

**MOVING CHILDREN TO FOSTER CARE ON THE BASIS OF OR AS A RESULT OF
POOR FINANCIAL STATUS AND UNSATISFACTORY HABITAT**

A SHARED RESPONSIBILITY OF FAMILY AND STATE

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HR MA THESIS

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Executive summary

The thesis looks at the Hungarian and German child protection system, and attempts to analyze recent changes in these systems, the tendency of shifting towards a child protection oriented, investigatory, punitive model of child protection and the significant rise in the proportion of children taken into state care. The aim of this comparison is to identify factors within a child protection system that affect the extent to which the system is removing children born to families of low socioeconomic status and marginalized ethnic group.

Recent cuts in the welfare system of the two countries have increased levels of child poverty, thus, the number of children seen as needing “saving” has increased. Vague definitions of child neglect, the high discretionary power of individual decision-makers, professionals’ awareness of their criminal liability and the need to function within public spotlight all enhance the phenomenon of class- and race disparity.

On the basis of Lipsky’s model of street level bureaucrats, actions of individual professionals have an utmost importance in the implementation of public policies. The overwhelmed state of these individuals results in distortions of the policy and decisions built on stereotypes. For these reasons the support, continuous education and supervision of these individuals is indispensable for the implementation of any anti-discrimination policy.

Introduction

The paper examines the international and domestic background of child protection systems in Hungary and Germany, with a special focus on the disproportionate out-of-home placement of children born to poor families and families belonging to ethnic minorities. My reason for choosing Germany and Hungary was to compare two European countries, one of them with a significantly higher GDP per capita and higher levels of social expenditures than the other one (the GDP per capita was 41,716 USD in Germany and 22,960 USD in Hungary in 2014¹; the German state spent 25.8% of its GDP on social expenditures, opposed to the Hungarian state's spending of 22.1%²). Furthermore, poverty and child poverty rates are significantly higher in Hungary than Germany. The poverty rate (the ratio of those persons who have an income less than 50% of the median income in the given country) in Germany was 8.4%, with a child poverty rate of 7.4%, while these numbers were 10.3 and 16.5 regarding Hungary in 2012³.

Nevertheless the current Hungarian and German systems of child protection have some common features – both have a high level of out-of-home placements (in Germany out of 1000 children 9.27 lived in state care in 2013, while in Hungary the number was 10.79 in the same year)⁴. Furthermore the state care population has been steadily rising in both of these countries for the last 10-15 years after a period of decline. While there is hardly any official statistics available regarding the ethnic and socioeconomic background of the children's

¹ OECD, Level of GDP per Capita and Productivity (2015) [database].

² OECD, Social expenditures (2014) [database].

³ OECD, Child poverty rates (2012) [database].

⁴ See Table 1. and Table 5.

family of origin, some statistics show that in both systems children coming from poor and ethnic minority backgrounds are overrepresented.

As a recent report prepared by the Council of Europe's (hereinafter CoE) Committee on Social Affairs, Health and Sustainable Development (hereinafter CSA) states, child protection professionals from all Member States noted that children coming from poor families are overrepresented in the state care system, and almost all of them also agreed that there is a disproportion in their system regarding ethnic minorities or immigrants. The report complains that even though the system's disparity seems to be a universal problem of child protection throughout the CoE, hardly any states collect official statistics regarding this matter⁵.

This finding might suggest that within the current social context of Western states the phenomenon of class- and race disparity in child protection systems is unavoidable – child protection systems tend to be an arm of structural oppression against low-income and ethnic minority families. Class and race disparity of these systems is entrenched in the history of child protection, law, open and subtle classism, racism and social exclusion. For this reason, child protection systems can become a genuine means of support rather than oppression only through a structural change in the system's relation to clients, the legal background, the enforceability of social rights and a reflection to history, and a complete change in the way modern states treat marginalized groups.

Nevertheless the aim of the paper is not to draw up an idealistic situation, but to find factors within the current systems of child protection that mitigate or amplify the phenomenon of disparity in order to be able to word recommendations for a more just system,

⁵ Committee on Social Affairs, Health and Sustainable Development (Council of Europe) and Ms Borozova (Special Rapporteur) (2015) *Social services in Europe: legislation and practice of the removal of children from their families in Council of Europe member States (provisional version)*, para. 4.

which takes into account the best interest of every individual child as much as possible, and reduces class and race biases of the system.

The “best interest of the child” is declared as a guiding principle in most international and domestic legal texts dealing with children’s rights, and can be accepted as an uncontroversial principle. The meaning of this principle is much harder to grasp in individual cases. Child protection is a controversial area since the child’s right to safety from abuse and neglect and a child’s right to material well-being oftentimes opposes her/his right to stay within the family and to maintain her/his emotional relations.

Out-of-home placement is necessarily a traumatic event, but in some situations – like in cases when a child is emotionally, physically and sexually abused – it is no doubt an important step to preserve the child’s safety and well-being. In some other cases the effect of the placement is much more questionable. In the first chapter I discuss the literature on the effects of out-of-home placements, in order to see whether removing children from “neglecting” families is beneficial for the children or not. Studies using large, matched samples and longitudinal studies can disentangle factors such as previous maltreatment, previous experience of material hardships and the effect of out-of-home placement. These studies show that removing children from maltreating parents is either neutral⁶, or disadvantageous for the children’s psychological and educational well-being⁷.

In the second chapter I look at the international and domestic legal background of child protection, with an emphasis on the European Court of Human Rights’ (hereinafter ECHR) case-law. The domestic constitutional background gives a glance on the state’s official approach towards social inequality and children’s rights. This picture is especially vivid

⁶ Lawrence M. Berger et al., *Estimating the “Impact” of Out-of-Home Placement on Child Well-Being: Approaching the Problem of Selection Bias*, 80 Child Development 1856 (2009), p. 1871.

⁷ CATHERINE R. LAWRENCE et al., *The Impact of Foster Care on Development*, 18 Development and Psychopathology 57 (2006).

regarding the Hungarian Basic Law and the Hungarian Cardinal Law on the Protection of Families, because these texts are very rich in symbolic, generalized descriptions of attitudes.

In the third chapter I introduce some theoretical models that help understanding child protection systems and the tensions within these systems. First, I describe Packer's and Griffith's models of juvenile justice and compare these models to child protection systems. The comparison is made possible by several parallel features of criminal and child protection law, such as the class- and race disparity of the defendants/parents; the fact that in both systems the state is conducting an official inquiry into the case, placing the state and the defendants in opposition; and that the proceedings and the condemnatory decision have a strong stigmatizing effect. Controversies in the juvenile justice systems – e.g. the questions regarding the high discretionary powers of decision-makers – are also questions to be posed regarding the child protection system. Furthermore, differences between the juvenile justice models can be traced back to underlying ideologies on personal responsibility for one's circumstances and on personal responsibility for one's actions. These questions of ethics are important to understand whether a system of child protection regards the opinions of parents and children as valid, and whether it punishes people for their circumstances.

The second theoretical framework described in the thesis is the differentiation between family service, child protection and child service oriented systems of child protection. After a short summary of the theoretical concept, I analyze the German and the Hungarian system's shift towards a child protection orientation in the last decade. I argue that these orientations are not only applicable for the description of domestic systems, but they can also describe attitudes of individual professionals working in the field, and even single professional-client relationships.

Child protection professionals necessarily have a power of discretion regarding how they treat cases, and what decisions they make. Even though this discretionary power “invites

racial bias”⁸, it is neither possible nor desirable to decrease this power completely. On the basis of the theory of street-level bureaucracy I draw up recommendations for the mitigation of this contradiction.

The thesis ends with a concluding chapter, summarizing the line of thought followed throughout the study, and drawing up recommendations for the child protection system of Hungary and Germany.

The main limitation on comparative research of child protection systems is the lack of data. Countries can hardly be compared on the basis of official data as the methodology of collecting them is very diverse. Furthermore, most countries do not collect data on the composition of the state care population regarding the children’s socioeconomic and ethnic background. There are hardly any studies concerned with this topic either in Hungary or in Germany. For this reason I had to heavily rely on literature written on child protection in the US and UK. As these countries have a very different history and approach to child protection than Hungary and Germany, the applicability of this literature is limited. (It is worth to note that the collection of detailed data on children’s ethnic background is due to the same difference in history and approach.)

The requirements for writing the thesis called for a comparison between two countries on the basis of primary and secondary literature – an approach alien from my previous educational background as a psychologist. While researching the literature and the case-law, I drew up possible areas for further research. In the concluding chapter I describe some of these directions.

⁸ Roberts, D. *Shattered Bonds* (2002), p. 55.

Chapter 1 – Child maltreatment, poverty, out-of home placement, race and child development

1.1 The effects of child maltreatment and foster placement on children's well-being

The aim of foster placement is to secure the physical and emotional safety of maltreated children and to reduce the effects of earlier child maltreatment. Many studies comparing foster children to the general population presume that the difference in the probability of behavioral and psychological problems, learning difficulties and criminal activity is a result of the child's maltreatment in the biological family. The possible effect of the trauma of foster placement is oftentimes not mentioned⁹.

Interestingly, most studies that categorize children in foster care according to the reasons for their entry into the system do not differentiate either between child abuse and child neglect, or between child neglect related or not related to poverty¹⁰. This approach to the subject does not make it possible to look at the effects of unjustified out-of-home placements.

Can the trauma of out-of-home placement be a cause for a person's psychological difficulties later on? Those researchers, who answer with a yes, generally rely on attachment theory. Attachment theory relies on the principle finding that human children need more than physical safety and nutrition to develop in a harmonic way; the psychological and social needs of the human children are just as important. Attachment theory was inspired by two

⁹ Leslie D. Leve et al., *Practitioner Review: Children in Foster Care - Vulnerabilities and Evidence-Based Interventions that Promote Resilience Processes*, 53 *Journal of Child Psychology and Psychiatry* 1197 (Wiley-Blackwell 2012), p. 1197.

¹⁰ J.P. Ryan, *Substitute Care in Child Welfare and the Risk of Arrest: Does the Reason for Placement Matter?*, 17 *Child Maltreatment* 164 (SAGE Publications 2012), p. 166.

main sources: first, by observations of children deprived of a relation with a primary caregiver¹¹, second, results of experiments on animals, especially Harlow's experiments.

The early theory of Bowlby supposed that the attachment of a human child to her/his mother is similar to the imprinting described by Konrad Lorenz in the case of young geese. Later research rejected the idea that human attachment would be as inflexible as the imprinting of birds¹².

Classical studies on institutionalized children living in big residential institutions pointed out that the social deprivation these children suffer results in high chances of psychological and behavioral problems in later life¹³. Later studies suggest that it might rather be the lack of a caregiver, than the loss of the biological parent itself that results in higher odds of psychological problems for adults who grew up in foster care.

Zeanah et. al. compared the attachment patterns of children growing up in institutionalized and community foster care in Romania, and found that the community setting did not have the same detrimental effect as the institutionalized setting¹⁴.

Harris and Bifulco found that adults who lost their mother in the course of their childhood (either due to the death of the mother or due to out-of-home placement) had higher rates of depression than adults who had not experienced this trauma. According to their findings, those persons who lost their mother at an early age had elevated rates of depression even in comparison to those persons who lost their mother between the age of 11 and 17. When Harris and Bifulco looked at the surrogate parent of these persons, they found that it was not

¹¹ R.A. Spitz, *'Hospitalism: An Inquiry into the Genesis of Psychiatric Conditions in Early Childhood*, 1 The Psychoanalytic Study of the Child 53 (1945), p. 54.

