed which the child must start to attend and a procedure will be initiated against the parents. The pupil, the school, the child welfare service and the local authority will all be involved in the case in order to solve the issue. Pursuant to Section 443 of the Act, if a parent fails to comply with the requirements of the school attendance order, they are guilty of an offence, unless they prove that they are causing the child to receive suitable education otherwise than at school.

The education system and the local education authorities try to do their best to provide enough school places for pupils of foreign origin. It is worth noting that *foreign pupils must fulfil the same criteria as British children if they apply to a specific school*. Their application will depend not on their country of origin but on the distance between their current place of residence and the selected school. Some schools may oblige children of foreign origin to take an aptitude test and/or an English proficiency test.²

If overseas children apply to state-funded schools, the School Admission Code must always be complied with. *A school place cannot be refused because of the lack of information on the child's legal status*. The following children are not entitled to a state education:

- children from non-European Economic Area (EEA) countries who are in the country as short-term visitors – these are children who live abroad but have been admitted to the UK for a short visit (for example as tourists or to visit relatives), and not to study,
- children from non-EEA countries who have permission to study in the country at an independent, fee-paying school.

The Home Office currently has a special team that is in charge of school matters (School Referrals Team). This Team can be contacted in order to find out if a specific child may participate in state education or not.³ Admission authorities (for example the local education authority) must decide on the applications of children of foreign origin in accordance with EU law or the Home Office rules applicable to citizens of non-EEA states.⁴

2. *In France*, pursuant to Section L131-1 of the Education Code⁵, children are subject to compulsory education between the ages of six and 16; this obligation applies to all children who live in the country, irrespective of their nationality. According to Section L131-5 of the Code, the parents of school-age children must enrol the children in a state-maintained or private institution, or they must notify the mayor and the state authority responsible for education if they choose to

¹ Education Act 1996, available at: <http://www.legislation.gov.uk/ukpga/1996/56/contents>

² See: <http://www.gettherightschool.co.uk/placingforeignstudentinaukschool.html>

³ See: <https://www.gov.uk/guidance/schools-admissions-applications-from-overseas-children>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf

⁵ Code l'éducation, see: www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071191

home-school their children. The same procedure must be followed within eight days if any change occurs in the child's residence or the way of their complying with the requirement of compulsory education. Pursuant to Section R131-2, the school principal shall issue a certificate of enrolment in the educational institution to the child's parents.

Every year, at the start of the academic year, the mayor compiles a list containing all school-age children in the municipality, in accordance with Section L131-6 of the Code. In order to facilitate the compilation of the list and to improve the monitoring of compulsory education, the mayor may manage the personal data of children, forwarded by the bodies responsible for the disbursement of family allowances, the state authority responsible for education affairs and the directors of educational institutions. Section R131-3 adds that the list shall be updated every month, and that the directors of educational institutions must notify the mayor of the number of children enrolled at the start of the academic year in their institutions. Changes must also be reported to the mayor at the end of each month. The persons specified by the law may inspect this list and request a copy of it.

Pursuant to Section R131-18 of the Code, a parent who fails to report to the town hall if they choose home-schooling or a private institution may be fined for committing a minor offence. Section L131-5 of the Code provides that the enrolment of a school-age child cannot be refused on the grounds that their parents have established a permanent place of residence in a foreign country. Every child must be enrolled in school in the municipality where the place of residence of their parents or the place of residence of their carer is located, or where an institution can be found outside France that has been founded specifically for French children. Contracts for seasonal work make it possible to enrol the children in the school of the town of temporary residence or employment.

3. *In Austria*, children who have spent at least one period of assessment (one semester) in the country must attend school; i.e. children who live in Austria permanently, irrespective of their nationality, are subject to compulsory education. *Children who reside in Austria only temporarily are not obliged to but may attend school.* General compulsory education applies to children between the age of six and the age of fifteen. Parents or foster parents must notify the competent local primary school of all children who are subject to compulsory education. The district school supervisor makes a decision on the child's admission to the first grade during enrolment, and he/she also establishes if the child is ready for school. *Inadequate knowledge of the German language may not prevent children from starting school; in such cases, children may take language lessons during school time.*

The local governments keep a list of all school-age children who live in their respective areas. The school management shall inform the local government of the dates of starting and finishing school with regard to every school-age child. The keeping of this list is supervised by the education committee, and the committee also makes sure that all school-age children fulfil compulsory education. *However, foreign national children are not entered onto this list.* Parents and teachers must comply with the rules applicable to compulsory education; the violation of such rules amounts to a minor offence for which a fine may be imposed by the district administrative authority. Home-schooling is also possible in Austria provided that the child passes an exam on the curriculum every year. Their parents must report this to the district school board before the start of the academic year. Appeals against the decisions of local school boards may be lodged with the national school board.

4. *In Germany*, the state supervises the entire education system. Every child is subject to compulsory education – irrespective of their state and nationality – who reaches the age of six by 30 September; compulsory education lasts until the age of 18. Similarly to Austria, *children may*

attend remedial language classes but pupils cannot be home-schooled. In Germany, education partly falls within the competence of the states, and therefore compliance with compulsory education differs by state. Currently the only states where there are specific rules providing that children who are in the country illegally are also subject to compulsory education are Bavaria, North Rhine-Westphalia, Hamburg, Bremen and Schleswig-Holstein. In the rest of the states there are conditions for compulsory education, such as the existence of a residence permit (Berlin, Brandenburg and Thuringia) and proof of residence, which children residing in Germany illegally cannot have. There are *various legal consequences* for violating the rules applicable to compulsory education, such as warnings, fines and the initiation of minor offence procedures or criminal procedures.

V. On the merits of the case

1. Compliance with the requirement of compulsory education by non-Hungarian children during their residence in Hungary

1.1 As regards the compulsory education of non-Hungarian children, I *reviewed* the personal scope of compulsory education *as a legal starting point*. Pursuant to Section 45(1) of the National Public Education Act, every child is obliged to participate in institutional education in Hungary as prescribed by this Act.

Pursuant to Section 92(3) of the National Public Education Act, *non-Hungarian citizens residing in Hungary* may use kindergarten educational services, services provided by halls of residence and special pedagogical services and – if they reach the compulsory school-age valid according to Hungarian law – educational services provided in schools, throughout the existence of their compulsory education, and throughout the duration of their studies commenced during the period of compulsory education and continued after the period of compulsory education, *under identical conditions to those ensured for Hungarian citizens, provided that they meet the conditions specified by the law.*

Pursuant to Section 92(1) of the National Public Education Act, a non-Hungarian citizen minor shall become entitled to kindergarten services and subject to compulsory education if, since the date of submission of their application for asylum, they are entitled to the same rights as Hungarian citizens, in accordance with the provisions of the Asylum Act. Minors shall have these rights even if their parents have a permit entitling them to stay in Hungary for more than three months and/or they exercise the right of freedom of movement and residence within Hungary according to the Act on the entry and residence of persons with the right to free movement and residence, or fall within the scope of the act on the admission and right of residence of third-country nationals and their status is “immigrant” or “settled”, or they have leave to remain in the territory of Hungary. Furthermore, pursuant to Section 92(6) of the National Public Education Act, non-Hungarian citizens who are the holders of a letter of invitation by the Minister of Education shall enjoy the services specified in the letter of invitation under the same conditions as Hungarian citizens. Otherwise, in the absence of these conditions, pursuant to Section 92(7) of the National Public Education Act, non-Hungarian citizens who are not covered by subsections (1) to (6) of Section 92 of the National Public Education Act, shall *pay a fee* for using kindergarten, school and halls of residence services and special pedagogical services unless

provided otherwise by an international treaty or a law.⁶ Pursuant to Section 92(2) of the National Public Education Act, *the fulfilment of the criteria must be verified* upon the admission of the pupil to the educational institution.

