



STATEMENT

on the provisions of the 15th Amendment to Hungary's Fundamental Law concerning the rights and protection of children

The Hungarian Child Rights Coalition considers the "child protection" provision of the Fifteenth Amendment to the Fundamental Law submitted to the Parliament to be of serious concern from the point of view of the enforcement of children's fundamental rights, the safeguarding of the best interests of the child and the system of fundamental rights protection, and therefore we ask the Members of Parliament not to support it in this form. We are convinced that the amendment does not serve the protection and enforcement of children's rights, but on the contrary, it **subverts the system of fundamental rights protection, and gives rise to the possibility of limiting the fundamental rights of children, parents and other persons without any consideration, causing serious damage to legal certainty.**

In our view, the need for protection and care has an important place, role and function in the children's rights system, but not in an absolute sense, automatically preempting all other rights. **Children are human beings who are entitled to all the fundamental constitutional rights that everyone else is. We are concerned that the reference to the „protection of children” could be the basis for a virtually unlimited reduction of the rights of other people, including adults and children, leading to legal uncertainty and making the protection of children unpredictable.**

The current amendment of the Fundamental Law goes against the spirit of the Convention on the Rights of the Child, its understanding and interpretation on children's rights.

We must point out that the Hungarian state currently has all the constitutional powers and possibilities to ensure the protection of children, to strengthen its effectiveness and quality, and the Child Rights

NGO Coalition (hereinafter: Coalition) has previously¹ and repeatedly² formulated several cornerstones and proposals in this regards.

In our view, the **full implementation of laws and other legislation** by the state, municipalities, churches and other actors **can also contribute greatly to strengthening child protection and to deepening the child rights approach if the state is able to guarantee the conditions for implementation.**

JUSTIFICATION:

[1] The Coalition has made it clear in its position on the 9th Amendment to the Fundamental Law that the Convention on the Rights of the Child, ratified by Hungary in 1991, reflects and requires a comprehensive, holistic approach to the protection of children's rights during its implementation. The **rights of the child as set out in the Convention on the Rights of the Child are interdependent** and can only be implemented in harmony with each other, based on the safeguarding of the **best interests of the child and a child-centred, child rights approach.** State Parties, including Hungary, must take all legislative, administrative or other measures necessary to give effect to the rights recognised in the Convention. In our view, the current wording of Article XVI(1) of the Fundamental Law lays down the right of the child to the protection and care necessary for his or her proper physical, mental and moral development, but does not refer „in general” to the rights exercised by the child, to the legal recognition of children as holders of fundamental rights, but to the care and protection provided to the child. **In accordance with the Convention on the Rights of the Child, the consistent practice of the Constitutional Court in interpreting the Convention makes it clear that the child is a human being who is entitled to all the fundamental rights of everyone else, but who is also entitled to increased protection due to his or her age and situation.**

[2] The 15th Amendment would change the already mentioned Article XVI(1) of the Constitution by not only stating that every child has the right to the protection and care necessary for his or her proper physical, mental and moral development, but by adding that "*This right shall take precedence over all other fundamental rights, with the exception of the right to life*". The **short justification** of this provision in the amendment states that "*the protection of children's right to the protection necessary for their physical, mental and moral development and of their right to a self-identity corresponding to their sex at*

¹ <https://gyermekjogicivilkoalicio.hu/aktualis/mit-kivan-a-magyar-gyermekvedelem-javaslatcsomag/>

² <https://gyermekjogicivilkoalicio.hu/mit-kivan-a-magyar-gyermekek-vedelme-2025/>

birth is a fundamental right which is of paramount importance compared to other fundamental rights guaranteed by the Fundamental Law, not including the right to life, and as such enjoys proportionate protection". In essence, **it repeats the amendment itself** in different words, **but does not explain precisely the purpose and content of the amendment**, and is ambiguous as to exactly which right it applies to, and whether it uses the proportionality approach.

[3] This amendment to the Fundamental Law was tabled by Members of Parliament, and **was not preceded by any meaningful consultation, social or professional debate or impact assessment**. The possible direction and content of the amendment could only be inferred from preliminary political statements.