¹² Michael Rutter, *Clinical Implications of Attachment Concepts: Retrospect and Prospect* *, 36 Journal of Child Psychology and Psychiatry 549 (Wiley-Blackwell 1995), p. 551.

¹³ Carlson, M. and Earls, *Psychological and Neuroendocrinological Sequelae of Early Social Deprivation in Institutionalized Children in Romania*, 807 Annals of the New York Academy of Sciences 419 (Wiley-Blackwell 1997), p. 426.

¹⁴ Charles H. Zeanah et al., *Attachment in Institutionalized and Community Children in Romania*, 76 Child Development 1015 (Wiley-Blackwell 2005), p. 1025.

the loss of the mother itself, but rather the lack of a caregiver with whom one can maintain an intimate relationship that had a high connection to depression in adult life¹⁵.

A stable finding of the literature on the issue of foster placement is that children growing up in foster families are less at risk of psychological and behavioral problems than children growing up in institutionalized settings¹⁶, although some studies suggest that even a children's home can provide the necessary social caregiver function to children if older and younger children are raised together¹⁷. Another quite consequent finding of the literature on the effects of foster placement is that the stability of the placement correlates with children's well-being, even though the causal relation between these two variables is not clear – children with psychological problems have a hard time to integrate well into a foster family, and the foster family faces specific problems regarding these children, which might explain the high rates of the foster placement's frequent interruption¹⁸.

The primary challenge facing research on the effects of out-of-home placement is the fact that children in foster care are disproportionately affected by factors such as poverty, experience of abuse or neglect, prenatal and natal complications, low birth weight, disability, and their parents are disproportionately affected by issues such as unemployment, drug abuse and mental health issues. For this reason the mere finding that children in foster care or leaving foster care have relatively high chance for psychological, learning and behavioral difficulties¹⁹ and involvement in criminal activity²⁰ does not explain what causal role foster

¹⁵ Harris Tirril and Antonia Bifulco, *Loss of Parent in Childhood, Attachment Style, and Depression in Adulthood*, in Peter Marris, *Attachment Across the Life Cycle* (C. M. Parkes et al. eds., Routledge 2002), p 25.

¹⁶ Berger et al., *Estimating the "Impact"...*, p. 1860.

¹⁷ Martin Wolins, *Young Children in Institutions: Some Additional Evidence.*, 2 *Developmental Psychology* 99 (1970), p. 108.

¹⁸ Berger et al., *Estimating the "Impact"...*, p. 1860.

¹⁹ Leslie D. Leve et al., *Practitioner Review*, p. 1201.

²⁰ Goodkind S. Goodkind et al., *From Child Welfare to Juvenile Justice: Race, Gender, and System Experiences*, *Youth Violence and Juvenile Justice*(SAGE Publications 2012), p. 260.

placement has in these regards. Does out-of-home placement reduce, increase or maintain the detrimental effects of previous poverty, social exclusion and child maltreatment?

The disentanglement of these factors is possible through statistical analysis that looks at mediating effects of the mentioned factors. Such a statistical analysis requires a very large sample size. Another possibility is to conduct longitudinal studies with smaller samples.

Berger et. al. conducted a study on foster children and children who were in contact with child welfare agencies, but had not been removed from the family. They found a significant difference in the odds of psychological and behavioral problems (but not cognitive functioning) between the two groups. According to their hypothesis a great part of this difference is explained by the selection criteria of those children who are placed into foster care.

When they compared the two groups with matched samples, and ruled out effects of several factors (such as gender, race, family's poverty, child maltreatment indicators), they found that foster placement has no effect for the well-being of children²¹. Looking from different perspectives findings of this study can be interpreted in different ways. The researchers concluded that „placement does not appear to help or harm children”, and since „out-of-home placement does little to positively influence children's development, CPS agencies should ensure that decisions to remove children from home continue to be driven solely by concerns for child safety.”²²

Fantuzzo and Perlman conducted a study on 11.000 children, all of whom were second grade students. They found that even after controlling for demographic indicators and birth risk, children placed in foster care had worse cognitive skills and educational outcomes than children who were living with their family. When the researchers controlled for previous

²¹ Berger et al., *Estimating the “Impact”...*, p. 1871.

²² Berger et al., *Estimating the “Impact”...*, p. 1873.

child maltreatment and homelessness, they found that these two factors had a major mediating effect. According to their findings, high incidence of child maltreatment and the experience of homelessness explain the poor educational well-being of foster children²³.

Lawrence, Carlson and Egeland²⁴ conducted a longitudinal study on children coming from families with low socioeconomic status, and classified them in three categories. The first group consisted of children who were neither maltreated by their parents, nor placed in foster care. The second group consisted of children who were maltreated by their parents, but were not placed in foster care. The third group consisted of children who were both maltreated by their parents and consequently placed into foster care.

The advantage of the longitudinal study is that the researchers could measure the behavioral and psychological problems and learning skills of the children before the placement and they could match the children in foster care with children of similar characteristics and family background who were not placed into foster care. This way the study could rule out the assumption that has been made by many researchers, according to which the initial behavioral and psychological problems of children entering foster care are responsible for the results after foster care. Findings of the study of Lawrence et. al. show that children placed into foster care showed higher levels of behavioral and internalizing psychological problems than those children who were staying with maltreating parents. Another finding of the study is that familiar care (where a familiar person, usually a relative of the child becomes her/his foster parent) has better results than unfamiliar care²⁵.

²³ John Fantuzzo and Staci Perlman, *The Unique Impact of out-of-Home Placement and the Mediating Effects of Child Maltreatment and Homelessness on Early School Success*, 29 Children and Youth Services Review 941 (2007), p. 956.

²⁴ C. R. Lawrence et al., *The Impact of Foster Care on Development*, 18 Development and Psychopathology 57 (2006), p. 60.

²⁵ C. R. Lawrence et al., *The Impact of Foster Care...*, p. 65.

Shealy addresses in his article „reforms” of welfare withdrawing financial support from families in need, and propagate the foster placement of the children affected by this measure. He argues that while in cases of abuse and intentional neglect out-of-home placement is the right option, in the case of poor, but not neglecting families, there is no reason to believe that the children will be better off in foster care. He relies on the model of therapeutic parenting, and concludes that there is no reason to believe that foster parents or workers in residential settings – rather than the natural parents – will have a higher chance to provide children with suitable caregiving relationship, especially in the light of the fact that foster homes are oftentimes places where abuse and neglect happens to children²⁶.

Looking at the literature, we might conclude that even after controlling for the effect of previous maltreatment and poverty, foster placement has a neutral, or slightly negative effect on children’s well-being. I find the study of Lawrence et. al. especially important, because it showed that children who stayed with maltreating parents had significantly less psychological problems than children moved to foster care. As a conclusion I argue that foster placement should indeed only be a last measure, in cases where the safety of a child can be preserved only through the separation of the child from her/his family.

²⁶ Craig N. Shealy, *From Boys Town to Oliver Twist: Separating Fact from Fiction in Welfare Reform and out-of-Home Placement of Children and Youth.*, 50 *American Psychologist* 565 (1995), p. 574.

1.2 The role of poverty and ethnicity

Several studies show that child maltreatment is related to poverty: child maltreatment is more frequent among low-income families than among middle- or high-income families. Roberts identifies three ways in which poverty might be related to maltreatment: it “may be indirectly *caused* by parental poverty, *detected* because of parental poverty, or *defined* by parental poverty”²⁷.

Maltreatment might be *defined* by parental poverty if the low income and inadequate living conditions are the reason for the foster placement of a child. In Hungary foster placement due to parental poverty as the only reason, is explicitly illegal. Nonetheless in situations when families become homeless or live in circumstances that factually endanger the child, authorities do remove the children. In order to avoid the accusation that the authority removed the child due to the low income of the family, child neglect is oftentimes added as a reason. Ideas of deserving and undeserving poor, and personal fault (discussed in more detail in chapter 3) are strong supporters of the finding that a parent is neglecting her/his child if she/he is poor.

Neményi and Messing identified in their research on the Hungarian residential care system the group of children who were removed primarily because of poverty as those cases where the reason of “bad social circumstances”, “homelessness” or “bad living conditions” were coupled with “child neglect”, but not with abuse, parent’s mental illness or substance abuse, and found that 23% of their sample were removed from their family based only on the parents’ material hardships.

²⁷ Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (New York : Basic Civitas Books, c2002. 2002), p. 27.

The same parental behavior might be perceived as child neglect in the case of lower-class families which would be ignored in the case of middle-class families. The fact that the parent is not attending parents' meetings in the school, and has bad relations with the teachers; the fact that a parent is not learning together with her/his children; the fact that the children of a family quarrel a lot, and the parent cannot control them are all such examples, that would never initiate labeling middle-class parents as neglecting. In my practice as a child welfare caseworker I have seen these reasons used to strengthen the claim about low-class parents' neglecting behavior.

Many scholars argued that the relationship between poverty and maltreatment is mostly due to the high social surveillance of poor families, higher rates of *detection*. While middle-class parents have more opportunity to divert their personal problems to private care professionals to look for additional help with the supervision of children, low-income families are unavoidably "served" by public agencies²⁸. As Roberts argues, "if the government subjected wealthier parents to the home inspections, drug testing, and police surveillance that takes place in poor neighborhoods, it would find more child abuse and neglect."²⁹

The possibility that maltreatment is both more detected amongst poor families and is defined oftentimes by poverty does not only have an implication for children of low-class families. It also means that the abuse of children born to better-off families is more often undetected.

While both of the previous causalities play a strong role in the correlation between poverty and child maltreatment, studies show that even after controlling for these factors, parents

²⁸ P. Mendes, *Marxist and Feminist Critiques of Child Protection: To Protect Children or to Change Society?*, 24:2 Children Australia 27 (1999), p. 29.

²⁹ Roberts, D. *Shattered Bonds* (2002), p. 33.

living in poverty have a higher probability of abusing and neglecting their children than better-off parents, especially if poverty is affiliated with low self-esteem, depression and a feeling of helplessness³⁰ – in the words of Roberts, child maltreatment “may be indirectly caused by parental poverty” through the increased levels of stress poverty imposes upon parents³¹. The association between poverty and maltreatment is not only present in the case of child neglect, but also physical, emotional and sexual abuse³², and even child homicides³³. At the same time even slight improvements in families’ financial situation lead to lower rates of child maltreatment³⁴.

1.3 Does race matter?

The book: *Shattered bonds – The color of child welfare* is a strong and convincing analysis of the US child welfare system’s racial disparity. The author argues that the high overrepresentation of black children in the foster system (black children have a 2.5 times higher chance of entering the foster care system than not African-American children³⁵) does not only result from the interconnectedness of race and poverty. She argues that the child protection system has a built-in racial bias: the broad discretionary power of caseworkers and judges, and the vague definition of neglect “practically invite racial bias”³⁶.

Neither the Hungarian nor the German state collects data about the ethnicity of the foster care population or the financial status of their original families. As the CSA has pointed out in its report to the Council of Europe, although evidence suggests that children belonging to

³⁰ L. H. Pelton, *The Continuing Role of Material Factors in Child Maltreatment and Placement*, 41 Child Abuse & Neglect 30 (2015), p. 31.

³¹ Roberts, D. *Shattered Bonds* (2002), p 27.

³² L. H. Pelton, *The Continuing Role...* (2015), p. 31.

³³ Roberts, D. (2002) *Shattered Bonds*, p. 30.

³⁴ Pelton, L. H. (2015) ‘The continuing role of material factors...’, p. 33.