1.2 Pursuant to Section 10(1) of the Asylum Act, refugees shall have the same rights and obligations as Hungarian citizens.⁷ According to the provisions of Section 17(1) of the Asylum Act, beneficiaries of subsidiary protection⁸ shall have the same rights and obligations as refugees. Pursuant to Section 22(1) of the Asylum Act, a beneficiary of temporary protection⁹ will be entitled to a document that proves their identity, a travel document valid for one entry and return as specified in separate law (if they have no valid travel document from their country of origin), to receive services, support and accommodation according to certain specific conditions, and to work under the general rules applicable to foreigners.

Pursuant to subsections (1) and (2) of Section 32 of the Asylum Act, if the refugee or the beneficiary of subsidiary protection is in need of such assistance, they shall receive the material conditions of reception and, unless otherwise provided by law, the support and care defined by law, for a period of a maximum of sixty days from the day the decision on recognition is made; beneficiaries of temporary protection are entitled to the same during the time they legally spend in Hungary. The specific forms of services and allowances are specified by Section 15 of Government Decree 301/2007 (XI. 9) on the implementation of the Asylum Act, pursuant to which the person seeking recognition is entitled to the reimbursement of education costs or, as a financial support, school enrolment support, among other things.

1.3 According to the rules of the Free Movement Act, the right of free movement and residence may be exercised by EEA citizens, their family members, the family members of Hungarian citizens and persons accompanying or joining an EEA citizen or a Hungarian citizen. Of the latter, those who are permitted by the authority to enter and stay in the country as a family member because in part they are the dependents of a Hungarian citizen, or have lived in the same household as a Hungarian citizen for at least a year, those who are personally taken care of by a

⁶ The fee shall not exceed the actual per capita cost of pedagogical services. The head of the public education institution may reduce or waive the fee according to the rules specified by the operator of the institution.

⁷ According to Section 6(1) of Act LXXX of 2007, Hungary shall recognise as a refugee a foreigner who complies with the requirements stipulated by Article XIV(3) of the Fundamental Law. That is, pursuant to *Article XIV(3)* of the Fundamental Law: Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group, or religious or political belief, if they do not receive protection from their country of origin or from any other country.

⁸ Section 12(1) of Act LXXX of 2007: Hungary shall grant subsidiary protection to a foreign national who does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of their return to their country of origin, they would be exposed to serious harm and are unable or, owing to fear of such risk, unwilling to avail themselves of the protection of their country of origin.

⁹ Pursuant to Section 19 of the Asylum Act, Hungary shall grant temporary protection to a foreigner who belongs to a group of displaced persons arriving in the territory of Hungary *en masse* which

a) was recognised by the Council of the European Union as eligible for temporary protection under the procedure determined in Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (hereinafter: Directive 2001/55/EC), or

b) was recognised by the Government as eligible for temporary protection as the persons belonging to the group were forced to leave their country due to an armed conflict, civil war or ethnic clashes or the general, systematic or gross violation of human rights, in particular, torture, cruel, inhuman or degrading treatment.

Hungarian citizen for serious health reasons, or those who were in part the dependents of an EEA citizen (in the country from which they arrive) or have lived in the same household as an EEA citizen for at least a year, and those who are personally taken care of by an EEA citizen may exercise this right.

EEA citizens and their family members who are the citizens of a third country may enter Hungary and stay in the country for a maximum of three months practically without any conditions; it is sufficient to have a passport or an identity card. If a family member comes from a third country, the citizens of which must have a visa to enter Hungary, the authorities shall issue that visa in the shortest possible time, free of charge.

Staying in Hungary for more than three months is subject to conditions; EEA citizens must register, of which the authority concerned shall issue a *registration certificate*. The right of residence for more than 90 days in the timeframe of 180 days of a family member who is the citizen of a third country is certified by a *residence card*, the issue of which must be requested at the latest on the ninety-third day after the entry or the day when the fact substantiating the right of residence arose. When submitting the request, the documents that prove the fulfilment of the residence criteria (specified in a separate law) must be presented or enclosed. Concurrently with the submission of the request, the authority acting in the case shall issue a certificate that proves the right of residence of the family member who is the citizen of a third country.

EEA citizens (and their family members) may stay in Hungary for more than three months if the purpose of their residence in Hungary is paid employment or studies, and if they have enough resources for themselves and their family members for the entire duration of their stay to guarantee that their residence will not be an unreasonable burden on the social care system of the country. Another condition of the residence of these persons is that they must be entitled to use the health insurance services under an insurance relationship according to the provisions of a special law, or they must be able to pay for such services themselves. Similar rules are applicable to the non-Hungarian family members of Hungarian citizens.

The right of permanent residence is ensured for all EEA citizens and all of their family members, provided that they reside in Hungary legally, for five years without interruption. This right is also ensured for the family members of Hungarian citizens – with the exception of the spouse – if they have lived together as a family with a Hungarian citizen for at least one year. Spouses become eligible if the marriage was contracted at least two years prior to the date when the application is submitted and they have lived together continuously since they got married. The right of permanent residence of EEA citizens and their family members is *proven by the permanent residence card*.

1.4 On the basis of the National Public Education Act, in terms of the fulfilment of compulsory education by non-Hungarian children, *the scope of those belonging to the third group is determined by the Third-Country Nationals Act*. The personal scope of this Act applies to third-country nationals, that is, foreigners who do not have the right of free movement and residence. “Third country” means a country other than Hungary (“first country”) and the states parties to the agreement on the European Economic Area (“second countries”).

The Third-Country Nationals Act provides for the rules of residence for a maximum of three months and residence for more than three months in separate chapters. The regulation of entry for the purpose of residence not exceeding three months falls within the scope of Community law; section 7 of the Third-Country Nationals Act only provides that, unless otherwise prescribed by any directly applicable Community legislation, an international agreement, the Third-Country Nationals Act or a government decree adopted by authorisation of

the Act, third-country nationals shall have a visa in order to be admitted for any planned residence not exceeding ninety days.

The rules of residence in Hungary for more than three months are laid down in Section 14 of the Third-Country Nationals Act. In this context, the following shall be regarded as visas entitling their holders to stay in Hungary for more than 90 days in a timeframe of 180 days: a visa entitling its holder to receive a residence permit, a seasonal worker's visa and a national visa.¹⁰ *A third-country national who has a valid residence visa or national visa may only stay in the territory of Hungary after the period specified in his visa has ended – unless provided otherwise by this Act – if they have a residence permit*¹¹ according to the provisions of Section 16 of the Third-Country Nationals Act which entitle them to stay in the territory of Hungary for more than 90 days in a timeframe of 180 days, but for a maximum of a fixed term of two years. The Act also provides special rules applicable to stays for more than 90 days in a timeframe of 180 days; these special rules may apply to family unification, paid employment, study, research, official, therapeutic, visiting or humanitarian purposes. The visa may also be issued for the purpose of paid employment or volunteering, or for a national economic interest.

This Act also provides that admitted persons are entitled to the rights afforded to residence permit holders. Of all these, the *residence permit that may be granted for study purposes* and which is regulated by Section 21 of the Third-Country Nationals Act deserves special mention. This permit may be granted to third-country nationals who establish or have established a student relationship in Hungary with a public education institution that is registered as an operating institution in the public education information system for full-time school education or other full-time training. A residence permit may also be issued to persons who intend to stay in the territory of Hungary in order to study full-time in a higher education institution accredited in Hungary, or to attend a preparatory course for further education, organised by a higher education institution, if the persons concerned verify that they have adequate language skills for the pursuit of such studies. The validity period of the residence permit issued for study purposes shall be adjusted to the duration of the course.

