

Summary
of Case Report AJB-373/2015 on
OPCAT Visit to the Reménysugár (“Ray of Hope”) Children’s Home of Debrecen
(January 29, 2015)

The National Preventive Mechanism (NPM) of the Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (OPCAT) visited the Reménysugár (“Ray of Hope”) Children’s Home of Debrecen on January 29, 2015. During the visit, special attention was paid to the verification of the implementation of the provisions of the United Nations Convention on the Rights of the Child (CRC) and the related directives. In the course of the inspection, the NPM examined the range of the children’s home's inhabitants and the practices of determining their placement, the related issues, the material conditions provided by the institution (equipment, catering), the institution's daily regime (education, joint activities), mental and regular healthcare, the composition of the institution's staff, disciplinary and security issues, the provision of legal representation and the appropriate handling of complaints.

At the time of the visit, there were 42 children, their ages ranging between one month and 16 years, in the special care unit of the Reménysugár Children’s Home of Debrecen, operated by the General Directorate of Social Affairs and Child Protection. Based on the referral decisions of the guardian authority, it was established that, in several cases, it was the parents' financial situation that had played a decisive role in the child's referral to the institution. In the case of at least five children, it was exclusively their age that had served as the special need requiring their institutionalization, and in five other cases there were no data that would have excluded the children's placement with foster parents. In 14 cases, the children's placement in the institution could not be justified even with the need to keep siblings together. Instead of a maternal bond with a primary caretaker, each child had to maintain core relationships with five, ten including the nights, caretakers. There were 12 children, as a maximum, taken care of in each of the foster homes, whose ages (from five year olds to those in aftercare) and needs (special and/or extra) varied significantly. In some cases older children behaved aggressively vis-à-vis the younger ones; such cases were not always handled properly by the staff.

The NPM made numerous findings in connection with the children's institutionalization and the determination of their placement for care. First, the NPM established that *taking a child from his/her parent exclusively for financial reasons may fall within the scope of inhuman or degrading treatment in accordance with the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), violates Article 9 of the CRC, and causes an impropriety in connection with Article III, Paragraph (1) and Article XVI, Paragraph (1) of the Fundamental Law of Hungary.*

Moreover, the NPM pointed out that, due to the nature of institutional care, children growing up in institutions do not have the opportunity to develop a secure attachment pattern to a primary caretaker. *Therefore, in the case of children under three, such type of placement falls within the scope of inhuman treatment under the CAT and causes an impropriety in connection with Article III, Paragraph (1) and Article XVI, Paragraph (1) of the Fundamental Law.*

The NPM also found that *in Hungary children with disabilities are put into institutional rather than family-oriented care. This placement practice is based on and made possible by the prevailing legal regulations. Both the legal background and the established*

practice violates Articles 2 and 23 of the CRC and Articles 5 and 7 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and causes an impropriety in connection with Article XVI, Paragraph (1), and Article XV, Paragraphs (2) and (5) of the Fundamental Law.

The proportion of Roma children was estimated on the basis of their family names and personal appearances, their ethnic origin had not been registered. However, interviews showed that multiple siblings were considered as Roma by the staff. Although the institution's atmosphere, in general, did not indicate any discrimination against Roma children, the NPM concluded that *ethnic discrimination manifesting itself in the form of verbal discrimination also leads to prejudicial thinking and to the recurrence of unjust life situations; therefore, it may not be tolerated.*

The majority of children in the special care unit attended kindergarten or school outside the institution; their systematic development and engagement were ensured, as well. By contrast, recreational activities offered for children living in foster homes were occasional; this issue was basically not resolved. That is why the NPM called attention to the fact that although the aimlessness of everyday life has an adverse effect on everyone, it is particularly harmful to children and young people. *The lack of joint activities constituted a violation of Article 31 of the CRC and a risk of impropriety in connection with Article XVI, Paragraph (1) of the Fundamental Law.*

Disciplinary practices in general did not constitute torture and other cruel, inhuman or degrading punishment. There were some cases, however, when children were ordered to stand against the wall, *which, under certain circumstances, is considered by the European Court of Human Rights as a form of degrading treatment.*

At the time of the visit, there were 13 children on the run. Although the issue of prostitution was raised only once in this context during the visit, it is worth mentioning due to the extremely high latency of crimes in connection with child prostitution and sexual exploitation, and the particular vulnerability of children in institutional care. The actors of the child protection system are obligated to initiate official proceedings if they learn, inter alia, of child abuse or any other factor presenting grave danger. The sexual exploitation of a child is undoubtedly such a factor. *Therefore, if those working in the professional care system fail to give the appropriate notice, it may qualify as cruel or inhuman treatment under the CAT and cause an impropriety in connection with the prohibition of inhuman treatment, stipulated in Article III, Paragraph (1), and the right of the child to protection and care, stipulated in Article XVI, Paragraph (1) of the Fundamental Law.* Although the prevailing Hungarian penal law criminalizes any and all activities related to sexual exploitation of the child, there are still no awareness-raising campaigns, national strategy, professional training programs and preventive measures implemented in this field in Hungary.

The material conditions of the children's placement, the institution's personnel and the provided medical care, a few exceptions notwithstanding, were in general in accordance with the relevant legal provisions and the standards adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). This was also true as far as the existence and the accessibility of the institution's documentation (professional program, in-house rules) and the availability of the children's rights representative were concerned. In connection with these factors, the NPM pointed out some issues giving reason for concern. *The need for psychological support would justify an increase in the number of psychologists. The promotion of personal hygiene among the boys and their sexual education would give grounds for the employment of male staff members. It would be important to provide continuous training, stress management and burn-out prevention to staff members.*

The NPM indicated as a major issue that only secondary prevention of alcohol and drug abuse were present in the institution: *there were no primary prevention programs implemented in the institution in order to reduce drug abuse.*

Last but not least, in connection with the "absence of complaints" irrespective of the (in principle) functioning forums for complaints, the NPM established that it could also indicate that *the children were not aware of the existence of those forums, and that it was burdensome and complicated, and possibly not encouraged, to file a formal complaint.*

In connection with the visit's conclusions, the NPM requested, in several respects, the head and the maintainer of the institution to take the appropriate measures to end improprieties. Furthermore, the NPM requested the *Minister of Human Resources* to enforce the ban amongst child protection authorities on taking children away from their families for financial reasons, to take the necessary measures in order to prevent children under three from being put into institutional care only because of their age, and to ensure, in the long run, the complete abolition of the institutionalization of children under twelve years of age. The NPM also requested the *Minister of the Interior* to work out a crime prevention and victim support strategy in connection with the sexual exploitation of children and child prostitution, and to prepare awareness-raising campaigns and training materials for the professionals concerned.

In addition, the NPM proposed to the *Minister of Human Resources* to draft a revision of the Child Protection Act of Hungary, ascertaining that the general rule of placing children under twelve years of age with foster parents also applies to chronically ill and severely disabled children. The NPM also recommended to the *Minister of the Interior* to initiate the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.