

**STATEMENT OF THE CHILD RIGHTS NGO COALITION ON
Bill No. T / 13648 of 2020 on the amendment of certain laws relating to justice in connection
with its other provisions submitted to the Parliament**

The Child Rights NGO Coalition has already stated in a previous resolution, also issued on adoption, that the best interests of the child are supported by well-established procedures and services where the best interests of the children prevail, i.e. that they be brought up by suitable adoptive parents to their individual developmental needs,

Under the current legislation, the territorial competence of the Territorial Child Protection Service (Területi Gyermekvédelmi Szolgálat) assesses the suitability of a person intending to adopt on the basis of his or her personality and circumstances, based on the well-founded opinion of various experts and after selecting a suitable adopter for the child. At the same time, the bill would make obtaining a permit subject to the additional condition that in the future, in the case of a person intending to adopt alone, eligibility would only be possible with special consent from the Minister without portfolio. According to the bill, the Minister shall consider the best interests of the child when granting consent, taking into account changes to Article L) and (1) of Article XVI of the Basic Law.

We continue to maintain that during adoptions, professionals never look for a child for the adoptive parents, but try to select the person and family that best suits the individual needs of the child and is best suited for his or her adoption.

14/2014. (V.13.) AB states that “the state must fulfill its obligation to protect marriage arising from Article L. (1) of the Basic Law in accordance with other fundamental rights and values enshrined in the Basic Law. The State's obligation to protect marriage against the right of children to protection and care cannot be fulfilled, it cannot be enforced to the detriment of children's rights under the Constitution, as this would be contrary to the principle of the best interests of the child.

The best interests of the child must therefore be protected in all proceedings concerning them, and even in the assessment of applications for adoption, there must be no element of discrimination.

The story of “Melinda” *

“Because of Melinda’s age and traumatized, abused family history, as well as her difficulty and disappointments in adapting to many care locations, no family was found, not even on the national list. After lengthy unsuccessful searches among families, a single woman finally applied for adoption. Following the procedure, he received a decision on suitability. The harmony of life stories and psychological fitness gave hope for the realization of the first encounter. Already at the time of the friendship, it was clear that the little girl had completely rejected the adoptive mother’s male friend, and one could only guess exactly what had happened in the child’s past. This could later be clarified by the adoptive mother and daughter in the deepened relationship that had developed between the two of them. It required the work of a coordinated and multi-professional team for the alignment to be successful, for them to learn to manage each other’s losses at the time of getting used to it and to overcome this huge crisis.

After five years, this single-parent family can be said to have had a successful adoption of the child. Melinda has since been admitted to the high school she craves, a happy and balanced teenage girl. ”

The story of “Attila”

“Attila is a smart and handsome little boy. His parents made a statement of consent to the adoption by an unknown person after the birth of the child because the child could not be accepted due to his tumor disease. In the search for adoptive parents, it had to be struck that no couple was able to accept it, or the mother or father was unfit for the task. He was adopted by a single parent (mother) and they are doing fine. Attila visits kindergarten and he is well integrated into his community, lives an active life of healthy children of a similar age, does not feel discriminated against. No evidence of malignant cell formation appears in the test results. ”

The story of “Dani”

Dani is a child of “two dad” parents. His parents applied as an individual adopter for the tests needed to determine the suitability for adoption. One party was chosen from the national list for the father for the little boy. The child lived in a rural orphanage before, **was born with little weight, had plenty of backwardness, and his skin and eyes were beautiful dark brown.** He did not have an adoptive family in Hungary, but he is not unique on the county list either. Dani is a happy and extremely receptive little boy today. He knows a lot about the world, including how he has two moms and where they start a family with two dads. ”

* The following cases are real, we have changed the names and certain historical elements in order to protect the characters and preserve their anonymity.

In connection with the bill, we would like to draw attention to the following:

- 1. A prerequisite for the best interests of adoptable children is that persons intending to be adopted receive a decision on suitability as a result of a well-prepared, coordinated action by practitioners of different disciplines, carried out in a rigorous procedure.** This ensures that the most ideal candidates are found, leading to successful adoption. The abolition of compulsory participation in the adoption preparation course this year¹ is in itself a serious threat to the proper preparation of the applicants and the acquisition of their suitability. **Giving this to the discretion of the Minister without portfolio responsible for families does not ensure the transparency of the procedure, which thus raises the issue of the violation of children's rights.** According to the traditions of Hungarian law, a discretionary decision is a special decision, only constitutional under certain conditions. The definition of cases deserving special appreciation is referred to in a separate piece of legislation in the bill. By acknowledging the possibility of derogating from the preference rule of marriage by allowing the single person to adopt, albeit with the ministerial consent necessary to determine their suitability, the legislature itself proves that it may happen. **However, by placing the determination of suitability in the case of individual adoptive parents only in the discretion of the Minister** (since the guardianship authorities of the county / capital government offices exercising the competence, only in this case they have to seek the consent of the Minister without portfolio responsible for