³⁵ Roberts, D. *Shattered Bonds* (2002), p. 8.

³⁶ Roberts, D. *Shattered Bonds* (2002), p. 55.

poor or ethnic minority families are overrepresented in the foster and residential care populations throughout the CoE, most states do not collect data in this regard³⁷.

The German Federal Statistical Office collects data on the number of children born to parents of foreign origins and children coming from families where German is not the first spoken language. The data in Table 1. shows that at the end of 2013 out of 1000 children 4.59 were placed at a foster family and 4.68 in a residential home – together close to 1% of the total child population. Children, who had at least one parent of foreign origin, had more than three times higher chance of living in a foster family or in residential setting. These numbers roughly correspond to the numbers of the CSA's report: "In Germany, between 17.5 and 26.7% of children taken into care the last years do not have German citizenship (in comparison, the foreign population of Germany – not holding German citizenship – makes up less than 9%)."³⁸ It is further noteworthy that – if placed into state care – children of foreign origins have higher chances of getting into a residential setting than to be placed in a more beneficial family environment.

Germany – Educational assistance outside the parents' home - 31. 12. 2013.					
Citizenship, origin	Number of minors	Full-time care in another family	Out of 1000 in the population of children	Care in residential homes	Out of 1000 in the population of children
Total	14,777,952	67,812	4.59	69,203	4.68
At least one parent is of foreign origin	1,114,428	14,199	12.74	19,916	17.87

Table 1. – Foster and residential care population at the end of 2013 in Germany³⁹

In Hungary no official statistics are available regarding the ethnic background of the foster and residential care population whatsoever. The reluctance on the side of official

³⁷ Committee on Social Affairs (2015) *Social services in Europe...*, para 4.

³⁸ Committee on Social Affairs (2015) *Social services in Europe...*, para 29.

³⁹ Statistisches Bundesamt [German Federal Statistic Office], *Hilfe Zur Erziehung Außerhalb Des Elternhauses [Educational Assistance Outside the Parents' Home]* (2014).

organizations to talk about the question of ethnicity and poverty in the area of child protection is perceivable in the document titled “Methodological guidance on the recognition and abolishment of children’s abuse” published in 2014 by the Ministry of Human Resources. In the 60 pages long document the words “Roma/Gipsy”, “ethnic”, “minority” words do not appear, the word “poor” appears only in a quote from the Child Protection Act⁴⁰.

In 2005 Neményi and Messing researched the composition of the state care population on a sample of 1868 children. Since ethnic background is a “sensitive data”, the researchers asked social workers working with the child whether they consider a child to be Roma or not, and asked about further information regarding the background of the child and reasons for her/his entering the state care. The researchers compared the data achieved to the ratio of Roma children in Hungary and in the counties of Hungary. The findings showed that children “considered Roma” had 2.6 times higher chances of living in state care than children “not considered Roma”⁴¹.

An interesting finding of the research was that in counties with low ratio of Roma in the child population, Roma children have an even higher chance of entering state care – this number is highest in Győr-Moson-Sopron county, where Roma children have 11 times higher chances of entering state care than not Roma children. This corresponds to the findings of Roberts, who found that in areas within the US, where the ratio of black children is relatively low within the child population (compared to other areas), black children have even higher chances of entering state care than in those areas where the ratio of black children is high. She

⁴⁰ Emberi Eroforrasok Miniszteriuma [Ministry of Human Resources], Módszertani Útmutató - A gyermekvédelmi észlelő- és jelzőrendszer működtetése kapcsán a gyermek bántalmazásának felismerésére és megszüntetésére irányuló szektorsemleges egységes elvek és módszertan [Methodological guidelines - Unified methodology and principles for the recognition and elimination of child abuse throughout the operation of the child protection reporting system (2014), http://www.macsgyoe.hu/downloads/szakmai_anyagok/bantalmazas2014.pdf.

⁴¹ M. Nemenyi and V. Messing, *Gyermekevédelem És Esélyegyenlőség [Child Protection and Equal Opportunity]*, 28 Kapocs 1 (2007), p. 11.

explains this phenomena with a sort of an increased visibility of black families, resulting in high levels of surveillance⁴².

Neményi and Messing examined the situation of children belonging to three age groups – infants, children at the age of starting primary school and adolescents. The overrepresentation of Roma children shows a decreasing tendency with the children's age.

The researchers asked about the reasons for the children's out-of-home placement, and the reasons mentioned most often were parental neglect (41%), bad social circumstances (38%), parent's addiction (26%) and bad living conditions (25%). (Respondents could sign more than one reason on the basis of the documentation). As the meaning of the most often mentioned reason – parental neglect – can vary from intentional neglect, neglect due to parental substance abuse to the lack of those circumstances that are deemed normal or required for the upbringing of children (bad living conditions, material need), the researchers separated the group of children in the case of whom parental neglect was only accompanied by social reasons – 425 children (23% of the sample) belonged to this group. The data shows that children born to large families (3 or more children), Roma children and infants are overrepresented within this category – it is these children who enter state care due to poverty only⁴³.

The researchers found that Roma children entering state care have lower chances of living in a foster family than not Roma children entering state care. (Similarly to Germany, where children with foreign origins have higher chances to live in residential settings than children born to German parents.)

After the study of Neményi and Messing no similarly large or methodologically appropriate investigation has been conducted regarding the composition of the Hungarian

⁴² Roberts, D. *Shattered Bonds* (2002).

⁴³ M. Nemenyi and V. Messing, *Gyermekvédelem...* (2007), p. 22.

foster and residential care population. The European Roma Rights Center conducted an inquiry in 2010, and estimated that about 65.9% of children living in residential care are Roma⁴⁴. The study points out one of the most disappointing features of the system – the low ratio of children who are successfully reunited with their family. The professionals interviewed by the researchers estimated that only about 10-20% of children entering state care can be reunited with their family later on. The professionals estimated furthermore that in the case of Roma children this ratio is even lower due to such levels of poverty and social exclusion that it seems hopeless that the parents will be able to improve their living standards enough in order to be deemed appropriate for the raising of their children⁴⁵.

It seems that against the reluctance of states to collect data on the class- and ethnic belonging of children entering state care, child protection systems have a tendency to remove children of marginalized parents to a greater extent than other children. This tendency is not surprising, knowing the history of child protection (the history of the Hungarian and German systems is discussed in more detail in chapter 3) and those cases that have already been explored, like the “Stolen Generation” of Australian indigenous children, the story of indigenous Canadian children referred to as “Lost Birds” or the “Kinder der Landstrasse” – the Yeniche children in Switzerland.

⁴⁴ European Roma Rights Center, *Eletfogytiglan [Life Sentence]* (2011), p. 25.

⁴⁵ European Roma Rights Center, *Eletfogytiglan [Life Sentence]* (2011), p. 37.

Chapter 2 – International and constitutional background

2.1 International law

2.1.1 UN documents

According to the Convention on the Rights of the Child a child might be separated from his/her parents only if competent authorities determine that such a separation is necessary for the “best interest of the child”. The convention lists those cases where this might be necessary - when the parents live separately, or when the child is abused or neglected by the parents. Inadequate living conditions are not amongst these exceptions⁴⁶.

At the same time the CRC declares the right of children “to a standard of living adequate for the child's physical, mental, spiritual, moral and social development”. Although this responsibility belongs primarily to parents, ” States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”⁴⁷.

According to the Resolution of the General Assembly about alternative care, “financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.”⁴⁸ Furthermore, the Resolution emphasizes children’s right to be heard in the proceedings regarding their life, and

⁴⁶ CRC, UN - General Assembly, (1989), Article 9.

⁴⁷ CRC, UN - General Assembly, (1989), Article 27.

⁴⁸ UN - General Assembly, 64/142. Guidelines for the Alternative Care of Children (2010), para 15.

to have their opinions taken into account. “The determination process should take account of, inter alia, the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.”⁴⁹

General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration describes the necessary steps and important elements in the assessment and implementation of the child’s best interest. The assessment needs to draft the elements that are relevant in the specific case, and – if these elements are conflicting – has to weigh them against one another.

The first of these elements is the child’s view on the matter. The General Comment does not leave space for the evasion of this principle: it states that “The fact that the child is very young or in a vulnerable situation (e.g. has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child’s views in determining his or her best interests.”⁵⁰

The second element is the child’s identity. The General Comment declares the child’s right to preserve her/his identity, cultural and religious practices as far as these practices compatible with the rights enshrined in CRC. In the case of out-of-home placement “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background”⁵¹.

The third element that should be taken into account to assess a child’s best interest is her/his right to stay within the family environment and to be able to maintain emotional relationships. This element requires the assessment whether “less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the

⁴⁹ UN - General Assembly, 64/142. Guidelines for the Alternative Care of Children (2010), para 7.

⁵⁰ UN - Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (2013), para 54.

⁵¹ General Comment No. 14 (2013), para 55-57.

parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.”⁵²

The fourth element is the safety and appropriate care for the child that supports her/his physical, emotional and cognitive development⁵³. Further elements are the “situation of vulnerability”, the right to health and the right to education⁵⁴.

2.1.2 ECHR

After the establishment of the ECtHR in 1959, it was not until 1987 that the Court had to deal with cases of child protection. In *W. v. the United Kingdom*, and in the subsequent cases of *B. v. the United Kingdom*, *Olsson v. Sweden* and *Eriksson v. Sweden* the Court laid down the general principles and procedural requirements of child protection cases, regarding the separation of children from their parents, the efforts of reunification, parents' right to access and the procedures relating to adoption orders.

In *W. v. UK* the Court said that the compulsory out-of-home placement of children, as well as the placement of children for adoption falls under the scope of A8⁵⁵. In *Olsson v. Sweden* and *Eriksson v. Sweden* the Court extended this finding, saying that the manner of the child's placement, and the restriction on parental access can also amount to an interference with family life⁵⁶.

⁵² General Comment No. 14 (2013), para 61.

⁵³ General Comment No. 14 (2013), para 71-74.

⁵⁴ General Comment No. 14 (2013), para 75-79.

⁵⁵ *W v the United Kingdom* (1987) 9749/82 (ECtHR), para 59. „The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life. Furthermore, the natural family relationship is not terminated by reason of the fact that the child is taken into public care. It follows - and this was not contested by the Government - that the Authority's decisions resulting from the procedures at issue amounted to interferences with the applicant's right to respect for his family life.”

⁵⁶ *Olsson v Sweden* (1988) 10465/83 (ECtHR), para 58-59. *Eriksson v Sweden* (1989) 11/1988/144/209 (ECtHR), para 57-58.

In *Olsson v. Sweden* the Court addressed the problem of the vague wording of laws regulating the conduct of authorities in matters of child protection. The applicants claimed that the great discretionary power of authorities and the vague wording of laws resulted in unforeseeable outcomes, thus in a wide sense the interference was not “prescribed by law”.

The Court said that the discretionary power of the authorities is essential in the area of child protection, because the circumstances necessitating the foster placement of a child are very diverse. For this reason it would be impossible to articulate laws that cover all these circumstances. Furthermore, the Court declared that the power of authorities to remove a child from her/his family without proof of harm done to the child is not only acceptable but also necessary for the protection of children⁵⁷.

The fact that the Swedish system had several safeguards against arbitrary interference (e.g. the possibility to turn to a court for the review of the authorities’ conduct) was a further factor taken into account by the Court in reaching its conclusion that in the case of *Olsson v. Sweden* the interference with the applicants’ private life was prescribed by law.