Child protection professional and civil society representatives have not had the opportunity to make any preliminary observations, nor to draw attention to the potentially unintended consequences of this far-reaching amendment, its internal contradictions and its lack of consistency with international legal obligations. **The Coalition hopes that the parliamentary debate will lead to an informed decision after careful consideration of all these aspects, and we wish to contribute to this with our resolution.**

[4] **Article XVI(1) of the Fundamental Law establishes an objective institutional duty of the State to protect and care for the child** (hereinafter referred to as the "objective duty to protect the child")³, not a fundamental right that the child may exercise. The original explanatory memorandum to Article XVI(1) of the Fundamental Law states explicitly that children are, as a general rule, entitled to all the fundamental rights of any other human being, but that, in order to be able to enjoy the full range of rights, they must be provided with all the conditions to become adults, which are appropriate to their age. Within the scope of the right to the protection and care necessary for the child's proper physical, mental and moral development, **the child may claim such protection and care from everyone**. The child's parents, his or her family, the State and all members of society have a duty to respect the child's rights and to provide him or her with the conditions necessary for his or her proper development as a guarantee of the survival of society.⁴ **The protection of children is not merely a state objective which can be achieved at will, but**

³ Confer 982/B/1998. Constitutional Court Decision, 2006, 1153, 1154–1155. 3142/2013. (VII. 16.) Constitutional Court Decision, Justification [27]. The constitutional court also mentions parents and society as being obligated alongside the state, but in the context of the amendment, meaning from the perspective of the restriction, this is not of significant importance.

⁴ See <https://www.parlament.hu/irom39/02627/02627.pdf>

a **constitutional obligation**, i.e. a priority task and responsibility.⁵ Furthermore, the practice of the Constitutional Court is also consistent in the view that this objective obligation to protect children may justify a restriction of the fundamental rights of others, such as the child, the parent or other persons.⁶ **However, the constitutional yardstick for this restriction is clearly and unequivocally the application of the general test of fundamental rights, the necessity and proportionality test, required by Article I(3) of the Fundamental Law** (see [point 8]).

[5] In the light of all this, the provision introduced by the 15th Amendment to the Fundamental Law may in fact **create the possibility for the State to restrict** in a quasi-absolute **manner the fundamental rights of anyone and of any fundamental right**, with the exception of the right to life, by invoking its obligation to protect children (the precise content and framework of which is to be determined by the State itself). The amendment also **does not rule out the possibility that any other fundamental right or freedom**, such as freedom of expression, freedom of assembly or the right to human dignity, **should be preceded by the State's obligation to protect children**. While so the scope and content of child protection is uncertain (for example, what exactly the state should protect children from, what risks and dangers), the Fundamental Law would give very broad powers to restrict it, including severely restricting a child's rights or a parent's right to raise a child.

[6] In matters directly affecting children and children's rights, **it is essential to establish the rights and interests of the child and parents, to ensure that the procedure is in the best interests of the child, and to define and justify the framework for state intervention**. European and Hungarian fundamental rights practice - the Constitutional Court and the European Court of Human Rights - therefore draws particular attention to the role and importance of **striking a balance**, of establishing a fair balance.⁷ In the fundamental rights system, **the automatic priority given to the protection of the child and to state intervention based on that protection may grossly upset this approach. The amendment may explicitly create the possibility for the state to override the parent's right to upbringing and the parenting decisions based on that right, in the name of 'child protection'**, or to obstruct the exercise of the child's

⁵ Decision 9/2019 (22.III.) AB, Justification [77]-[78]

⁶ Decision 21/1996 (17.V.1996) AB

⁷ See Valdis Fjölfnisdóttir and Others v. Iceland, 71552/17, Judgment 18.5.2021; Paradiso and Campanelli v. Italy, 25358/12 Judgment 24.1.2017.

other fundamental rights.⁸ Ultimately, it is capable of reducing child protection itself to a universal policy instrument by turning it inside out.

[7] **In our view, the 15th Amendment to the Fundamental Law is also incompatible with the guarantee rules of the Convention on the Rights of the Child.** The fundamental aim and aspiration of the Convention on the Rights of the Child, while emphasising an overtly child-centred approach to children's rights, is to balance the exercise of certain rights of the child, the rights and duties of the parent and the responsibility of the State in protecting and caring for children. **Several provisions of the Convention on the Rights of the Child contain specific safeguards of a protective nature**, for example, **Article 19 explicitly sets out** the obligation of States Parties to take measures to protect children from any form of violence, assault, physical or mental abuse, abandonment, neglect, maltreatment or exploitation, including sexual violence. Furthermore, under **Article 27** of the Convention on the Rights of the Child, States Parties must recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. It is true, however, that each such provision sets out precise obligations of protection with a clear framework and function, with a well-defined content, which are also non-absolute. **Creating the possibility of broad restrictions does not raise the level of child protection, but makes it unpredictable.**