According to Section 32 of the Third-Country Nationals Act, residence may be established by means of a national permanent residence permit, an EC permanent residence permit or a temporary residence permit. The first two permit types enable their holders to stay in Hungary for an indefinite period, while temporary residence permits may be issued for five years and they can be extended for five years in each case. The resident statuses are interlinked; as such, the holder of a temporary residence permit may apply for a national permanent residence permit or an EC permanent residence permit, and the holder of a national permanent residence permit and a third-country national who acquired an immigrant or resident status pursuant to the laws previously in force may apply for an EC permanent residence permit. A third-country national who is a permanent resident shall have the rights guaranteed by the Fundamental Law and the laws.

1.5 Pursuant to the foregoing, *from among the persons falling within the scope of the laws referred to in the National Public Education Act, the following non-Hungarian children are*

¹⁰ Pursuant to Section 38 of Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, the administration period for issuing seasonal work visas and national visas is 15 days.

¹¹ As a general rule, the administration period is 21 days according to section 49 of Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

subject to compulsory education in Hungary: those who exercise the right of free movement and residence in Hungary, refugees, beneficiaries of subsidiary protection, immigrants, permanent residents and third-country national children who have a residence permit. Children who are the beneficiaries of temporary protection are not subject to compulsory education in Hungary, considering that their legal status is different from that of refugees and beneficiaries of subsidiary protection; the latter are entitled to the same rights and bound by the same obligations as Hungarian citizens. However, according to the provisions of Section 90(9) of the National Public Education Act, the minister responsible for education may authorise the operation of an educational institution for the children of the beneficiaries of temporary protection, by issuing a temporary operating permit upon the request of the minister responsible for alien policing and asylum. However, a temporary operating permit shall not mean the recognition that the educational institution complies with the requirements of the country from which the beneficiaries of temporary protection have come to Hungary, and it shall not mean that Hungary will recognise the certificates issued by that school.

2. The issue of the starting date of compulsory education

The organisations I contacted raised as a problem that a significant number of non-Hungarian children do not attend school *because the requirement of compulsory education is currently subject to a stay of more than three months.* Pursuant to subsections (4) and (5) of Section 92 of the National Public Education Act, with regard to a non-Hungarian citizen, the starting date of compulsory education depends on their legal status. The compulsory education of refugee children and children who are the beneficiaries of subsidiary protection shall exist from the date of submission of their application, while compulsory education of children with the right of free movement and residence, immigrant children, settled children and third-country national children with a residence permit in Hungary can be exercised *if the parent has leave to remain for more than three months.*

I have compared the above-mentioned provisions of the National Public Education Act with the relevant provisions of the Free Movement Act and the Third-Country Nationals Act, taking into consideration that, pursuant to Section 92(2) of the National Public Education Act, the fulfilment of the criteria must be verified upon the admission of the pupil to the educational institution. On the one hand, I was looking for an answer through my inquiry to the question of how the fulfilment of the conditions must be proved, and on the other hand, I wanted to find out whose residence was important in terms of the fulfilment of the legal conditions, the residence of the child or the residence of the parent.

I discovered that *while the National Public Education Act requires a “residence permit” valid for more than three months in order to be able to exercise compulsory education, pursuant to the Free Movement Act persons are not entitled to the right of free movement and residence on the basis of an official permit but this right is subject to a notification or the submission of an application; a certificate is issued on the fact that the notification has been made or that application has been submitted and this certificate proves the right of residence until the residence card or the permanent residence card is issued.* We can talk about residence permits in the classical sense with regard to third-country nationals, but the permanent resident status of these persons is also not conditional upon a residence permit but upon a permanent residence permit specified by the Act.

Further examining the issue of the start of participation in school education of non-Hungarian children, it can also be seen that the National Public Education Act *requires not of the*

child but of the parent to have a “permit that entitles its holder to reside in Hungary” in order for a non-Hungarian child to be subject to compulsory education, with the exception of children falling within the scope of the Asylum Act. Pursuant to Section 6(1)(c) of the Free Movement Act, an EEA citizen shall be entitled to residence for more than 90 days in a timeframe of 180 days if they *have been admitted to an educational institution falling within the scope of the National Public Education Act*¹² or the National Higher Education Act for the purpose of studying (including vocational training and adult education provided that its programme is accredited). Another condition is that the students must have enough resources for themselves and their family members for the entire duration of their stay to guarantee that their residence will not be an unreasonable burden on the social care system of Hungary. It is also a condition that the student must be entitled to use the health insurance services under an insurance relationship according to the provisions of a special law, or they must be able to pay for such services themselves according to the legal provisions. Section 21 of the Third-Country Nationals Act also makes it possible, *inter alia*, for third-country nationals to be granted a residence permit for study purposes if they establish or established a student relationship with a Hungarian public education institution for full-time school education, and if they verify that they have adequate language skills for the pursuit of such studies.

By contrast, *in practice, a number of life situations may arise* when non-Hungarian children come to Hungary without parental supervision or are left without such supervision (unaccompanied minors), but in several cases a non-Hungarian child is not accompanied by their parent to Hungary because the child comes here as an exchange student or stays with Hungarian relatives.

The issue of *school records* is also related to all this. In addition to verifying the criteria, according to Section 41(4) of the National Public Education Act, the school also keeps records of the data of children (pupils), including without limitation the name, place and date of birth, sex, *nationality*, address of temporary place of residence, address of permanent place of residence and social security number of the children. *With regard to non-Hungarian citizens, the records also contain the legal grounds for their stay in the territory of Hungary and the type and number of the document entitling them to stay in the country.* Furthermore, the name, temporary place of residence, permanent place of residence and telephone number of the child’s parent or legal representative, the data relating to the student status of the child and the national evaluation and assessment data.

In conformity with the terms of the Acts within this sector, and in contrast with the terms used in Section 92(2) of the National Public Education Act in connection with the data to be registered, *with regard to non-Hungarian citizens, Section 42 of the National Public Education Act prescribes the recording of the legal grounds for their residence and the type and number of the document entitling them to stay in the country.*

In view of all this I conclude that the rules lack coherence on several levels in connection with

¹² In Hungary, student status can be established with the following public education institutions, among others: primary school, secondary school (grammar school, specialised school, vocational school), elementary level art school, special needs education institution or conductive educational institution. Pursuant to Section 60 of the National Public Education Act students may participate in school education in line with their occupational, family or other commitments, acquired knowledge and age (hereinafter “adult education”). From the year in which the student reaches the age of 17, with regard to 8-year primary schools, or in which they reach the age of 25, with regard to grammar schools and vocational schools, they may only start the next academic year in adult education, i.e. students may participate in full-time primary education until the age of 17 and in full-time secondary education until the age of 25.

requiring the “residence permit” of the parent or a residence permit as a condition of the start of the education of a non-Hungarian child in Hungary. The requirements of the National Public Education Act are not in accordance with the provisions of the cited laws of this sector, they contain provisions that are contrary to such provisions; in fact the National Public Education Act itself does not use these terms consistently. All this results in the violation of legal certainty.