In *W. v. UK* the Court laid down the following principal requirements relating to foster placement and placement for adoption of children. The decision-making process of the domestic authorities has to be “based on relevant considerations” and may not be “one-sided”. As a consequence of these requirements, the right decision-making process “neither is, nor appears to be arbitrary”⁵⁸.

A further requirement is that the “views and interests of the natural parents”⁵⁹ are duly taken into account throughout the decision-making process. In paragraph 64 the Court points at some “practicalities of the matter”, because of which parents do not necessarily have to be

⁵⁷ *Olsson v Sweden* (1988) 10465/83 (ECtHR), para 60-63.

⁵⁸ *W v the United Kingdom* (1987) 9749/82 (ECtHR), para 62.

⁵⁹ *W v the United Kingdom* (1987) 9749/82 (ECtHR), para 63.

heard by the authorities or the courts. Oftentimes cases are decided through a continuous monitoring through officials and social workers, who can mediate between the authority and the parents. Furthermore, “there will clearly be instances where the participation of the natural parents will not be possible or will not be meaningful – as, for example, where they cannot be traced or are under a physical or mental disability or where an emergency arises.”⁶⁰ In their separate opinions Judges Pinheiro Farinha, Pettiti, De Meyer and Valticos criticize the Court for this reserved approach.

In *B. v. UK* the Court found that the lack of the mother’s involvement in the authority’s decision-making process amounted to a violation of her right to respect for family life, even though she was hard to trace⁶¹.

In *Olsson v Sweden* the Court found that although in the decision regarding the out-of-home placement of children the state has a wide margin of appreciation, the serious nature of the interference calls for “sufficiently sound and weighty considerations in the interests of the child... it is not enough that the child would be better off if placed in care”⁶². The fact that preventive measures had been implemented, and proved to be unsuccessful, was another factor that led the Court to conclude that the removal of the Olsson children did not amount to a violation of A8.

According to the Court’s case-law, the foster placement of children should be a temporary measure, and the ultimate aim of the authorities should be the reunification of the family⁶³,

⁶⁰ *W v the United Kingdom* (1987) 9749/82 (ECtHR), para 64.

⁶¹ *B. v the United Kingdom* (1987) 9840/82 (ECtHR), para 68. „They were thus patently decisions in which the applicant should have been closely involved if she was to be afforded the requisite consideration of her views and protection of her interests (see paragraph 64 above). It is true that the applicant was difficult to contact at the time of the June 1978 decision, but its importance for her future relationship with P [the child – AM] was such that some delay for the purpose of consulting her would have been necessary.”

⁶² *Olsson v Sweden* (1988) 10465/83 (ECtHR), para 72.

⁶³ *Olsson v Sweden* (1988) 10465/83 (ECtHR), para 81. “...the Court would first observe that there appears to have been no question of the children’s being adopted.

especially if the placement for adoption is not feasible. In the *Olsson* judgment the Court found a violation because the children were placed separately and far from each other, and because the authorities restricted the parents' access to their children to a great degree.

There have been only a few cases at the European Court of Human Rights where the domestic authorities justified the removal of a child from her/his family solely on the ground of the family's poverty. Since poverty has a high rate of co-occurrence with mental or physical disability⁶⁴, many cases concern families where one or both of the parents are disabled⁶⁵.

In *Moser v. Austria* the first applicant was an immigrant mother of Serbian nationality, who gave birth to her son (the second applicant) in Vienna. On the basis of the mother's "unclear personal and financial situation and a lack of a residence permit"⁶⁶ she was not allowed to take the child with herself from the hospital. Subsequently the custody over the child was transferred to the Youth Welfare Office.

The applicant claimed that the authorities could have turned to less restrictive measures to ensure the well-being of her child, e.g. their placement in a mother-child center. The Court observed that "unlike in most child care cases" the reason for the transfer of custody was not the parent's inability to take care of the child. "It was based solely on her lack of appropriate accommodation and financial means and her unclear residence status, i.e. her precarious situation which would have made it difficult for her to care for a very young child."⁶⁷ The

The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the *Olsson* family."

⁶⁴ World Health Organization, 'World Report On Disability' (2011), p. 39.

⁶⁵ See, for example: *K. and T. v Finland* (2001) 25702/94 (ECtHR).; *X. v Croatia* (2008) 11223/04 (ECtHR).; *Kutzner v Germany* (2002) 46544/99 (ECtHR).; *Mircea Dumitrescu v Romania* (2013) 14609/10 (ECtHR).; *B. v Roania* (2013) 1285/03 (ECtHR).

⁶⁶ *Moser v Austria* (2006) 12643/02 (ECtHR), para 10.

⁶⁷ *Moser v Austria* (2006) 12643/02 (ECtHR), para 68.

Court went on, saying that “a case like the present one called for a particularly careful examination of possible alternatives to taking the second applicant into public care.”⁶⁸

The Court found violations of Article 6(1) on three accounts and violation of Article 8 because the measures in question were disproportionate to their aim. *Moser v. Austria* is one of those rare cases where the Court did not only find a violation because of the procedure, but also the substance of the domestic authorities’ decision.

In *R.M.S. v Spain* the applicant was a young mother. She was living with her extended family on a farm, and maintained herself from agricultural work in Spain and in France. Her great-uncle was appointed as the foster parent of her two older children, in order to take care of them when she was working abroad. In 2005 she went to the local social office with her smallest child, asking for financial support and help in job-seeking. The child was taken to a foster home later that day, and two days later the procedure to declare the girl legally abandoned was set to motion. The basis for this procedure was the financial hardship of the mother, the hygienic state, the clothing and the dry skin of the daughter, and her “anxiety about food”⁶⁹. After three visits the mother – who was at the time very agitated because of the fact that the child had been taken to foster care - was not allowed to see the child any more. The child was placed with foster parents, with a view to adoption.

The conduct of the responsible social worker was in many stages of the case very peculiar. The facts of the case point at a possibility of the social worker’s interest in the removal of the child in question and a younger child of the applicant. “The Court finds it surprising, to say the least, that the social worker who set the procedure in motion should have requested the Red Cross to trace the applicant, stating that the family who had ‘adopted’ G. were also

⁶⁸ *Moser v Austria* (2006) 12643/02 (ECtHR), para 9.

⁶⁹ *R.M.S. v Spain* (2013) 28775/12 (ECtHR), para 9.

‘prepared to adopt [her] baby’, whom she estimated to be around nine months old since the applicant ‘[had been] pregnant over a year ago’.”⁷⁰

The Court examined the question, “whether the national authorities took all the necessary and appropriate measures that could reasonably be expected of them to ensure that the child could lead a normal family life within her own family.”⁷¹ Several factors supported the Court in finding a violation of Article 8. First, the ability of the mother to take care of her child was not formally questioned by the authorities. There was not any sign of physical or emotional abuse of the child. The sole reason for the child’s removal was the poverty of the mother. Second, although her situation has changed with the elapse of time, the consequent decisions did not take this change into account⁷². Third, the authorities did not attempt to support the family in any way in order to avoid the child’s foster placement. Fourth, placing the daughter at a relative (the great-uncle) was declared unfeasible without due reasoning⁷³.

In *Mircea Dumitrescu v Romania* the applicant – a person suffering from a serious physical disability – alleged that the state violated his Article 8 rights. At the time when he was in prison, his son was taken to a foster centre. After the father’s release from prison he wished to reunite with his son, but his financial situation did not make this possible. He claimed that the state should have supported him financially in order to ensure his right to respect for family life. The Court found no violation of Article 8, because the authorities made it possible for him to keep in touch with his son, and he was entitled to benefits eligible for persons with disabilities.

⁷⁰ *R.M.S. v Spain* (2013) 28775/12 (ECtHR), para 87.

⁷¹ *R.M.S. v Spain* (2013) 28775/12 (ECtHR), para 82.

⁷² *R.M.S. v Spain* (2013) 28775/12 (ECtHR), para **Error! Main Document Only..** “In the present case the applicant’s ability to provide her minor daughter, G., with educational and emotional support was not formally at issue, despite the fact that her two eldest children had been placed in the foster care of their mother’s great-uncle within the extended family (see paragraph 7 above). The care order in respect of the applicant’s child was made because of the applicant’s difficult financial situation at the time, without any account being taken of subsequent changes in her circumstances.”

⁷³ *R.M.S. v Spain* (2013) 28775/12 (ECtHR), para 88.

In cases concerning the removal of children from their families the Court's approach is generally very cautious. It is more inclined to find a violation on procedural grounds, and leaves a wide margin of appreciation to state authorities in deciding what are those circumstances when the removal of children is necessary. There have not been any child protection cases at the Chamber or the Grand Chamber where the Court has found a violation of Article 14 in conjunction with Article 8. This is due to the fact that the Court has been reluctant to accept financial status as a ground for discrimination, and in the cases of parents with disability the Court avoided discussing the issue of discrimination saying that it had already found a violation of Article 8. There has not been any case where the parents would have alleged that they were discriminated against because of their ethnicity.

The Court has not declared that financial problems may never be a justification for the out-of-home placement of a child, only called for a heightened scrutiny in these cases. States have a positive obligation "to enable the ties between parents and their child to be preserved."⁷⁴ For families struggling with serious financial problems, securing the welfare of the child while keeping the family together necessarily requires positive, supportive action on the side of the authorities.

The Court does not acknowledge this consequence. The judgment in *Mircea Dumitrescu v Romania* can be interpreted as saying that if a child is separated from her/his parents or has to stay in foster care because of the parents' financial hardships, it is not a violation of human rights. The state has to offer the aids eligible for citizens in general, and if these aids cannot cover the expenses of raising a child, that is not any more the state's responsibility.

⁷⁴ *Kutzner v Germany* (2002) 46544/99 (ECtHR), para 65.

2.2 Constitutional background in Hungary and Germany

Both the Hungarian and the German Basic Law discusses the role of the family in the modern society the protection of the family, and rights related to family life.

The Preamble („National Creed”) of the Hungarian Basic Law declares the belief that „the most important frameworks of our coexistence are the family and the nation...” Article L of the „Principles” declares that „Hungary protects the institution of marriage as the community between man and woman based on voluntary decision. Furthermore, Hungary protects the family as the basis for the preservation of the nation. The bases of family relations are marriage, and parent-child relations.”⁷⁵

Interpreting this text critically, one might argue that family is defined in a narrow way, in line with the imaginary of a family that is in no way different from the „normal, decent Hungarian family”. Apart from the criticism that has been raised from the point of LGBT rights, I find that the text carries with it further worrisome messages. If the family deserves protection from the state only „as the basis for the preservation of the nation”, those who are either officially (immigrants) or symbolically (Roma) excluded from the imaged nation, do not deserve protection. One might argue that the sentence mirrors the racist narrative of worry shared and expressed by many: at some point the Roma will become the majority.

Article VI(1) of the part „Freedom and responsibility” declares that „Everyone has the right to respect for private- and family life, home, correspondence and reputation”. Article XV(5) declares that „Hungary protects families, children, women, the elderly and people with disabilities with special measures.” Article XVI(1) addresses the protection of children: „every child has the right to protection and care that is necessary for her/his bodily, mental and moral development.”

⁷⁵ Hungarian Basic Law [Magyarország Alaptörvénye] 2011 (Hungary).

According to Article L(3) of the „Principles” of the Hungarian Basic Law, the protection of families is further regulated by a cardinal law⁷⁶. The act – similarly to the Hungarian Basic Law – implies that the reason why the family deserves special protection is that the family is the basis of the nation. The Preamble of the act says, that „The family is the most important national resource of Hungary. As the basic unit of society, family is the guarantee of the nation’s survival. The family is the natural environment of the human personality’s development; the state has to respect this.” The existence and birth of children is also valued for their role in „sustainable development and economic development”.