[8] It should be noted that the current wording of Article I (3) of the Fundamental Law, **in line with the previous practice of the Constitutional Court and the uniform European standards for the protection of fundamental rights**, stipulates that "*a fundamental right may be restricted to the extent strictly necessary, in proportion to the aim pursued and in compliance with the essential content of the fundamental right, in order to ensure the exercise of another fundamental right or to protect a constitutional value*". **The Constitutional Court applies the necessity-proportionality test to decide whether and how a restriction can be constitutionally justified in the light of a given conflict of fundamental rights**, for example whether and how compulsory schooling can restrict a parent's right to education. **The Constitutions do not establish an explicit hierarchy between fundamental rights, as this could override the application of the fundamental rights test**, privileging some fundamental rights to the detriment of others. Hungarian fundamental rights practice does **not even make such an exception** in the

⁸ See: <https://www.parlament.hu/irom42/11201/11201.pdf>

case of the **right to human dignity**, which is of paramount importance, **or freedom of expression**, **nor does it establish a direct hierarchy.**

[9] **All this raises the possibility that the amendment could lead to a conflict between Article I(3) of the Fundamental Law (a test must always be applied) and Article XVI(1) of the Fundamental Law (inherent primacy) in a fundamental rights dispute relating to the protection of children.** It should also be pointed out that, due to the specificities described above, there would be **serious concerns and uncertainty about the interpretation of "prevention"** even if the amendment did not automatically exclude the application of the fundamental rights test.

[10] **It is the task of the Constitutional Court to interpret the provisions of the Fundamental Law in a binding manner and to resolve possible conflicts. However, the Coalition is of the opinion that the effects of the amendment will lead to legal uncertainty in the fundamental rights system.** The question may arise, for example, whether the state can interfere in the religious practice of parents on the grounds of the protection of the child, or even the seemingly absurd question of whether someone can be subjected to torture, cruel and inhuman treatment in order to protect a child. All this may lead to **a lack of clarity in the adjudication of cases involving the exercise of children's rights**, and the extent to which a particular fundamental right can be interfered with without reference to the protection of the child. **The unbridled scope for restriction will also increase distrust of state intervention** in areas where state action has been and continues to be justified (e.g. the administration of compulsory vaccinations). **Overall, the 15th Amendment to the Fundamental Law will lead to an unpredictable level of protection of children's and parents' rights.**

[11] Based on international experience to date, the Coalition believes that **a constitutional declaration alone will not increase the level and quality of child rights protection.** However, the Coalition considers that constitutional amendments which, in accordance with the latest findings on the implementation of children's rights, **elevate to a constitutional level the best interests of the child or the principle of child participation, are supportable.**⁹

⁹ CDL(2014)014-e. Draft Report on the protection of children's rights: international standards and domestic constitutions. Venice Commission.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2014\)014-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2014)014-e)

In answering everyday legal questions, in the everyday resolution of legal disputes, legal practitioners generally do not take into account the provisions of the Fundamental Law, but the legislation applicable to the legal relationship or issue in question (for example, the Child Protection Act). The abstract text of the Constitution does not therefore appear to have any impact on everyday life. **The Coalition's position, on the other hand, is that constitutional child protection in Hungary can only be realised within the normative framework of the Fundamental Law, and therefore it is not indifferent what and how the Fundamental Law regulates.**

In view of the above, we call on the Honourable Parliament, in addition to considering the above, not to adopt the provision of the Fifteenth Amendment to the Fundamental Law on the "protection" of children's rights in its present form.

Budapest, 17 March 2025

From the organisations of the Child Rights NGO Coalition:

Bagázs Public Benefit Association

Family, Children, Youth Public Benefit Association

Children's Aid Public Benefit Association

Hintalovon Children's Rights Foundation

Real Pearl Foundation

Legal Knowledge Foundation

Terre des hommes Foundation "Lausanne" Hungary

Hungarian Pedagogical Society's Korczak Working Committee

National League for Child Protection

Pressley Ridge Hungary Foundation

Rosa Parks Foundation

Social Workers Association of Hungary (SzMME)

Social Professional Union

Hungarian Civil Liberties Union (HCLU)

and individual experts such as

Anna Aczél

Zoltán Békés

Katalin Baracsi

Miklós Cserey

Ágnes Galajda

Edina Gyulai

Rita Herczeg

Boglárka Jánoskúti

Erika Pehr Katonáné

Zsuzsanna Kovács

Ágnes Lux

Éva Makai

Fanni Mátyók

Barbara Németh

Andrea Toma

Zsófia Tóth

As an observer organisation, it agrees with the declaration:

Civil Platform for Public Education

Human Rights Educators Network