3. Schools admitting non-Hungarian citizen pupils

I also examined, as an issue closely related to the fulfilment of compulsory education, which schools are obliged to admit non-Hungarian but school-age children according to the effective regulations, taking into account the freedom to choose a school. As regards the personal scope specified in the provisions of the National Public Education Act, pursuant to sections 10 and 17 of the Asylum Act, refugees and people recognised as beneficiaries of subsidiary protection shall have the same rights and obligations as Hungarian citizens. Pursuant to Section 32(2) of the Third-Country Nationals Act, permanent residents shall have the rights afforded in the Fundamental Law and other laws.

Article 12 of the EEC Regulation provides that the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions. The EC Directive lays down in its introductory provisions that the Member States shall ensure for minors to be admitted to the education system under the same conditions as the citizens of the Member States. Article 11(1)(b) of Council Directive 2003/109/EC provides that long-term residents shall also enjoy equal treatment with nationals as regards education and vocational training, including study grants in accordance with national law.

Based on all this, when non-Hungarian children fulfil compulsory education in Hungary, the provisions that determine the compulsory education of Hungarian children must be taken into account. Hungarian children have a free choice of school; however, in order to guarantee compulsory education, Section 50(6) of the National Public Education Act also specifies a school that provides mandatory admission, that is, a school may not reject the admission of children if their habitual residence is in its catchment area. Pursuant to Section 22(6) of the EMMI Decree, habitual residence means the pupil's permanent place of residence or, in the absence of this, their temporary place of residence in the catchment area of the school that provides mandatory admission to the pupil. Pursuant to Section 22(2) of the EMMI Decree, if the principal of the chosen school rejects admission in their decision, the parent shall enrol their child in the first grade of the school providing mandatory admission within five days after the decision has become final.

After this, I examined *what is currently meant under the terms “permanent place of residence” and “temporary place of residence”* on the basis of the laws in force. According to the provisions of Section 5(2) of the Records Act, the permanent place of residence of a citizen is the address at which the citizen lives. Furthermore, on the basis of Section 5(3) of the Records Act, the temporary place of residence of a citizen is the address at which the citizen lives for more than three months, without intending to leave their permanent place of residence permanently. I reviewed Section 4 of the Act which deals with the personal scope of the Act and provides that the scope of the Act applies to, including without limitation, Hungarian citizens living in the territory of Hungary, those who have been granted an immigrant or settled status and persons

recognised as refugees or beneficiaries of subsidiary protection, as well as persons falling within the scope of the Free Movement Act if they exercise their right of free movement and right of residence for a period of more than three months in the territory of Hungary. Pursuant to the provision included in Section 26(1) of the Records Act, citizens living in the territory of Hungary and falling within the scope of the Records Act shall report the address of their permanent or temporary place of residence to the district office for the purpose of registration, within three working days after moving in or moving out.

Pursuant to Section 73(1) of the Third-Country Nationals Act, third-country nationals must notify the immigration authority of their accommodation, by providing the number of their visa or residence permit. Based on the foregoing, *the temporary or permanent place of residence* of non-Hungarian children is registered by the district office according to the Records Act, and their *accommodation* that is not considered a permanent place of residence but serves the same purpose is registered by the immigration authority. All non-Hungarian children have a “place” which can be regarded as their habitual place of residence and which also determines the school that provides mandatory admission.

Based on all this, if schools refuse to admit non-Hungarian children who “live” in their catchment areas, that is, have a permanent or temporary place of residence or are accommodated in their catchment areas, in my opinion this will constitute a practice giving rise to serious concerns in terms of the Convention and the international obligations undertaken by Hungary in the field of children’s rights.

In order to fulfil the provisions of Article 28(1) of the Convention – according to which the States Parties to the Convention recognise the right of the child to education, and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory to all – the expected practice is that schools must guarantee the admission of minors based on the mere fact that the children live in their respective catchment areas. In the absence of this, the best interests and the right to education of the children concerned will be violated.

4. The obligation of foreign national children to attend school and the related costs

Pursuant to Section 92(7) of the National Public Education Act, non-Hungarian citizens who are not covered by subsections (1) to (6) of Section 92 of the National Public Education Act, shall *pay a fee for using kindergarten, school and halls of residence services and special pedagogical services* unless provided otherwise by an international treaty or a law. This fee shall not exceed the actual per capita cost of pedagogical services. The head of the public education institution may reduce or waive the fee according to the rules specified by the operator of the institution. The legislator intended to deal with some cases closely related to this in Section 185(1) of the EMMI Decree, by prescribing that if a non-Hungarian minor who lives in the territory of Hungary without a residence permit requests their admission to an educational institution, they must certify upon their admission who performs the duties relating to parental responsibility and *who provides the conditions required for their school studies.*

The organisations that responded to my questions (schools, the police, NGOs) mentioned in several cases that – for different reasons – they regularly meet non-Hungarian children who reside in Hungary but have no registered place of residence. In accordance with the above, those who do not fall within the personal scope analysed in detail are not subject to compulsory education in Hungary or, if they want to use education services, they may do so if they pay the costs of education. In order that this requirement can be met, the minor must prove who provides

the funding for their studies, upon submitting their application for admission to the school.

Based on the above-mentioned provisions, *it became necessary to review two major issues* within the framework of the comprehensive inquiry of the ombudsman. One of these topics is the *lack of compulsory education* of non-Hungarian children who do not fall within the scope of eligibility of the National Public Education Act and the *costs of their use of education services*, and the other topic is the *legal capacity* of minors.

4.1 The provisions of points (a), (b) and (c) of Article 28(1) of the Convention clearly state that the States Parties of the Convention recognise the right of the child to education, and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular, make primary education compulsory and available free to all. In addition, the states encourage the development of different forms of secondary education, including general and vocational education, and make them available and accessible to every child. Furthermore, they take measures to introduce free education and to offer financial assistance in cases of need, as well as to encourage regular school attendance and to reduce the number of drop-outs. Points 2(a) and (b) of Article 13 of the International Covenant on Economic, Social and Cultural Rights contain provisions that are almost identical to these requirements.¹³

There is a contradiction between the provisions included in the Convention and those included in Section 92(7) of the National Public Education Act. The provision of the Convention cited above provides compulsory and free education for *all* children – irrespective of their nationality and other conditions – and it prescribes similar provisions in respect of secondary education. Pursuant to the foregoing, *the statement on the provision of the conditions required for school studies* is irrelevant. *It is a requirement that every non-Hungarian child who resides in the host country legally must have access to public education.*¹⁴

With regard to all this, I conclude that the National Public Education Act fails to fully provide for compulsory education and the absence of charges for the same with regard to non-Hungarian children, as both compulsory education and its being free of charge are made dependent on the parent's residence permit valid for more than ninety days or the submission of an application for recognition, which also causes an anomaly in connection with the right to education of the child concerned.

4.2 *Another subject of my inquiry in this topic was the regulation of inviting non-Hungarian children to make a statement.* Pursuant to Section 185(1) of the EMMI Decree, if a non-Hungarian minor who lives in the territory of Hungary without a residence permit requests their admission to an educational institution, they must prove the fulfilment of several conditions upon their admission. They must make a statement to name the person who performs the duties related to parental responsibility and provides the conditions necessary for school studies.

Section 15(1) of the Private International Law Law-Decree provides that unless provided otherwise by a law, the legal capacity, the personal and property rights and the obligations of foreign nationals and stateless persons shall be subject to the same rules as those of Hungarian

¹³Pursuant to Article 13(2) of the International Covenant, States Parties recognise that, with a view to achieving the full realisation of this right, primary education shall be compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

¹⁴In connection with the EU comparison see Mária Simon: *A bevándorló gyerekek iskolai integrációja Európában.* [Integration of immigrant children in Europe] Új Pedagógia Szemle, 2005. <http://epa.oszk.hu/00000/00035/00094/2005-07-vt-Simon-Bevandoorlo.html>

nationals. Subsections (1) and (2) of Section 64 of the Private International Law Law-Decree provide that the personal law of the party shall be applicable only in respect of the legal capacity of a party in a lawsuit. Based on all this, the *Hungarian law shall be applicable* to non-Hungarian children when admitting them to school.