The Preamble describes family again according to a narrow picture. „Family can fulfil its role if the solid and long-term relation of the mother and the father realizes itself in the responsibility for children.” This imaginary of the „family” that „can fulfil its role” excludes everyone who does not fit into the „mommy – daddy – family planning – children” imaginary (to name a few examples, LGBT couples, single parents, teenage parents).

Paragraph 13 addresses the right of the child to be raised in her/his family, to be separated from them only for her/his bodily, psychological and mental development. The act specifically mentions, that „for endangerment resulting only from financial reasons” the child may not be separated from the parents, and „it is the state’s responsibility in these cases to ensure the conditions of caring for the child within the family, if necessary”⁷⁷.

The German Basic Law mentions family less frequently, and in a more to-the-point manner. According to Article 6, the family, marriage and others deserve special protection. The care for children is described as primarily the parents’ right and duty, and the state has a secondary role in „watch[ing] over them in the performance of this duty.” Similarly to the

⁷⁶ Act of 2011, CCXI on the Protection of Families [2011. évi CCXI. törvény a családok védelméről] 2011 (Hungary).

⁷⁷ Act of 2011, CCXI on the Protection of Families [2011. évi CCXI. törvény a családok védelméről], paragraph 13(3-5) 2011 (Hungary).

Hungarian, the German Basic Law also declares that children might be separated from their parents only in a lawful manner, and if the child is in danger, or if „the parents or guardians fail in their duties”. Article 6(5) specifically addresses children born outside marriage, who should enjoy the same rights and privileges as children born in marriages.

At the time of the German Basic Law’s adoption in 1949, explicitly mentioning that children born inside and outside marriage have the same rights, was a relatively progressive step. In 2012, when the Hungarian Basic Law entered into force, the narrow imaginary of family, the symbolic exclusion of single-parent families, LGBT families, can be considered as a step-back from the protection of human rights and the universal dignity and worth of the human being.

Chapter 3 – Theoretical models of child protection systems

In this chapter I will shortly describe some theoretical models applicable to the functioning of child protection systems: first models of criminal justice which can be applied to better understand systems of child protection. Second, I will look at the work of Gilbert, Patron and Skivenes who analyzed the child protection systems of several Western countries, and found that the most significant difference between different systems is their stand on an imaginary dimension of family service and child protection orientation.

The aim of looking at these models is to find a theoretical frame to analyze tensions, opposite aims and directions within child protection. As it will turn out from these analyzes, it is always an individual (caseworker, guardianship official or family court judge) who meets these tensions and has to resolve them according to the individual situation. For this reason at the end of the chapter I will draw up recommendations not only regarding the system as a whole, but also regarding the support of these individual decision-makers.

In order to suggest changes within a system, one has to clear what the aims of the system are. In the case of a child protection system the primary aim can be framed as reducing the number of abused children as much as possible. (Although an alternative aim can be to raise children's well-being as much as possible, like in Finland, where phrases of "child abuse" and "child neglect" are hardly used in the vocabulary of the child protection system.⁷⁸)

A second aim of the system shall be to place as few children in foster and residential care as possible – as I have concluded in the first chapter; out-of-home placement is detrimental for a child's well-being and development even in cases of negligence. These two aims can be furthered through accuracy and prevention. Accuracy means that the system should place

⁷⁸ Tarja Poso, *Combating Child Abuse in Finland: From Family to Child-Centered Orientation*, in *Child Protection Systems - International Trends and Organizations* (Neil Gilbert et al. eds., Oxford University Press 2011), p. 116.

those and only those children to foster and residential care who suffer from abuse. Race- and class bias hinders accuracy to a great extent, thus the question is how these biases can be reduced. Furthermore, I reiterate that whenever “less intrusive measures” could prevent out-of-home placement, these measures shall be applied.⁷⁹

3.1 Models of criminal justice system applied to child protection

The question why family law proceedings (e.g. divorce) in Hungary require a court decision while the decision to move a child to foster care is administered by guardianship authorities is of great importance in order to understand the underlying ideology and attitudes of the child protection system. Both situations entail the intrusion of state into private, family life and deal with the placement and custody over children.

In my view the most important underlying reason for the difference between the two systems is that child protection systems have always dealt mostly with a more vulnerable, more precarious layer of society, while family law deals with a wider segment of society. As a consequence, the system of child protection is more patronizing than family law.

Typology of criminal justice systems can be of help in this matter. The application of these models is possible to the child protection system because while in the (continental European) criminal system the state conducts an official inquiry on the facts of the case and there is a conflict of interest between the individual and the state, in the system of child protection the state (in the name of the child’s best interest) conducts a similar inquiry against parents. In this case there is an assumed conflict between parents and the child (represented by the state). Removing the child from the family is not only an action in the child’s best

⁷⁹ General Comment No. 14 (2013), para 61.

interest but also a sanctioning of the parents, and it has a stigmatizing effect, just like imprisonment.

Packer describes two extreme, prototypical models of criminal justice: the due process model and the crime control model. While the due process model's guiding principle is fairness, and stresses due process guarantees, the crime control model is more focused on the speediness and effectivity of proceedings, as well as on the interest of the community as a whole. Margin of error is hardly tolerated in the due process model: evidence must prove the guilt of the defendant beyond reasonable doubt. In the crime control model a wider margin of error is tolerated because the lack of conviction in case of guilt is seen as a similarly disadvantageous outcome for society as a whole as a conviction in case of innocence. Thus the threshold of proof is lower in the crime control model⁸⁰.

On Packer's dimension the child protection system is closer to the crime control model. A relatively wide margin of error is tolerated, because inaction in the case of a not clearly provable child abuse is a dangerous prospect. Due process guarantees (the presumption of innocence, the right to appeal, the right to remain silent) are present in the system, but are not stressed, there is no requirement to inform parents about their rights in the context of the proceedings. Equality of arms is also not a concept that would be stressed in child protection cases – parents do not automatically get the documents and information which the guardianship relies on. Written opinions of teachers, child welfare social workers, doctors is oftentimes not available to parents, and they have no right to free legal advice to protect their interest.

Even though clients both in Hungary and Germany have the theoretical opportunity to appeal to a court about the guardianship authority's or the family court's decision, the

⁸⁰ H.L. Packer, *Two Models of the Criminal Process*, 113:1 University of Pennsylvania Law Review 1–64 (1964).

realization of this opportunity is hardly realistic for people with low levels of education and without financial possibility to pay for legal advice. The European Roma Rights Center found in an interview with a guardianship official that in the cases decided in their office, it happens only every two or three years that a client appeals against the decision⁸¹.

Griffith argues that Packer's two models are in fact two alternatives of the same, Western struggle or battle model of criminal justice. The battle model is based upon two, fundamentally hostile parties with an irreconcilable conflict of interest. In the battle model the result of the proceedings is that one party wins, the other one loses, and – in case of a conviction – the defendant loses many of his rights and gets into a very different role at the moment of the verdict's annunciation, and is expelled from society. According to Griffith the difference between Packer's two models is only the bias built into the system. The due process model is more biased in favor of the defense, while the crime control model is more biased in favor of the prosecution.

Griffith constructs a dimension with battle model and family model on the two poles of the dimension. The family model is built on the assumption that the interests of the individual and the state can be reconciled, and the aim of the criminal proceedings and the sentencing is to further the interests of society as a whole as well as the individual criminal's interests. Criminal proceedings have an educative value, and the main aim of sentencing is treatment. In this model there is no harsh distinction between a tried and a convicted person: conviction does not entail exclusion from society and stigmatization. This model does not stem from a liberal ideology, but is a more collectivist and patronizing system⁸².

⁸¹ European Roma Rights Center, *Eletfogytiglan [Life Sentence]* (2011), p. 40.

⁸² J. Griffiths, *Ideology in Criminal Procedure or a Third 'model' of the Criminal Process* (in Yale Law School Legal Scholarship Repository, 1:1, 1970), http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5000&context=fss_papers

The system of child protection – in an ideal situation – is close to the family model of criminal justice. Guardianship authorities are supposed to discuss the situation with the family, and try to reach an agreement about the necessary steps to ensure the protection of the child. Furthermore the authority can prescribe behavioral impositions to the family members (e.g. keeping in touch with the local social services). There is supposed to be a gradualism in the proceedings: the removal of children from the family has to be seen as a last resort. On the other hand – in practice – child protection systems are oftentimes a punitive arm of the state harassing and punishing the most precarious layer of society.

On the two poles of the third dimension of criminal justice systems are justice model and welfare model. The more traditional justice model is based on the rule of law and the due process guarantees. Judges have a relatively small discretion both in the proceedings and in the sentencing. In the welfare model - usually applied in juvenile justice - authorities have a broader discretion. The aim of the proceedings and the sentencing is treatment and education. Welfare model tries to avoid stigmatization. Detention is only a last resort: other types of sentencing (e.g. compulsory cooperation with the social services or community work) are preferred.⁸³

The doctrine of ‘no punishment without law’ is strictly followed in the justice model. In the welfare model not criminal, but supposedly deviant patterns of behavior can be a reason for sentencing. So-called status offenses (offenses not based upon a legally prohibited action but on the group belonging of the individual, e.g. in case of a minor’s alcohol consumption or truancy is a status offense) are acknowledged. The aim of detention is rehabilitation, and - since the time that is needed for this rehabilitation is unknown - judges can sentence the

⁸³ Ian O’Connor, *Modes of Juvenile Justice*, Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice (1997).

defendant to an unfixed period of detention. In the justice model this is not acceptable: a maximum amount of time has to be announced in the verdict.

Welfare model has several positive sides, but – as any patronizing system where authorities have a broad discretion – it can be applied arbitrarily. One of the possible criticism of such a system is that this high level of discretion can lead to unfair outcomes through hidden, conscious or subconscious racism, sexism and classism.⁸⁴

The child protection system is closer to the welfare model than the justice model. Guardianship authorities have a great discretion in the kind of behavioral impositions they prescribe. Similarly to status offenses in case of juveniles, certain - not criminal - behavioral patterns of parents are seen as evidence of negligence. In many cases this is justifiable: parents have a high responsibility and effect on their children's life, but often benign, not abusive or negligent activities can be used by the authorities as a sign of negligence. In my practice I have met a case where the fact that the mother did not go to the parents' meeting in the school was perceived as a sign of negligence. Another – twisted-out – argument was that the fact that a pregnant mother did not visit her doctor was seen as a sign that she is a negligent mother, justifying the removal of her already born children.

This type of 'evidence' is used only in the case of parents in a precarious situation, especially Roma parents. Noone would think of removing a child from a white middle-class family because her parents do not communicate with the school or because the mother does not avail herself of prenatal care. In my view an underlying reason for this different treatment might be that the inquiry and intrusion into someone's private life and the officialized judgment over his lifestyle is more possible when the person representing the authority perceives the other person as - this way or another - inferior.

⁸⁴ Ian O'Connor, *Modes of Juvenile Justice*, Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice (1997).

As the ECHR has pointed out in its judgments, it is generally advantageous if child protection casework and the authorities' work are concerned with the well-being of their clients and the social context in which child maltreatment happens, and have a wide discretion as to what steps to take. The Court explains that "the circumstances in which it may be necessary to take a child into public care and in which a care decision may fall to be implemented are so variable that it would scarcely be possible to formulate a law to cover every eventuality."⁸⁵

The backside of these features is that such a wide discretion about what to do and what facts to consider, gives space for individual biases to take a great role in the decision-making process. The possible reconciliation of the contradiction between the need and the harmfulness of discretion lies within individual decision makers. For this reason every professional working in the field of child protection shall receive education about anti-discrimination practices, and – even more important – have the possibility to participate in free supervision regarding both the professional and the personal aspects of her/his work.