¹ 2020. évi LXV. törvény 8.§ az egyes törvényeknek az örökbefogadások elősegítésével összefüggő módosításáról

families) **introduces an ‘strange’ element without any Hungarian legal tradition in the domestic regulation of adoption.** Furthermore, it is questionable whether the contribution is not given by the minister in charge of the sector, i.e. the Minister of the Ministry of Human Resources, but by a minister without portfolio, which may also suggest that the issue of single suitability is not primarily a professional matter. **The fact that prior authorization by the Minister, based on individual discretion, is required to determine the suitability of individual adoptive parents violates the right to human dignity and the right to a fair trial, as its professional / legal guarantees have not yet been developed.** Currently (and in the case of married couples in the future as well) the guardianship authority will make a suitability decision for the applicant, which has specific legal conditions. As a general rule, the guardianship authority determines the suitability or unsuitability of those intending to adopt following the expert opinions obtained by the territorial child protection service during the pre-adoption procedure, the proposal sent and the evidentiary procedure carried out by it. Of course, in all cases there is a possibility of appeal against the official decision. However, there are also statutory cases, such as the adoption of relatives and foster parents, where the guardianship authority examines the suitability of those intending to adopt in a specific adoption permit procedure, in which case the presence / absence of ministerial consent affects children's rights even more. **In the case of a ministerial discretionary decision, neither the legal form nor the legal remedy is clear,** although it can be assumed that the presence or absence of consent appears in the decision of the county / capital guardianship authority, ie the Ministry of Families will be based on a declaration of consent not given in the discretion of the Minister without

2. The Government's main intention is to promote adoption, to find final placement for children living in the child protection system for whom this is the optimal solution. According to the data of the CSO, the number of persons suitable for registered adoption is approx. 10% are individual adopters.² **In 2019, 1,052 children were adopted, of which 71 were individuals.**³ The loss of this adoptive layer should not be the intention of the Government, **as this could permanently settle the fate of fewer children, violating their right to education in the family.**
3. The current adoption system **already has the professional expectation that married couples have an advantage over individual persons.**⁴ The data show that married couples are more likely to adopt, they also adopt the vast majority of adopted children, so there is no professional, legal reason for further restrictions. Since the October 2020 a legislative amendment introduced⁵ an individual applicant can only take place if the national search for a suitable married couple for adoption has not been successful. **However, in our professional experience, those who intend to adopt individually are already more consciously and openly involved in the procedure than those who apply as married couples. In most cases, they also take on older**

² In 2018, 266 of the 2,855 registered adoptable persons were single, and in 2019, 362 of the 3,886 persons.

³ <https://orokbe.hu/2020/11/02/2020-as-orokbefogadasi-statisztika/>

⁴ Current Hungarian legislation recognizes two forms of adoption: individual adoption and joint adoption. All suitable persons are eligible for individual adoption, regardless of their sexual orientation or marital status (ie even a person living in a cohabiting or registered partnership can be adopted individually). However, only spouses, non-cohabiting spouses or same-sex partners or registered partners do not.

⁵ 15/1998. (IV. 30.) NM rendelet a személyes gondoskodást nyújtó gyermekjóléti, gyermekvédelmi intézmények, valamint személyek szakmai feladatairól és működésük feltételeiről 147. § (3) és (3a) bek.

children with a serious / long-term illness, a disability, trauma, presumably of Roma origin, who could be in an even more hopeless situation in the event of the loss of those intending to adopt. There are cases where an adoptable child has a clear interest in being placed with an individual adopter, especially if he or she is afraid of men or women, for example, because of a previous serious trauma or abuse.