I reviewed *the Hungarian rules of legal capacity*. Pursuant to subsections (1) and (2) of Section 2:8 of the Civil Code any person whose competency is not limited or precluded under this Act or by a court ruling on guardianship is considered legally competent. Whosoever is competent is entitled to conclude contracts and make other legal statements. According to Sections 2:11-2:12 of the Civil Code, a minor shall be of limited capacity if he or she has reached the age of fourteen years and is not incompetent. The legal statements of a minor with limited capacity shall not be deemed valid without the consent of that minor's legal representative. According to Sections 2:13-2:14 of the Civil Code, minors under the age of fourteen years are legally incompetent; legal statements made by such minors shall be null and void and their legal representatives shall proceed on their behalf. Pursuant to Section 4:146(1) of the Civil Code, minor children are under parental custody or guardianship. Pursuant to Section 4:225(1) of the Civil Code, any organisations and persons shall notify the guardianship authority if they learn in the course of their official proceedings that a guardian has to be appointed for a minor.

I also took into consideration that pursuant to Section 22(2) of the EMMI Decree, *parents* must enrol children who reach school age in the first grade of the school chosen or the school competent on the basis of the place of residence of the child. Furthermore, if the principal of the chosen school refuses to admit the child, the parent shall enrol their child in the first grade of the school providing mandatory admission within five days after the decision has become final.

Based on all this, in my opinion, with regard to non-Hungarian nationals too, it is the parent or, in the absence of a parent, the legal representative of the child (for example, their guardian) who is entitled to submit an application for admission to school, and not the underage child themselves, whose legal statement – depending on his age – is either null and void or requires the consent of their legal representative.

If a minor without a residence permit requests their admission to the school, *it must be clarified who is the person who may proceed as his legal representative*, as it is the parent, or in the absence of a parent the legal representative, who may request the admission of the minor to school; and a statement from the parent is also required with regard to admission to secondary school, in addition to the statement of the child with limited legal capacity. If the application for admission is submitted by the minor himself, and the minor is not under parental supervision, the school must initiate the appointment of a guardian.

5. Continuing studies started abroad in Hungary; intercultural programmes

Based on the survey of KLIK, typically there is no established practice in Hungarian schools with regard to non-Hungarian children *for the admission of pupils, the assessment of their knowledge and the provision of Hungarian language education for them*. It happened that the host institution assessed the knowledge of the pupil, or made the pupil take a comprehensive test, or perhaps classified them into a grade based on a certificate issued by another Hungarian school. Sometimes social workers were involved to assess the level of knowledge of the children, after which they helped the children to catch up, but it also happened that the individual progress of the children was ensured, appropriate to their age. Several school districts reported that they assess the Hungarian language skills of the pupils and provide Hungarian language teaching on the basis of such assessment, and if necessary they help with the learning of the language through

private lessons, remedial classes and tutoring. There was a school district where the parents paid for the Hungarian private lessons, and the pupils were given a one-year deferment to acquire the knowledge required in Hungarian and history.

To my questions on the use of educational programmes in support of non-Hungarian pupils' integration into Hungarian schools, I received answers from the school districts stating that – with the exception of a few counties – the schools usually do not have such programmes.

According to subsections (9) and (10) of Section 92 of the National Public Education Act, unfinished studies commenced abroad may be continued in the Hungarian public education system, and *the school principal shall decide* on the recognition of previous studies and on the admission of the pupil. If the school principal is unable to make a decision on such recognition, he or she will obtain the opinion of the minister responsible for education or, with regard to vocational training, the minister responsible for vocational qualifications. According to Section 185(3) of the EMMI Decree, if the continuation of school studies is impeded by the lack of knowledge of the Hungarian language or a difference between the requirements of the foreign school and those of the Hungarian school, the school principal may authorise the repeating of the grade – with the parent's consent – in such a manner that the pupil will only attend remedial classes and language classes. The times of classes, the knowledge taught at such classes and the manner of assessing the knowledge acquired shall be determined by the principal.

The provisions of Section 92(8) of the National Public Education Act also serve the purpose of facilitating the continued studies of non-Hungarian children in Hungary, pursuant to which *the minister responsible for education shall introduce teaching and education programmes for the kindergarten and school education of non-Hungarian children.* The ministry responsible for public education has called my attention to the directive issued by the Ministry of Education back in 2004. The directive is about the kindergarten and school education of foreign national children and pupils on the basis of an intercultural educational system and it was issued on the basis of the authorisation included in Section 110(8) of the Public Education Act. According to the directive, if a school applies the provisions of the annex of the directive to the organisation of the education of foreign national children, it means that it implements education and teaching in accordance with the intercultural programme.

Pursuant to the provisions of the directive, the *condition* of organising the intercultural programme is that *the school must employ at least one teacher specialised in teaching Hungarian as a foreign language, who may complete the required mandatory number of hours in several schools, on the basis of a cooperation agreement.* The salary of the teacher employed for this purpose may be assigned to one school or it may be assigned to several schools, jointly. *If there is no teacher with such specialisation, a teacher qualified to teach children in the first four grades of primary school or a teacher who teaches Hungarian language and literature may also perform this teaching task, provided that they attended an accredited CPD course organised for teachers on the teaching of Hungarian as a foreign language.* If conditions are right, *travelling or part-time teachers may also be employed to teach the native language and culture of the foreign national pupils.* Pursuant to the directive, the school principal shall make a decision on the classification of the foreign national pupil into a grade on the basis of the existing school documents of the pupil and a *personal interview* conducted with the pupil, *also consulting the teacher of Hungarian as a foreign language and the form tutor.* A school that teaches in the native language of the foreign national pupils shall also be regarded as a school operating according to the intercultural programme if its educational programme is developed according to the provisions of Decree 26/1997. (VII. 10.) MKM on the issue of a directive on education in bilingual schools or Decree 32/1997. (XI. 5.) MKM on the issue of a directive on the

kindergarten education of national and ethnic minorities and a directive on the school education of national and ethnic minorities. According to the directive, foreign national pupils *may be exempted from written parts of the assessments of the subjects* if, in the opinion of the teacher of Hungarian as a foreign language, this is justified.

On the basis of the practice outlined by the responses of the school districts, and after reviewing the relevant laws and the directive issued by the ministry, it can be established that a significant number of schools do not know of the directive issued regarding the kindergarten and school education of non-Hungarian children and the professional guidelines included in the directive. Furthermore, in the absence of the personal and material conditions, currently there are only a few schools that provide special intercultural or other similar programmes for non-Hungarian pupils to ensure the continuation of their studies and facilitate their integration.

6. Compliance with compulsory education and the consequences of a failure to comply with it

The organisations I contacted mentioned in their responses that if non-Hungarian children go to school but are absent without any excuse, there are no available means to encourage the parents to comply with the rules. The parents do not receive any educational allowance, and therefore such allowance cannot be withdrawn from them. If a procedure is initiated against them, the parents can quickly and easily move to an unknown place from the area of competence of the authority. In their response, the police mentioned that it was a problem that in many cases non-Hungarian parents refer to their personal laws, that is, to the fact that their child is registered as a home-schooler with a school in their native country, but they are unable to present any certificate of this.

