

STATEMENT OF THE CHILD RIGHTS NGO COALITION ON THE PROVISIONS OF THE “NINTH AMENDMENT OF THE CONSTITUTION OF HUNGARY” DIRECTLY AFFECTING THE RIGHTS OF THE CHILD

The United Nations Convention on the Rights of the Child (hereinafter: the UN CRC), which Hungary ratified with the Act LXIV of 1991 reflects and requires a comprehensive, holistic approach to the protection of the rights of the child in its implementation. The rights of the child enshrined in the UN CRC are interlinked and can only be exercised in accordance with each other, as empowered by Art 4 of the UN CRC, which states that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.”

The Basic Law (Constitution of Hungary) currently provides for the right to the protection and care necessary for the proper physical, mental and moral development of the child in (1) of Art XVI of the Basic Law. Our constitutional background does not “generally” provide for children’s rights, but for the child’s right to protection and care. The constitutions of many countries¹ go beyond this and, more broadly, enshrine the protection of children as holders of their rights.

In his reports, the Commissioner for Fundamental Rights, who is primarily responsible for the protection of the rights of the child, consistently refers to Constitutional Court’s Decision Nr. 995 / B / 1990. AB, which states that “the child is a person to whom all constitutional rights are entitled like everyone else.”

The 1993 Vienna Declaration and Plan of Action² states that “all human rights are universal, inseparable, interdependent and interconnected. The international community must treat human rights globally fairly and equally, on the same basis and with the same emphasis. ”

In view of all this, in connection with the ninth amendment to the Basic Law, we would like to draw particular attention to the following.

I.

Pursuant to the ninth amendment, Article XVI of the Basic Law The following is added to Article 1 (1): "Hungary protects the right of children to self-identity according to their gender of birth and ensures education in accordance with the values based on Hungary's constitutional identity and Christian culture."

Regarding the child's identity:

- The amendment introduces a provision that explicitly and severely restricts the rights of the child: directly concerning the rights of the "child" and indirectly concerning the rights of the "parent". According to Art 8 of UN CRC “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

¹ <https://rm.coe.int/168062cf94>

² Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on 25 June 1993

- This amendment to the Basic Law narrows this scope of protection, so it is not the full identity of the child that is a right protected by the constitution, but only a narrowed part of it: “self-identity corresponding to the sex of birth”. From this narrow constitutional protection, the rights of children whose identities and identities other than those of their parents or births occur in a very diverse way in reality in their families are meaningfully excluded. A person’s gender at birth (male or female) is sometimes inconsistent with that person’s gender identity — that is, how they relate to and think about gender.³ Research shows that the ratio of gender dysphoria in men to adulthood is 1: 30000- 1: 100000 among women, there is no clear explanation for its cause: biological (e.g androgenic effect during brain development), psychosocial (e.g social learning), cognitive theory (acquisition of patterns of non-thinking) is known.⁴ the exclusion of the amendment for intersex children (with a conservative estimate of 1: 500) who have atypical gender characteristics (genitals, reproductive organs, or sex hormones) and who often face discrimination anyway (as the Office of the Commissioner for Fundamental Rights in 2015 and the report of the European Union Agency for Fundamental Rights s revealed⁵).

Regarding the upbringing of children:

- Article 18 (1) of the UN CRC places the primary (joint) responsibility for the upbringing and development of the child on the parents and legal representatives. According to the UN CRC, the state has no power to determine the “directions” of the upbringing of their children in relation to parents and legal representatives, to “ensure” them according to some moral, cultural or religious values. This finding also means that according to the latest amendment to the Basic Law, education outside the “constitutional identity and values based on Christian culture” to be provided by the state is not considered by the state to be a constitutional right for the child.

It should be noted that according to the last census of 2011, 54.13% of the respondents in Hungary's religious composition declared themselves to be Christian, while 18.18% declared themselves not to belong to a religious community or denomination.⁶

- Article 14 (1) of the UN CRC states that the State must respect "the right of the child to freedom of thought, conscience and religion." According to (2), the state is obliged to respect the right and duty of parents to "guide the child in the exercise of this right in accordance with the development of his or her abilities." Article 14 reaffirms the child's fundamental civil right to freedom of thought, conscience and religion, which is guaranteed to "everyone" by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The second paragraph, recalling Article 5 of the UN CRC requires respect for the right of parents “to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.” The International Covenant requires respect for parental freedom in the religious and moral education of the child in accordance with their own beliefs, but the Convention on the Rights of the

³ In 2018, WHO published an updated version of the International Classification of Diseases (ICD), where gender identity disorder is replaced by gender incongruence, a condition already described in sexual health. and not listed as mental illness. For most people, the biological gender established at birth is the same as their gender identity, social gender, and physical expressions of their gender, but not to everyone.

⁴ <https://semmelweis.hu/klinikai-pszichologia/files/2019/02/15.-Luk%C3%A1cs-Eszter-Szexu%C3%A1lis-%C3%A9s-nemi-identit%C3%A1s-zav.-t%C3%BCnetek-diagn.-2018.pdf>

⁵ <https://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>

⁶ http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_10_2011.pdf

Child focuses primarily on the child's freedom of religion, with parental guidance appropriate to his or her developing abilities.