3.2 Family service, child protection and child-focused oriented systems

Gilbert analyzed the child protection systems of several Western countries in 1997 and found that these systems can be placed on a dimension of child protection-family service orientation. He found four distinguishing lines between the two orientations. First, the understanding of child abuse is different in the two orientations. In child protection orientation abuse is seen as the acts of "problematic" relatives, from whom the child must be saved. In family service orientation child abuse is perceived as the result of dysfunctional family dynamics, social and psychological problems. Second, child protection orientation

⁸⁵ *Olsson v Sweden* (1988) 10465/83 (ECtHR), para 62.

responds to the abuse in a legalistic, investigatory manner, while family service orientation responds to the family's needs, in a therapeutic way, with the involvement of care professionals. Thirdly, in the child protection orientation the professionals' relation to parents is adversarial, supposes a disaccord between the two sides, while in the family service orientation professionals attempt to build a relationship based upon an equal partnership with the family members. While the authors have not found that either in countries with a child protection- or a family service-oriented system would have higher rates of out-of-home placements, the patterns of these placements differ between them. The last differentiator between the two systems is that in the family service orientation the majority of these placements are based upon a common decision of the authorities and the family, while in the child protection orientation most of the out-of-home placements happen through the state's coercion⁸⁶.

In 2011 the systems were analyzed and the authors found that child protection systems tended to change rapidly since 1997. They could identify some common features, like the expansion of the child protection systems (in all analyzed systems the proportion of children living in state care has increased with the exception of the US) and the increasing challenge of having to operate "in the public spotlight"⁸⁷. Systems that were previously described as family service oriented were typically moving towards a more adversarial approach, while systems described in 1997 as child protection oriented tended to take up some features from the other end of the spectrum. Furthermore, the authors describe a new, qualitatively different orientation.

⁸⁶ Neil Gilbert, *Conclusion - A Comparative Perspective, in* *Combating Child Abuse - International Perspectives and Trends* (Oxford University Press 1997), p. 232-233.

⁸⁷ Neil Gilbert et al., *Changing Patterns of Response and Emerging Orientations, in* *Child Protection Systems - International Trends and Orientations* 243-258 (Neil Gilbert et al. eds., Oxford University Press 2011), p. 245.

Role of the state Vis-à-Vis Child and Family in the three different orientations of child protection			
	Child focus	Family service	Child protection
Driver for intervention	The individual child's needs in a present and future perspective; society's need for healthy and contributory citizens	The family unit needs assistance	Parents being neglectful and abusive towards children (maltreatment)
Role of the state	Paternalistic/defamilialization - state assumes parent role; but seeks to refamilialize child by foster home/kinship care/adoption	Parental support; the state seeks to strengthen family relations	Sanctioning; the state functions as "watchdog" to ensure child's safety
Problem frame	Child's development and unequal outcomes for children	Social/psychological (system, poverty, racism, etc)	Individual/moralistic
Mode of intervention	Early intervention and regulatory/need assessment	Therapeutic/needs assessment	Legalistic/investigative
Aim of intervention	Promote well-being via social investment and/or equal opportunity	Prevention/social bonding	Protection/harm reduction
State-parent relationship	Substitutive/partnership	Partnership	Adversarial
Balance of rights	Children's rights/parents' responsibility	Parents' rights to family life mediated by social workers	Children's/parents' rights enforced through legal means

Table 2. – A summarized comparison of family service, child protection and child-focus orientations⁸⁸

Child-focused orientation is centered on the well-being of the child. This orientation is underpinned by two emerging trends in social sciences and policy regarding children. The first trend is the emphasis on the “social investment state”, which invests into its citizens who – in turn – will be able to contribute to society more. In this framework children have a special, strategic situation, as they will be member of the society for a long time, thus every investment into the well-being and development of children will “pay off” many times. This attitude sees children as future workers. Another emerging trend sees children as current

⁸⁸ Neil Gilbert et al., *Changing Patterns of Response and Emerging Orientations, in* Child Protection Systems - International Trends and Orientations 243-258 (Neil Gilbert et al. eds., Oxford University Press 2011), p. 255.

citizens, who have the same value as adults, even though they have different needs. The authors emphasize that these orientations are not solid categories; they rather describe the theory as a three-dimensional model in which systems can be placed according to the extent to which they actualize the orientations.

I argue that these orientations cannot only be used for describing whole systems of child protection, but a similar theoretical model could be applied to individual social workers or decision makers, and even to single professional-client or professional-family relationships. An interesting direction of research would be observing relations between social workers and their clients (or decision makers and clients), and describe these relationships according to Gilbert's dimensions. The observation should include certain features of the relationship, such as: whether the child is actively heard; to what extent her/his views are taken into account; whether the professional has the intention to investigate potential abuse; whether threats of or hints to child removal happen throughout discussions, or even whether the social worker asks the clients to sit down when they enter her/his office, or whether she/he offers the client the opportunity to look her/him up when the clients feels the need to do so.

I suppose that the difference between the treatment of parents belonging to the ethnic majority or the minority, and parents of a middle/high or low socioeconomic status is within these fine differences.

3.3 Child protection – history of the German and Hungarian system

3.3.1 The history of the German child protection system

In this subchapter I will describe the history of the Hungarian and German child protection systems' formation on the basis of the work of Wolff⁸⁹ and my research conducted on the holdings of Open Society Archives⁹⁰ and the work of Ferenc Gergely⁹¹. Furthermore, I analyze the close past of the two systems and try to find reasons for their shift towards child protection orientation.

The first efforts of organized child protection appeared in Germany in the early 19th century. The aim of these organizations was twofold: first to save children born to working-class families, who suffered from previously unknown ways of child exploitation in the unfolding industrialized capitalist system. The other aim of these initiatives was to promote the “moral development” of these low-class children who were seen as potentially dangerous. With the grounding of Bismarck's welfare reforms legislations on compulsory education and limitations of child work were enacted. By the 1920's the formerly scattered and unorganized local child protection organizations were brought into a unified system under the local state-run agencies. The approach of the system had two directions: first offering support to families in need, second fighting child neglect and abuse with vigorous, repressive means (even though physical abuse as a method of childrearing was not perceived as problematic at the time.

⁸⁹ Reinhart Wolff, *Germany - A Nonpunitive Model*, in *Combatting Child Abuse - International Perspectives and Trends* 212–31 (Neil Gilbert ed., Oxford University Press 1997), p. 212-220.

⁹⁰ Anna Maria Marko, *A Review of the Press Representation of Child Protection in the Hungarian People's Republic in 1954-1959 and 1987* (2015).

⁹¹ Ferenc Gergely, *A Magyar Gyermekvédelem Története* (The History of The Hungarian Child Protection) (Puski Kiado 1997).

The Nazi regime used the topic of child sexual abuse as a topic of propaganda, according to which the new system was fighting deviants vigorously. In general, the Nazi system had a strongly punitive approach towards child maltreatment.

Around 1970 a new approach of child protection emerged within the Federal Republic of Germany called “New Child Protection Movement”, growing out of the radical leftist and feminist movements of the 1960’s and influenced by the Scandinavian model of child protection. The movement was a radical example of the family service oriented child protection work with a strong emphasis on need instead of risks and problems, providing a wide array of supportive services, such as family therapy and psychological counseling. Child maltreatment was defined as a continuum rather than a solid category. The system had no mandatory reporting scheme.

The approach of the New Child Protection Movement determined the attitude and organization of the West-German child protection system, and even the system of the unified Germany for a long time. In 1997 the German child protection system was characterized as highly family service oriented.

Some “atrocious tales” of severe child abuse got high media coverage both in Germany and in Hungary in the recent years. In Germany the cases of “Lydia”, “Jessica”, “Kevin” and “Lea-Sophie” put the system of child protection in the public spotlight⁹², with the consequent amendment of the German Social Code, giving criminal liability to child protection workers, and with a general move from the family service orientation to the child protection orientation. As Wolff, Biesel and Heinitz observe, the criminal liability of caseworkers has resulted in a higher willingness to remove children from the family in order to avoid individual criminal prosecution. Family courts got more power to restrict parental rights and

⁹² Neil Gilbert et al., *Changing Patterns of Response and Emerging Orientations, in Child Protection Systems - International Trends and Orientations*, 243–258 (Oxford University Press 2011), p. 245.

oblige parents to be in touch with the child welfare system, to use obligatory child medical services, or to send children to closed clinical and residential institutions.⁹³

I argue that the shift within the German system from family service orientation to child protection orientation cannot completely be explained by the emergence of atrocity tales, but the general shift within German political and administrative structure contributed to the change in the child protection system at least to the same degree as the public interest in atrocity tales.

Germany could preserve its highly developed welfare system for a long time, opposed to several Western states described by Esping-Andersen as liberal welfare states, like the United Kingdom in the time of Thatcherism⁹⁴, for several reasons. First, the West-German state had to preserve a high standard of living for the majority of its population, as it was more exposed to comparison with the Eastern model (due to the close cultural and geographical closeness to East-Germany). Second, the strong self-reflection within the German society to the Nazi era from the 1960's on placed a great weight on issues of social exclusion, social justice and equality. Furthermore there has been a strong environmental and peace-movement in Germany from the 1980's on, also expressing a strong voice regarding the issue of social justice.

Nevertheless, at the beginning of the millennium the “third way of social democracy” has reached and dominated the German political rhetoric. The government of the SPD (social democrats) – Green Party coalition started using a rhetoric borrowed from neoliberal ideology. After the change of government in 2005, the coalition of CDU-CSU (conservative party) and SPD started to diminish the welfare structure of the country, following a more

⁹³ Reinhart Wolff et al., *Child Protection in an Age of Uncertainty: Germany's Response*, in *Child Protection Systems - International Trends and Orientations* 183–203 (Oxford University Press 2011), p. 186.

⁹⁴ Gosta Esping-Andersen and Alex Hicks, *The Three Worlds of Welfare Capitalism*, 20 *Contemporary Sociology* 399 (1991).

neoliberal ideology than any former government. In parallel with these changes has the system of child protection also changed after 2005. The data on the number of children entering state care and living in state care show a dramatic rise (see Table 3. and 4.) despite a slow but steady decrease in the number of children living in Germany.

Germany - Number of children living in foster and residential care at the end of the year		
Year	Living in a foster family	Living in residential care
1991	48 017	68 190
1995	48 021	69 969
2000	48 993	69 723
2005	50 364	61 806
2007	49 673	52 793
2008	54 429	58 690
2009	57 452	60 902
2010	60 451	63 191
2011	61 894	65 367
2012	64 851	66 711
2013	67 812	69 203

Germany - Number of children taken to state care throughout the year	
Year	Number of children
1995	23 432
1996	28 052
1997	31 807
1998	31 415
1999	31 645
2000	31 124
2001	31 438
2002	28 887
2003	27 378
2004	25 916
2005	25 664
2006	25 998
2007	28 192
2008	32 253
2009	33 710
2010	36 343
2011	38 481
2012	40 227
2013	42 123
2014	48 059

Table 3. and 4. – The number of children living in and entering state care in Germany

I argue that the cuts of the welfare state, the increasing levels of poverty (compared to the level experienced by a society in the close past) and the widening of social inequality can be more tolerated within a society, because ideologies and cognitive biases such as the “just world hypothesis” or the differentiation between “deserving” and “undeserving poor” help

individuals to perceive these phenomena as “just”, seeing individuals with material hardships as faulty. Increasing levels of child poverty on the other hand can much less easily be explained by the personal fault of the individual child – these children will be rather seen as ones who have to be saved from their parents. For this reason when a state’s welfare system is diminishing, the child protection system will tend to move towards a more punitive, child protection oriented approach, as it happened in Germany after 2005.