On the basis of these practical experiences and indications, I found it necessary to review the rules applicable to the legal consequences relating to a failure to comply with or to the violation of the requirement of compulsory education, both in respect of Hungarian children and in respect of cases where the children of Hungarian nationals attend a school abroad, from registration to the rules applicable to child welfare services, guardianship authorities, minor offence authorities and police measures.

It must be emphasised that, pursuant to subsections (1) to (3) and (7) of Section 45 of the National Public Education Act, every child is obliged to participate in institutional education and fulfil compulsory education. According to the National Public Education Act, compulsory education may be fulfilled in primary schools, secondary schools, within the framework of the Public Education Bridge Programme and in the form of skills development education. Compulsory education lasts from the age of six until the end of the academic year in which the child turns sixteen; the compulsory education of pupils with special educational needs may be extended until the end of the academic year when they turn twenty-three.

The competent district office of the government office keeps records of school-age children according to subsections (8) and (9) of Section 45 of the National Public Education Act, and it shall regularly provide data to the state institution maintenance centre and the town clerk of the local government competent on the basis of the permanent (or, in the absence of that, temporary) place of residence of the pupil; it shall also order and supervise the fulfilment of compulsory education *ex officio*. The performance of the tasks relating to the unexcused absences of school-age children also fall within the competence of the district office.

Pursuant to Section 51 of the EMMI Decree, if a pupil is absent from a lesson, any other class or a class organised by the halls of residence, they shall provide an excuse for such absence.

If the pupil's absence is not excused, it will be deemed an unexcused absence. The school must inform the parent of the first unexcused absence of a school-age pupil, and also if the unexcused absences of a *non-school-age minor* reach 10 hours. If the notification made by the school has no effect and the pupil is absent again without an excuse, the school will contact the pupil's parent, with the assistance of the child welfare service. If the unexcused absences of a pupil reach 10 lessons or other classes in an academic year, the school principal will inform the guardianship authority that is competent according to the actual place of residence of the pupil with regard to pupils, or the child welfare service with regard to school-age pupils. After such notification, the child welfare service draws up an action plan together with the school, specifying tasks in relation to the termination of the situation that endangers the pupil and gave rise to the unexcused absence, and in relation to the fulfilment of the pupil's compulsory education, as well as tasks that serve the pupil's interests.

If the number of unexcused absences reaches *30 lessons* in an academic year, the school informs the minor offence authority of this, and again informs the child welfare service, which will participate in informing the pupil's parent. In the event of any additional absences of a school-age pupil, if the number of unexcused absences reaches 50 lessons in an academic year, the school principal will immediately inform the guardianship authority that is competent according to the place of residence of the pupil.

On the basis of Section 15 of the Family Support Act, if a school-age child or a child who, after the termination of their compulsory education studies at an educational institution, is absent from compulsory lessons without an excuse, the guardianship authority will at first – based on the information received from the principal of the educational institution – call the attention of the beneficiary to *the rules on the termination of the payment of the family allowance*, after the 10th compulsory lesson missed by the pupil without an excuse in the given academic year. If, however, the number of lessons from which the pupil was absent without an excuse reach 50 in the academic year concerned, the guardianship authority will *request the suspension of the allowance with the Budapest or county government office*, within eight days after the receipt of the relevant information. Pursuant to Section 68/A(1) of the Child Protection Act, in addition to requesting the suspension of the family allowance, the guardianship authority will also order the child to be taken into care *if they are younger than 16 and are not under protection*.

A minor offence procedure may be initiated against the parent or the legal representative because of the violation of the requirement of compulsory education. According to Section 247 of the Minor Offences Act, a parent or legal representative commits a minor offence if they fail to enrol the child in school in time or if the child under their parental supervision or guardianship is absent from at least thirty compulsory school lessons and other classes in the same academic year without an excuse (Section 51(6)(b) of the EMMI Decree).

In addition, unexcused absence from school lessons and other classes may result in the *repetition of the grade*. This may happen if in an academic year the total number of excused and unexcused absences of the pupil reaches the number specified by the laws for each school type – with the exception of the duration of the pupil's status as a temporary guest pupil – and therefore the pupil's performance could not be marked during the academic year and it cannot be rated at the end of the academic year either (unless the teaching staff permits them to take a comprehensive exam).

In order to ensure the fulfilment of compulsory education, the legislator authorised the police in Section 34/A of the Police Act to take measures against pupils younger than 14 who are absent from or leave classes or events organised by the school on a school day without permission. Police officers may – after prior consultation with the educational institution – escort

to the principal of the educational institution any pupil who is younger than 14, is absent from classes or events organised by the school on a school day, is not accompanied by an adult and cannot provide a credible excuse for their absence. The following can be accepted as a credible excuse: a written certificate issued by the educational institution, a doctor, the parent or the legal representative of the child. The detailed rules of the police procedure are laid down in Order 22/2012 (XII. 21) ORFK of the National Police Headquarters.

After examining the above, I also reviewed the rules related to the fulfilment of compulsory education by Hungarian pupils abroad, since Hungarian pupils may also fulfil their compulsory education outside Hungary.

This is made possible by Section 91(1) of the National Public Education Act, according to which Hungarian citizens may study in foreign countries without having to obtain any permission and may also fulfil compulsory education in foreign educational institutions. Pursuant to Section 91(2) of the National Public Education Act, the fact that a school-age pupil fulfils compulsory education in a foreign country shall – for the purpose of keeping records of school-age children – be reported to the district office competent on the basis of the permanent (or in the absence of that, the temporary) place of residence of the pupil, or to the principal of the school if the pupil has already enrolled in a school in Hungary.

Pursuant to Section 23(8) of the EMMI Decree, the records of children and pupils admitted to the school (including home-schooled pupils) are kept by the school. School-age children who continue their studies abroad will remain on the records of the school. Furthermore, according to the provisions of subsection (1) and (7) of Section 95 of the EMMI Decree, a school register must be kept for recording the pupils admitted to the school, in which those pupils who fulfil compulsory education abroad must also be included.

It is also important to stress in connection with this that, according to Section 91(3) of the National Public Education Act, *as a general rule, the Hungarian pupil status of the pupil will be suspended for the duration of their studies abroad unless the pupil continues their studies as a home-schooler in Hungary.*

Since 1 September 2015, a similar procedure has been followed with regard to children who are older than three and *fulfil their compulsory kindergarten education abroad.* Pursuant to Section 20(2) of the EMMI Decree, the parent of a child who is obliged to attend kindergarten for four hours per day must inform the town clerk competent on the basis of the permanent (or in the absence of that, the temporary) place of residence of the child in writing if the child fulfils the compulsory kindergarten education abroad, within fifteen days after the deadline for enrolment. The parent of a child who is obliged to attend kindergarten for four hours per day and is in a legal relationship with the kindergarten must inform the town clerk competent on the basis of the permanent (or in the absence of that, the temporary) place of residence of the child in advance if, in the future, the child will fulfil their compulsory kindergarten education abroad.

In connection with the above, I would like to underline that every regulatory deficiency as a result of which the legal system fails to provide a sufficient guarantee that the parent or (in the absence of care provided by the parent) the state will ensure access to education for every child causes an anomaly in connection with children's right to education.