4. From 2014, the follow-up of adoptions is mandatory in Hungary. Its purpose is to monitor the child's integration, to help with their upbringing if necessary, and to support the family if necessary. Based on our professional experience so far, **it can be said that in terms of the success of adoption, no difference can be observed between adoptions between married couples and individuals.** The well-being of children is most affected by the well-being of the adults who raise them, family, parental stability affects their development, and not whether they are raised as a couple or not. The failure of adoptions is related to unpreparedness (lack of course / preparatory training), lack of subsidies, unprocessed family losses and not to family structure.
5. When examining the institution of adoption, it is unavoidable **that the number of children in child care is constantly increasing despite the decrease in the number of births.** In connection with the reform of the adoption framework, it is necessary to examine the child welfare and child protection framework in order to remove as few children as possible from their families. It is also of primary importance that adopted children are not returned to the child protection care system, and the danger of this can be prevented by proper training of the adoptive parents and continuous, on-demand support and assistance, whether the adoptee is married or the sole adopter. **The quality of a country's social and child welfare system is evident in the fact that it successfully supports families and only removes a child from his or her family if, despite all assistance, it is in the child's best interest or if removal is unavoidable and there is a chance to returning home. In terms of adoptions, the child protection system works well if you find the right family, parents or parent for as many adoptable children as possible.**
6. According to the data of the CSO, the number of single-parent families: 58,428 families with single father child (ren) nationwide, 413,473 families with mother child (ren). This issue affects many children in Hungarian society. **On the order of magnitude, one in three children experiences before the age of 18 that they live in a single-parent household for a longer or shorter period of time.** This fact, according to current child protection practice, is not a risk factor - professionals do not consider a child to be at risk because of their marital status. Nor can it be ignored that childhood is a period from 0 to 18 years of age. In the case of married adopters, divorce also occurs, just as single adopters can marry and enter into a cohabitation relationship after adoption. Throughout history, due to the early death of parents, a significant proportion of children grew up in single-parent or mosaic families. **Given that adoption is a complex legal, professional decision, of which the marital status of the adopter is only one aspect, it is not justified to attach such importance to the marital status existing at the time of adoption.**
7. **Provisions restricting the range of persons suitable for adoption have the effect of finding the widest possible range of domestic adopters suitable for the child. One in five of the adopted children currently goes to foreign parents.⁶ Tightening the rules of domestic adoption is expected to further increase the number of Hungarian children going abroad,**

⁶ According to the data of the CSO, the number of children involved in international adoptions was 256 in 2018 and 236 in 2019.

which contradicts existing international obligations⁷, which emphasize the priority of domestic adoption in the child's country of origin, as the adoption of children abroad can only be secondary.

8. **Highlighting adoption issues among professional issues results in not only uncertainty but also mistrust.** Proper preparation is a key element in the success of adoptions. High professional standards and trust are essential for this. Although the legislation makes it clear that the person intending to adopt is required to provide factual information as to his or her circumstances, the failure to do so must be assessed when forming an opinion on his or her suitability¹⁰, it is feared that the present proposal should be secret. marriages - so that the preparation will not be successful, which may lead to the failure of the adoption.

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On behalf of the Coalition:

Alapítvány az Örökbefogadó és Nevelőszülőkért Család, Gyermekek, Ifjúság Egyesület
Esélyt a Hátrányos Helyzetű Gyerekeknek Alapítvány
Európai Szülők Magyarországi Egyesülete (ESZME)
European Roma Rights Center
Főnix Mozgalom
Gyerekesély Közhasznú Egyesület
Hintalovon Gyermekjogi Alapítvány
Igazgyöngy Alapítvány
Jogismeret Alapítvány
Kék Vonal Gyermekkrízis Alapítvány
Közép-Európai Mediációs Intézet
Magyar LMBT Szövetség
Magyar Női Érdekvégyesítő Szövetség
Magyar Pedagógiai Társaság Gyermekérdekek Szakosztálya – Korczák Munkabizottság
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Mozgáskorlátozottak Egyesületeinek Országos Szövetsége (MEOSZ) Nők a Nőkért Együtt az Erőszak Ellen (NANE) PATENT Egyesület
Pressley Ridge Magyarországi Alapítványa Rosa Parks Alapítvány
SOS Gyermekfalvak Magyarország
Társaság a Szabadságjogokért (TASZ)
Traumaközpont
UNICEF Magyarország
Validity Alapítvány
Világszép Alapítvány

And individual expert members, as

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⁷ Article 21 of the UN Convention on the Rights of the Child states that "adoption abroad may be considered as another means of providing the child with the necessary care if he or she cannot be placed in a foster or adoptive family or properly raised in the child's country of origin". The 1993 Hague Convention on the Protection of the Child in Respect of Intercountry Adoption states that "adoption abroad is possible only if it has been demonstrably exhausted in the country of origin that all possible forms of care have been exhausted and international adoption is interests.

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