3.3.2 The history of the Hungarian child protection system

The Hungarian system of child protection had a very different course of evolution than the system in the Federal Republic of Germany. At the beginning of the 20th century no organized system existed providing for the residency and catering of abandoned or orphan children. Although some charitable and religious organizations existed in Hungary, their scope and support was much smaller than in Western-European states. From 1907 the state solved the issue of unattended children by paying a minimal amount of money to families (mostly in rural areas) for taking these children into care.

After WWII the topic of child protection was an important topic for the communist regime’s propaganda. The official ideology of the state required showing first that it takes good care of its most vulnerable citizens (poor and abused children), second that the system is much more beneficial for children than the previous one. The state was depicting itself as the parent of children in residential institutions. See the quote from an article in 1954:

*This story surely leaves a bad taste in the reader’s mouth. But then you think: the children of Ferenc Czifra do have a foster mother: the community of the working people – in a narrower sense the State’s Child Protection Institute.*⁹⁵

⁹⁵ Istvan Szoka, *Ehagyatott Gyermek [Abandoned Children]*, Oct. 8, 1954 (HU OSA 300-40-1:497).

The new regime converted several monasteries, nunneries and castles of the former aristocracy – symbolic buildings of the former system – into children’s institutions, which had the further advantage that since these buildings usually were far from residential areas, the children placed into these new institutions were not visible for the people. The number of these institutions grew rapidly. Before 1945 there were 14 residential institutions, in 1959 the number grew to 120, administering 20000 children. At the time about 6000 children were living in foster families, but the official child protection system had the aim to be able to place all these children into institutions⁹⁶.

“The most common aim of institutions was phrased as raising “trustworthy”, “hard-working”, “well-behaving” adults. This aim can be interpreted for one as the regime’s morality, the ideal citizen for the totalitarian regime. On the other hand it also expressed the prejudice against children coming from “debauched” families, in the case of whom the role of the institutions is to “resocialize” them. This prejudice is more obvious in the case of delinquent, problematic, “neurologically weak” (“gyenge idegzetű”) children.”⁹⁷

After the transition to the more permissive Kadar-system, foster placement was seen as a more beneficial alternative, and in the 1980’s the press was already reporting abuses in residential institutions⁹⁸. Although there was no official statistic or declaration about the number of Roma children in the state care system, but the director of the children’s home in Diosgyor stated that about 70% of the children living in their institution are Roma, and that most of the children’s parents have a low education.⁹⁹

⁹⁶ Arpad Halasi, *Látogatás a Rózsadombi Hóvirág Nevelőotthonban (Visit in the Snowdrop Children’s Home)*, Nepszava, Feb. 20, 1959 (HU OSA 300-40-1:497).

⁹⁷ Anna Maria Marko, *A Review of the Press Representation of Child Protection in the Hungarian People’s Republic in 1954-1959 and 1987* (2015).

⁹⁸ Anna Maria Marko, *A Review of the Press...* (2015).

⁹⁹ Radio Free Europe - Hungarian Monitoring Unit, *Radio Monitoring*, Jun. 19, 1987 (HU OSA 300-40-1:499).

Hungary - The number of children (out of 1000 children in the given age group) in state care at the end of the year									
Year	0-3	4-5	6-9	10-11	12-14	15-17	Minors - total	18 years old or older	Total
	age								
1990	6.29	7.41	8.90	10.84	12.33	14.52	10.29	0.21	7.51
1991	5.60	6.52	8.24	11.03	12.62	13.70	9.87	0.92	7.34
1992	5.52	6.25	8.00	10.09	12.43	13.36	9.53	2.10	7.34
1993	5.59	6.05	7.75	9.72	12.42	13.50	9.41	2.74	7.34
1994	5.69	5.91	7.50	9.68	12.25	14.13	9.40	2.68	7.25
1995	5.82	5.89	7.46	9.77	12.26	14.44	9.44	2.29	7.08
1996	6.32	6.27	7.50	9.35	12.11	14.81	9.56	2.45	7.16
1997	6.35	6.18	7.34	9.24	11.80	14.86	9.46	2.64	7.10
1998	5.95	6.19	7.15	9.07	10.90	14.12	9.01	2.90	6.87
1999	5.79	6.16	7.01	8.88	10.83	13.44	8.79	3.40	6.91
2000	5.40	6.34	6.93	8.58	10.80	13.37	8.69	3.61	6.95
2001	5.37	6.60	7.05	8.44	11.02	13.32	8.77	3.89	7.12
2002	5.37	6.42	7.47	8.50	10.66	13.37	8.81	4.06	7.23
2003	5.46	6.43	7.96	8.68	10.69	13.57	9.00	3.65	7.04
2004	5.27	6.30	8.24	9.07	10.65	13.40	9.01	3.76	7.10
2005	5.06	6.22	8.38	9.42	10.88	13.40	9.06	3.92	7.21
2006	4.80	6.32	7.94	10.05	10.98	13.38	9.01	3.98	7.21
2007	4.75	6.11	7.84	10.60	11.56	13.50	9.12	3.95	7.28
2008	5.24	6.17	8.11	10.53	12.27	14.02	9.45	4.42	7.81
2009	5.32	6.43	8.04	10.13	12.79	14.77	9.62	4.36	7.89
2010	5.42	6.49	8.40	10.07	13.12	15.65	9.90	4.10	7.99
2011	5.71	6.90	8.40	10.65	13.63	16.69	10.32	3.61	8.10
2012	6.39	6.99	8.57	10.94	13.21	16.91	10.51	3.54	8.21
2013	7.08	7.13	8.71	10.84	13.49	17.45	10.79	2.99	7.96
2014	7.96	7.32	9.17	10.92	14.63	18.66	11.53	3.02	8.45

Table 5. - The number of children (out of 1000 children in the given age group) in state care at the end of the year (Hungary)¹⁰⁰

The state care population was constantly growing from 1960, and peaked in 1971 with 36,000 children, after which it started to decline. In 1990 26,650 children were in state care¹⁰¹. After the transition to democracy the new child protection system could develop only slowly. The Child Protection Act entered into force in 1998, giving the legal background to the establishment of Child Welfare Agencies, intended as a universal services for families

¹⁰⁰ KSH, Gyermekvédelmi Szakellátás (Alternative Child Care System) (2015).

¹⁰¹ KSH Tarsadalombiztosítás, szociális ellátás (1960-)

with children. The primary task of these institutions was to provide preventive services, and support families in need, while the secondary task was to monitor children at risk.

After 1990 the proportion of children in state care decreased until 2000. After 2000 we can observe a steady rise in the state care population – in 2014 the ratio was even higher than at the time of the transition (see Table 5.). What might be the explanation for this rise?

Hungarian governments between 1990 and 2010 implemented highly neoliberal policies, deconstructing structures of the previous welfare state. The right-wing Antal- and the first Orban-governments were implementing neoliberal policies, explained by the expectations of the EU-accession, and – at least rhetorically – were aiming to rebuild the structures of national bourgeoisie and upper middle-class. The governments self-identifying as social democrats, followed the later failed model of third way social democratic policies, deconstructing features of the welfare state even further, under the guise of a leftist rhetoric.

As the welfare state's deconstruction was taking place, Hungary's economy was inserted into the world capitalist economy as a country on the half periphery. The financial crisis in 2008 hit Hungary especially hard. After 2010, with the second Orban government's coming into power, the new government took on a position regarding the state's role. The new state philosophy is turning away from the idea that the state would be a guarantor of basic social security of the citizens.¹⁰²

Since the 2010 election, the new government has implemented several decisions regarding social policy that have furthered the income gap in the country. Social benefits for the disabled, and the long-term unemployed segments of society have been reduced and have become harder to get. The Orban-government's workfare program provides work for a wage under the minimal income, with the evasion of labor security rules. The newly implemented

¹⁰² Istvan Kukorelli, *Az alaptörvény államfilozofiaja (The state philosophy of the basic law)*, Ars Boni (Jan. 20, 2015), http://arsboni.blog.hu/2015/01/20/az_alaptorveny_allamfilozofiaja.

flat tax is benefiting the richer segments of society and further disadvantages people with a low income. At the same time the family taxation reduction has benefitted those families most where the parents have a high income, while the universal family allowance's value has decreased since 2007¹⁰³.

These actions have all contributed to the increase in the rate of poverty, and especially the rate of child poverty. Meanwhile, the child protection system has followed the punitive trend of the general social policy.

Some data suggests that the system's focus moved more and more towards risk assessment, the monitoring of risky families, and away from prevention and providing special services. In the dual structure of the Child Welfare Agencies' services (the "basic service" is a voluntary supporting relationship with the parents, while the "taking into protection" is a mandatory relation between the family and the social worker, happening through the Guardianship Authority's decision), the number of children receiving basic services has not changed significantly between 2001 and 2009, but the number of children taken into protection has highly increased (see Table 6.).

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
The casework of the Child Welfare Agencies									
Number of the affected children	111,982	116,469	123,303	127,778	130,350	122,908	121,539	126,478	127,219
Ebből									
basic services	93,900	96,495	100,812	103,388	105,780	99,501	96,284	100,512	99,763
taking into protection	15,034	16,984	18,880	20,930	22,539	21,997	23,371	24,743	26,136
care after the age of 18	3,048	2,990	3,349	3,460	2,031	1,410	1,884	1,223	1,320

Table 6. – The casework of the Child Welfare Agencies (Hungary)¹⁰⁴

¹⁰³ Balint Misetics, A social catastrophe in the making: Social policy in Hungary since 2010 (Dec. 23, 2014), <https://www.boell.de/en/2014/12/23/social-catastrophe-making-social-policy-hungary-2010>.

¹⁰⁴ KSH, Gyermekjóléti Ellátások (2015).

Furthermore, between 2010 and 2014 the Child Welfare Agencies' caseload stayed roughly the same, the number of children receiving special and preventive services declined significantly (see Table 7.). Both of these data point at the shift in the system towards the child protection orientation.

Child care work of Child Welfare Agencies			
Year	Number of children receiving casework	Number of children receiving special services	Number of children receiving preventive services
2010	145.377	60.504	195.372
2011	151.204	64.025	171.138
2012	145.324	65.069	162.966
2013	140.843	57.562	140.340
2014	139.287	41.815	114.445

Table 7. – Child care work of Child Welfare Agencies¹⁰⁵

In the follow-up book written on the subsequent changes of the child protection systems analyzed in *Combating Child Abuse – International Perspectives and Trends* the authors found that systems of child protection tended to change rapidly in the time between 1997 and 2011. They found that such rapid changes happened in times of crisis – either due to financial constraints or due to the fact that the public spotlight falls on the country's child protection system.¹⁰⁶ These crises generally bring with themselves a move towards a more legalistic, investigatory, child protection oriented approach. As Pelton phrased this tendency, “amidst a relentless trickle of deaths attributable to child abuse or neglect, «get tough» advocates are in the ascendancy.”¹⁰⁷

¹⁰⁵ KSH, Gyermekjóléti Ellátások (2015).