Article VII of the Basic Law "Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to choose or to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in religion or belief, or in public or in private, practice or teach."

Constitutional Court' Decision Nr. 3326/2018. (VII.20.) AB (Reason [18]) states that "The duty of the state to respect and protect fundamental rights [Article I (1) of the Basic Law] in relation to freedom of religion does not extend to refraining from violation of individual rights, but must also ensure the conditions necessary for the exercise of religious freedom, ie the protection of values and life situations related to religious freedom, regardless of individual needs [cf. 64/1991. (XII. 17.) AB Resolution, ABH 1991, 297, 302; 4/1993. (II. 12.) AB Decision, ABH 1993, 48, 53–54.]

A fundamental condition for the non-discriminatory exercise of religious freedom is that the state, within the framework of a law binding on all, does not discriminate between its citizens on the basis of their religious and ideological commitment. Denominational equality is an essential element of civil equality, Article XV of the Basic Law and Article 2 of the UN CRC comprehensively prohibit discrimination.

The need to separate the state and the church stems from the requirement of state neutrality.⁷ This obviously does not mean valuelessness, but worldview neutrality, the principle of which was first enshrined by the Constitutional Court in Decree No. 4/1993. (II. 12.) AB, according to which the state must remain neutral in matters of religion and conscience.

Article 2 of the First Protocol to the European Convention on Human Rights states that "no one shall be denied the right to education. In exercising its responsibilities in the field of education and teaching, the state is obliged to respect the right to education in accordance with the parents' religious and ideological convictions. According to Article 18 (4) of the International Covenant on Civil and Political Rights, "States Parties undertake to respect the liberty of parents and, where applicable, legal guardians, to ensure the religious and moral education of their children in accordance with their own convictions.

Article XVI of the Basic Law, which is in force until 15 December 2020, "Parents have the right to choose the education to be given to their child." Parents have the right to choose the education to be given to their children. "In doing so, the Basic Law also protects the worldview integrity of the family, that is, it protects the right of parents to raise their children according to their conscience and religious beliefs." ⁸

As a result of the amendment, Article XVI. Article 1 (1), which prescribes "education based on the constitutional identity and Christian culture of our country", is fundamentally in conflict with the current constitutional law, which recognizes the competence of parents and guarantees freedom of education, and violates the family's ideological integrity. .

⁷ Paczolay Péter: A lelkiismereti és vallásszabadság – In: Halmai Gábor és Tóth Gábor Attila (szerk.): Emberi jogok. Budapest, Osiris, 2003. 527-575. pp

II.

According to Article L (1) of the Basic Law, "The mother is a woman, the father is a man." In addition to the fact that the amendment does not currently have a normative content, we draw attention to the following.

Linking the concepts of "mother" and "father" to the biological basis within the family as a basic social unit may also infringe parental rights under Article 9 of the Convention on the Rights of the Child. In our diverse and real world, a person exercising "parental" functions in the social and sociological reality recognized by the Convention cannot necessarily be identified with the concepts of biological "mother" and "father" to be included in the Basic Law of Hungary.

As a further layer of the problem, it appears that in addition to the diversity of social gender, biological gender cannot be described along black-and-white terms such as "The mother is a woman, the father is a man." item you want to display. This provision excludes all persons (children or parents) from the scope of constitutional legal protection, in whose family relations self-identity and identity other than the sex of birth may develop, occur and exist in various ways. However, they are also children protected by the UN CRC and parents who play a key role in enforcing the rights of the child.

Budapest, December 22, 2020

On behalf of the Coalition:

Organizations:

Család, Gyermek, Ifjúság Közhasznú Egyesület

Esélyt a Hátrányos Helyzetű Gyermekeknek Alapítvány

Európai Szülők Magyarországi Egyesülete

Főnix Mozgalom

Gyerekesély Közhasznú Egyesület

Hintalovon Gyermekjogi Alapítvány

Igazgyöngy Alapítvány

Jogismeret Alapítvány

Kék Vonal Gyermekkrízis Alapítvány

Magyar LMBT Szövetség

Magyarországi Terres des hommes Alapítvány "Lausanne"

Magyar Pedagógiai Társaság Gyermekekérdekek Szakosztálya Korczak Munkabizottság

Pressley Ridge Alapítvány

Rosa Parks Alapítvány

Társaság a Szabadságjogokért

Traumaközpont

UNICEF Magyarország

Világszép Alapítvány

Validity Alapítvány

And individual expert members as

Aczél Anna

Békés Zoltán

Bíró Dalma

Cserey Miklós – Szülőnek lenni program

De Coll Ágnes

Hegedűs Judit

Lux Ágnes

Mátyók Fanni

Nagy-Nádasdi Anita Rozália

Negrea Vídia

Rácz Andrea

Szotyori-Nagy Viktória

Tománé Mészáros Andrea