I found that if a Hungarian pupil fulfils their compulsory education abroad, it is sufficient to report this fact to the district office or the school principal. On the basis of this notification alone, the parent will be exempted from the fulfilment of their child's compulsory education in Hungary, without the need to actually prove the school studies of the child (e.g. by submitting a certificate of school attendance or proving the child's status as a home-schooler). However, as the respondent organisations also mentioned, the actual fulfilment of the compulsory education of

Hungarian children cannot be monitored *through this lenient procedure that is subject to notification*. Based on the facts I established, as a matter of fact, that the parents of Romanian pupils, who have the right of free movement and residence, also refer to a similar procedure *on the basis of their personal law*. This is especially problematic because, according to the well-known observations made in the course of applying the law, the available legal consequences are difficult to apply or cannot be applied efficiently at all with regard to Hungarian nationals residing abroad and non-Hungarian nationals residing in Hungary. Even if the parents are abroad legally (e.g. they work), the fulfilment of the compulsory education of their children will be invisible to the authorities of their native country; as a result, the authorities are unable to comply with their objective obligation to protect the fundamental rights.

Based on all this, I conclude that the legal situation that came into existence as a result of the effective regulations causes an anomaly in connection with the right to education of non-Hungarian children residing in Hungary and Hungarian children residing abroad, because the procedure that only requires a simple notification renders the right meaningless and makes its enforcement impossible.

7. The compulsory education of non-Hungarian children and child protection

The failure to fulfil compulsory education is closely related to the enforcement of children's right to care and protection: if a child is permanently absent from school and education, it will seriously impede their development and have a negative effect on his future. Such children are in danger, according to Hungarian legal terminology. "Endangerment" is defined in Section 5(n) of the Child Protection Act. It is considered endangerment if as a result of the behaviour or omission of a child or another person, or as a result of a circumstance, a situation occurs that hinders or prevents the physical, mental, emotional or moral development of the child.

Section 17(1) of the Child Protection Act defines the *task performers* related to the child protection system; they are commonly known as the *members of the child protection warning system*.

The Child Protection Act mentions as members of the warning system, for example, health care service providers, public education institutions and the police. For the purpose of preventing and eliminating the endangerment of children, the members of the warning system are *obliged to issue warnings and to cooperate*. The members of the warning system must warn the child welfare service in the event that a child is endangered, and they must initiate an official procedure if they observe child abuse, serious neglect or any other serious threats to the child or a serious danger caused by the child himself. Pursuant to Section 17(2) of the Child Protection Act, any citizen and any social organisation representing the interests of children may issue a warning or initiate a procedure in the event of the endangerment of a child.

The scope of the Child Protection Act applies to children, young adults and their parents who are Hungarian citizens residing in the territory of Hungary, and, unless otherwise provided by an international treaty, to persons settled in Hungary who are immigrants, admitted persons, recognised as refugees, persons subject to subsidiary protection or stateless persons. The scope of the Act also applies to persons entitled to free movement and residence according to the Free Movement Act if, at the time of applying for support, they exercise their right of free movement and their right of residence over three months in Hungary in accordance with the provisions of the Free Movement Act and have a registered place of residence in Hungary in accordance with the Act on the personal data and address records of citizens. In addition to this, pursuant to Section 4(1) of the Child Protection Act, the following persons also fall within the scope of the

Act: a foreign child who has not reached the age of 18, and who submitted an application for asylum under the Asylum Act and entered the territory of Hungary without being accompanied by an adult responsible for their supervision on the basis of a legal regulation or custom, or remained without supervision following entry, as long as they are not transferred under the supervision of such a person, provided that the refugee authority has established that the child concerned is a minor.

According to Section 4(3) of the Child Protection Act, the Act must also be complied with in relation to the protection of a non-Hungarian citizen child staying in Hungary if the failure to provide temporary placement for the child, the failure to order the supervision of the upbringing of the child or the failure to appoint a guardian would put the child in danger or cause irreversible damage.

It follows from the foregoing that official measures may only be taken to protect the rights of non-Hungarian children who do not fall within the scope of the Child Protection Act if the failure to take such measures would result in the endangerment of the child or irreversible damage.

Section 4(1) of the Child Protection Act specifies the children who fall within the scope of the Act. *According to the data and information available to me, mainly in the southern counties, the child welfare services provide child welfare basic services to families that are raising children and do not have the right of free movement and residence or a registered address, provided that the child welfare service finds out that they live here and the issue of the endangerment of children arises, even if temporary placement is not necessary in their case. If the child welfare service providers or the guardianship authorities learn that there is a child living in Hungary habitually who is in danger, and their endangerment is attributable to a failure to fulfil compulsory education, the service providers and the authorities will take measures to protect the child in accordance with the law. However, based on the information available to me, the cases I reviewed and the practice, unsuccessful measures are not caused by any failure on behalf of the authorities acting in these cases; as such, no anomalies can be found in connection with the fundamental rights in this respect.*

Pursuant to Section 39(1) of the Child Protection Act, a child protection service is a special personal and social service that protects the interests of children, and facilitates the physical and mental health of children, their growing up in a family, the prevention of the endangerment of children, the termination of any endangerment already existing, and the replacement with their family of any children removed from their family, using the methods and resources of social work.

Section 39(2) of the Child Protection Act specifies the *tasks within the child welfare service*, for the purpose of promoting the physical and mental health of the child and their upbringing in a family. These tasks include the provision of information on children's rights and on allowances ensuring the development of children, as well as assistance with accessing allowances and the organisation of recreational programmes. Furthermore, points (a) and (b) of Section 39(3) of the Child Protection Act also provide that, among other things, it is the duty of the child welfare service – for the purpose of preventing the endangerment of children – to maintain a system for detecting endangerment and issuing the appropriate warnings, to promote the participation of non-governmental organisations and private individuals in the prevention system, to reveal the causes of endangerment and to draft proposals on possible solutions.

According to Section 14(1) of the NM Decree, the child welfare service shall maintain a *detecting and warning system* that makes it possible to reveal the causes that usually endanger children, as well as to recognise the endangerment of children in time. Within this framework, the

child welfare service monitors the living conditions and social situation of children living in town, their need for child welfare and other social services, and whether their situation requires the intervention of the child welfare service or another authority. On the basis of Section 14/B of the NM Decree, the child welfare service provides support to children attending education institutions, the families of such children and the teachers of the educational institutions, in the framework of social work performed at schools.

According to the amendment of the Child Protection Act entering into force on 1 January 2016, child welfare services may be provided within the framework of the same service provider that provides family support, i.e. the child welfare service. The child welfare service performs the child welfare service tasks specified in subsections (1) and (2) of Section 32 of the Child Protection Act, as well as the family support tasks specified in Section 64(4) of the Social Benefits Act. The child welfare service is operated by the local government and it performs organisational, service and care tasks. Within its scope of activities, in addition to the duties included in Section 39 of the Child Protection Act and Section 64(4) of the Social Benefits Act, pursuant to points (a), (b) and (e) of Section 40(2) of the Child Protection Act, it must continuously monitor the social situation and the endangerment of children living in the town concerned; it shall also listen to the complaints of the children and take the necessary measures to remedy such complaints, and it shall support the performance of the child protection duties of the educational institutions.

Based on the provisions of Section 40/A(1) of the Child Protection Act, district towns must maintain family and child welfare centres (hereinafter: child welfare centre) from 1 January 2016. In addition to the general service tasks of the child welfare service, as described in Sections 39 and 40(2) of the Child Protection Act and Section 64(4) of the Social Benefits Act, the child welfare centre also provides special individual and group services and programmes, tailored to the needs and demands of the children. Within this framework, the centre provides the following: social work on housing estates, an emergency child protection service and warning system, legal advice, psychological counseling, family consultation, family therapy and family decision-making conferences. Pursuant to Section 40/A(2) of the Child Protection Act, the child welfare centre performs the activities aimed at the protection of children and relating to the official measures that fall within the scope of child protection care.