¹⁰⁶ Neil Gilbert et al., *Changing Patterns of Response and Emerging Orientations, in* Child Protection Systems - International Trends and Orientations 243–258 (Neil Gilbert et al. eds., Oxford University Press 2011), p. 256.

¹⁰⁷ Leroy H. Pelton, *Child Welfare Policy and Practice: The Myth of Family Preservation*, 67 American Journal of Orthopsychiatry 545 (1997), p 545.

Similarly to Germany, in Hungary in the recent years we can observe an increase in the publicity of “atrocity tales”. The “case from Szigetszentmiklós” has drawn great media coverage and public attention. At the time of this “atrocity tale’s” outburst I was working in a Child Welfare Service, and experienced that both social workers and officials of Guardianship Authorities were suddenly removing children from several families where the situation of the children had been monitored for years – mostly from families in a precarious situation.

3.4 The role of the individual professional

Lipsky argues in *Street Level Bureaucracy: Dilemmas of the Individual in Public Service* that public policy is always mediated through individuals in public service. He describes “street-level bureaucrats” (hereinafter SLBs) as those public workers who are in touch with citizens (e.g. members of the police force, social workers, judges, teachers). Generally, they have a high level of discretion, and provide punishment or rewards to citizens. They are the extended arm of the state, and the meaning of any policy will be represented on the “level of the street” by their actions. He argues that the core of public policy is not to be found in legislation and official texts coming from “up”, but rather in the everyday actions of individuals¹⁰⁸.

The working conditions of SLBs determine to a great extent their ability to implement policies in a just way. In his theoretical framework, public servants – due to a too high number of clients and lack of resources – will tend to apply coping mechanisms to deal with the excessive demand of their work. These coping mechanisms include routines, decisions based on stereotypes, attempts to control clients, and sending clients away.

¹⁰⁸ Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Service* (Russell Sage Foundation Publications 1980).

SLBs are trapped in a dual expectation between the state (and their superiors) and the clients – they shall follow the regulations without considering the aim of these regulations, but at the same time they shall be empathic, humane, and bend the rules for their clients' interests. No wonder it is exactly these vocations where burn-out rates are high. Their work requires them to be empathic towards clients, but at the same time they have to function within systems that offer few tools to offer real help to clients.

SLBs develop personal practices regarding how they portion the resources they have a power over. The most common way of this portioning is stereotyping. The technique of “creaming” means that oftentimes SLBs give resources to those clients who seem to be the most able to use the resource meaningfully (e.g. a worker in a municipality gives the opportunity to rent social housing not to those clients who are most in need, but whom she/he considers fit to take advantage of this opportunity on a long term).

Social workers, guardianship officials and family court judges can all be categorized as SLBs, as they have a high discretionary power, have some (but little) resources to give and sanctions to impose. Child protection is an especially stressful area because of the felt responsibility for children's safety and well-being, the contact with marginalized families in need without enough resources to help them.

Caseworkers' situation is further made harder by their “dual role”¹⁰⁹ – the contradictory requirement to act as helping professionals and to take on the role of investigator. The role of the helping professional requires that the professional and the client are in equal (but not necessarily symmetric) positions. The client shall enter the relationship voluntarily – otherwise the chances of developing a trusting relationship are very low. The role of the official, investigating person contradicts these requirements completely – clients of child

¹⁰⁹ L.H. Pelton, *How We Can Better Protect Children from Abuse and Neglect*, 94 Online Journal of the International Child and Youth Care Network (2006).

protection agencies are neither voluntarily participating in the relationship, nor are they on an equal footing with the social workers.

Pelton argues that this dual role should be completely eliminated, giving the investigatory role to the police, defining abuse, neglect and abandonment in a narrow way. This way the child protection system's financial and human resources could be diverted towards a genuinely supportive system¹¹⁰.

In Hungary social workers in the child protection system is one of the worst paid group of public servants. The vast majority of social workers and guardianship officials are women. It is a feminine profession, which infers that it has a low prestige and is paid badly. This is a problem that shall be addressed by any government aiming to give better social work services to families in need.

Some provisions of the Hungarian Child Protection Act are oftentimes impossible to follow. The provision declaring that children may never be removed from their family solely for the reason of poverty can completely contradict the official's responsibility to safeguard the child's safety (e.g. in cases of homelessness, factually dangerous living conditions or at wintertime when a family has no wood to heat). While providing for appropriate living standards for families in need shall at least partly be the responsibility of the state apparatus, individuals working in child protection – against all their good intentions – are trapped between two provisions, as well in a morally impossible situation.

The reconciliation of these tensions would be possible if family court judges and guardianship officials would not only have a power over their clients, but to some extent also over the state apparatus or the local government, and could provide their clients those

¹¹⁰ Leroy H. Pelton, *Child Welfare Policy and Practice: The Myth of Family Preservation*, 67 American Journal of Orthopsychiatry 545 (1997), p. 555.

resources that can prevent the need to move a child into state care. (Within the current hierarchical and patriarchic system it is hard to imagine how this could realize).

Furthermore, the reduction of the caseload of these public servants would result in better, less stereotype-driven decisions, and lower rates of burn-out. Caseworkers – especially in disadvantaged areas of Hungary have an excessive number of cases to deal with¹¹¹. This results in the application of individual coping mechanisms. These mechanisms might be the decision making on the basis of stereotypes or the removal of children from their families to reduce the number of cases.

The education of social workers and lawyers working in the field of child protection shall entail education about anti-discrimination practices, with a special focus on recognizing one's own biases. Furthermore, continuous, free and voluntary supervision shall be available to all professionals working in the field regarding both the professional and the human aspects of their work.

¹¹¹ European Roma Rights Center, *Eletfogytiglan [Life Sentence]* (2011), p. 25.; Judit Kozma et al., *Nyomorgó Csaladok Es Szocialis Szolgaltatasok* (Families in Deep Poverty and Social Services) (Szociálpolitikai és Munkaügyi Intézet 2010).

Conclusion

In the paper I attempted to find factors that determine the extent to which a child protection system moves children coming from a low socioeconomic status with higher rates into state care than children of wealthier and more educated parents. The two cases observed were Germany and Hungary. The two countries have a very different history of child protection, and the current systems have to function within different economic and social contexts. Furthermore, the two systems face different problems, as the largest “problematic group” (deemed by the state as the group of people requiring special monitoring and investigation) is the group of poor and/or undereducated and/or Roma people, the “problematic group” in Germany consists mostly of migrants, and the descendants of migrants (posing a special problem regarding language barriers).

Despite these differences the German and Hungarian systems have some common characteristics – a high out-of-home placement rate, an overrepresentation of children belonging to certain vulnerable groups (children of foreign origin in Germany and Roma in Hungary). Furthermore, both of these countries have experienced a rise in the out-of-home placement rates in the last decade.

In Germany’s case I identified the reasons for this rise in the cuts of the welfare system and the intensifying role of neoliberal ideologies in the country’s politics and social policy. Parallel with these changes and due to public outcries after some high-profile atrocity tales, the German child protection system itself has shifted towards a more investigatory child protection orientation.

In Hungary, the cuts on the welfare state have been slowly implemented since the transition in 1990, but since the second Orban-government’s state philosophy has further shifted regarding the state’s role in the social sphere, and drastic measures were implemented increasing the level of child poverty. The Orban-government’s hardly covert punitive attitude

towards poverty and unemployment has appeared in the child protection system as a drastic rise in the number of children entering state care.

Atrocity tales have had a major role in the “toughening” of the systems both in Hungary and Germany (as well as in most countries analyzed in *Child Protection Systems - International Trends and Orientations*). It seems advantageous that organizations of social workers (rather than the state to which citizens generally have a low level of trust) should communicate about their work, about the prevention of child abuse and the support of positive parenting both in times when the public is agitated by a horror story, and also in general.

The liability of professionals is a controversial question. To what extent are social workers liable for the faith of the children under their care? Even though the cases when a social worker has been held criminally liable for the abuse done by a third party on a child are extremely rare, in my experience for many social workers this possibility is still an additional source of threat. The extent of this liability shall be explicitly and clearly regulated for foreseeability.

Poverty is not a universally describable category, but depends on the comparison to an individual’s perceived social context. Thus the same level of material income and well-being might be defined in Germany as poverty, while in Hungary as a low middle-class status. When a country’s poverty rates are falling, the public perception on what does and does not constitute poverty might follow this trend with a long delay. For this reason in times of welfare cuts and increasing child poverty more and more children might be deemed as in need of saving, and the rates of out-of-home placements will rise.

At the same time the child protection system – as any bureaucratic system – has a tendency to grow. While the increase in poor families’ income decreases the incidence of child maltreatment (see chapter 1), when a society experiences a general reduction of the

number of families in deep poverty, it does not automatically mean a decrease in the foster and residential care population. Pelton questions why the foster care population grew significantly in the 1960's and 1970's in the US even though the number of impoverished families decreased to a large extent. He argues that coercive systems have a tendency to grow, but within democratic states such expansion needs to be supported by rhetoric of helping.¹¹²

Wolff argues that from the 1980's on with the dramatic decrease of the number of births in Germany the social services and the professionals working within these services had to find new areas where their work could be helpful (or at least justifiable), thus from the 1980's on the interest of social services in investigatory child protection work increased, supported by the changes of family dynamics (e.g. the increase in divorces), providing new types of "problematic families".¹¹³

States shall determine the level of material well-being under which no child shall live, and realize this standard of living (through the increase of universal family allowances, as well as social housing and other measures). Furthermore, an accurate description of those cases when the child's removal is and is not necessary shall be issued by the state in order to give guidance on the meaning of "neglect".

The requirement that no child shall be removed from the family solely for poverty is a concept that is approvable as a guiding principle, but the definite enunciation of this rule places decision-makers in guardianship offices and family courts into a situation where they have to give false reasons for a child's removal from her/his family even if the circumstances (caused by poverty) were such that the child's safety could be preserved only this way. For

¹¹² Leroy H. Pelton, *Child Welfare Policy and Practice: The Myth of Family Preservation*, 67 American Journal of Orthopsychiatry 545 (1997), p. 549.

¹¹³ Reinhart Wolff, *Germany - A Nonpunitive Model*, in *Combating Child Abuse - International Perspectives and Trends* 212-31 (Neil Gilbert ed., Oxford University Press 1997), p 217-218.

this reason it would be more advantageous if the decision to remove the child would be accompanied by a guarantee that the family will get the necessary support so that the child can be reunited with them in the close future.

At the end of chapter 3 I described Lipsky's concept of street-level bureaucrats; those individuals who meet citizens directly and carry out the state's policies. Lipsky argues that when these bureaucrats are overwhelmed by the expectations and number of cases, they will adopt some coping mechanisms, all of which will affect towards the distortion of the policy and an increase of stereotyping in decision-making processes.

For this reason the caseload of child protection professionals shall be kept on a bearable level, and they should get adequate support to carry out their tasks. Furthermore, since these professionals have a power over their clients, but have hardly any tools to effectively improve the life of their clients, the sense of helplessness often turns into burn-out, and a blaming of clients. Without a welfare system and resources to mobilize social workers have less and less opportunity to help their clients in their practical needs.

One of the hindrances of comparative work on child protection systems is the lack of comparable, disaggregated data about the functioning of these systems. The lack of data on the ethnic and socioeconomic background of the children in different levels of the system makes it even harder to follow what the effect of certain policy measures are, and makes also the planning and evaluation of policies aiming at anti-discrimination hardly meaningful.

For this reason states shall collect more detailed information regarding the children receiving child protection services, with a special regard to the children's socioeconomic and ethnic background.

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