Child protection services must be organised in such a manner that, if necessary, they can be extended to all children living in the town or area concerned. Pursuant to subsections (1) and (5) of the NM Decree, as part of its organisational tasks, the child welfare service organises recreational programmes and the cooperation of the persons and the institutions carrying out child protection tasks. According to Section 12(1) of the NM Decree, the recreational programmes organised for children must be aimed at mitigating the detrimental effects of problems and deficiencies of their upbringing in their families, or they must be programmes which would cause undue hardship for those parents who are in a poor social situation to organise. Subsection (2) of the NM Decree authorises the child welfare service to initiate that public education institutions, social and cultural institutions dealing with young people and NGOs organise programmes serving the above-mentioned purposes. On the basis of Section 12(3) of the NM Decree, in order to facilitate the participation of children, the child welfare service keeps records of the organisations that are available in town and provide recreational programmes, and it invites them to provide information about their programmes, of which it informs the children, the parents (legal representatives) and those in charge of child and youth protection at the schools. According to Section 13 of the NM Decree, when participating in the administration of official matters, the child welfare service helps the children and the parents to deal with their affairs effectively and it

shall inform the children and the parents of the available legal representation.

Based on the above, the children who are subject to the Child Protection Act, and their families, are entitled to make full use of the above-mentioned services of the child welfare services.

In my opinion, the principle of procedures serving the best interests of the child (declared in Article 3 of the Convention) can only be enforced in full if the children living in Hungary and their families – irrespective of their nationality and the legal grounds for their residence in Hungary – may use some of the services of the child welfare services that support the upbringing of children in their own families and are aimed at preventing the endangerment of children.

In particular, such services are can be the following: effective cooperation within the child protection warning system in order to recognise the endangerment of children in time; monitoring the social situation of children; listening to the complaints of children and taking the necessary measures to remedy the same; legal advice; help and cooperation in dealing with official matters.

I conclude that, as their access to the child welfare services is not guaranteed, there is an anomaly in connection with the right to care and protection of non-Hungarian children temporarily residing in Hungary, that there is a direct danger of the violation of this right, and the principle of procedures serving the best interests of the child may also be violated.

I must point out that the most vulnerable of the non-Hungarian children residing in Hungary, who do not speak Hungarian or only have limited knowledge of it and who constitute a group that is already vulnerable, are those children – excluding unaccompanied minors – whose or whose parents' legal status is unsettled and who live in Hungary illegally or only in part legally. There is no doubt that in many cases the child welfare service providers, the authorities and the police are unable to follow their movements or residence, and therefore their compulsory education and their access to education – as well as to other basic public services – becomes impossible in practice.

This, however, does not mean that the state and government agencies are not required to take all measures in relation to the adoption of laws (clear rules and consequences) and the application of the law (consistency; provision of extensive foreign language information; special assistance and treatment) in order to protect the fundamental rights and best interests of these children, through which they would not disappear completely and become invisible in Hungary.

The measures I have taken

In order to eliminate the anomalies in relation to fundamental rights that I have revealed in my comprehensive report, and to prevent the possibility of their occurrence in the future,

- 1) pursuant to Section 37 of the ACFR, I hereby request *the Minister of Human Capacities* to
 - a) initiate the appropriate amendment of the provision included in Section 92(5) of the National Public Education Act on the start of compulsory education with regard to non-Hungarian children, regarding the residence permit and the fact that the start of the compulsory education of the child is dependent on the residence permit of the parent, in order to harmonise this provision with the criteria laid down in the Free Movement Act and the Third-Country Nationals Act;
 - b) review the rules applicable to the compulsory education of the children of non-Hungarian nationals who have the right of free movement in Hungary and who apparently exercise

- their right of residence for a period of a maximum of three months but in fact come to Hungary to work, taking the right of children to education into account;
- c) review and, based on that review, consider the amendment of the provision included in Section 185(1) of the EMMI Decree as regards the statements of non-Hungarian minors who live in the territory of Hungary without a residence permit, taking the findings of my report into consideration;
- 2) pursuant to Section 31(1) of the ACFR I hereby request *the Minister of Human Capacities* to
- a) consider providing access to education free of charge for non-Hungarian school-age children living in Hungary, even without determining special legal conditions for this, and to create guarantees relating to the verification of cases where pupils fulfil compulsory education abroad;
- b) initiate the development of methodological guidelines for the child welfare services, through which the performance of the tasks relating to the care provided to non-Hungarian children and their families may be supported effectively; furthermore, the services that are available to children outside the scope of the Child Protection Act and their families could be specified by name;
- c) examine the possibility of establishing a close professional cooperation mechanism and a joint programme with the partner ministries and educational authorities of neighbouring countries – in particular with Romania and Austria – through which the efficiency of the information flow in connection with the fulfilment of compulsory education may be further improved;
- d) review if the professional directive issued by the Ministry of Education in 2004 needs to be updated in view of the changes that occurred in Hungarian and EU law in the past decade and the latest methods, experiences and good practices, as well as the closing remarks on the right to education of the UN Committee on the Rights of the Child.
- 3) based on Section 32(1) of the ACFR, I request *the president of the Klebelsberg Institution Maintenance Centre* to
- a) take the required measures in order that the educational institutions maintained by the Centre admit the non-Hungarian children living in their respective catchment areas consistently, that is, in all cases;
- b) ensure that the schools familiarise themselves with the directive issued on the kindergarten and school education of non-Hungarian children and that, if necessary, the operator provides the personal and material conditions required for non-Hungarian pupils to catch up and integrate.

Budapest, December 2015

László Székely

Annex
The number of non-Hungarian pupils and dual citizen pupils in public education institutions in the 2014/2015 academic year¹⁵

country	kindergarten	primary school	vocational school	specialised vocational school	grammar school	specialised school	total
Romania	556	1,550	129	10	493	420	3,158
Germany	215	525	11		361	43	1,155
China	307	537	7		203	60	1,114
Slovakia	142	234	36	6	200	255	873
USA	161	486	2	1	193	22	865
Serbia	57	208	27	3	344	139	778
Ukraine	47	267	40		109	176	639
Great Britain	178	289			83	3	553
Vietnam	128	292			101	29	550
Italy	93	245	2		83	16	439
France	112	235			80	9	436
Austria	47	125	2		77	20	271
Russia	65	107	4		48	15	239
Canada	45	110			43	5	203
The Netherlands	35	117	4		36	10	202
Syria	50	101	4		23	6	184
Afghanistan	12	86	30	1	29	16	174
Turkey	42	82	1		32	14	171
Japan	35	99			18	5	157
Mongolia	29	50	5		18	23	125
Israel	35	54	1		28	3	121
Croatia	17	40	2		30	10	99
Kosovo	25	60	3		7	2	97
Poland	36	43			10	8	97
Spain	24	51			16	2	93
Switzerland	17	58			14	3	92
Belgium	21	47	2		19	1	90
Bulgaria	11	36	1		25	6	79
Korea	17	36			19	4	76
Slovenia	6	62			6	2	76
Greece	15	37	1	1	18		72
Egypt	22	36			9	3	70
Sweden	13	39			10	4	66
Ireland	35	22			6	1	64
Australia	12	27			15	2	56
Albania	15	29	1		7		52
India	33	18				1	52

¹⁵The table shows the number of pupils studying in Hungary from countries from which more than 50 persons were studying in Hungary in the academic year (a total number of 13,638 pupils). In addition to this, another 1,014 children from another 96 countries were also studying in Hungary.