**For the attention of the Members of Parliament of Hungary**

Dear Representatives! Dear Madam and Sir!

The Hungarian Civil Liberties Union (TASZ) and the signatory professional organisations and professionals are requesting that the Honoured Representatives not support the *amendment of T/12477 which is related to the enhancement of children’s safety and security of the Child Protection and Healthcare Act 1.,* as some components of this bill are anti-constitutional and may create precedent for the unjustified removal of children from their families and provide a legal basis for ripping families apart.

In our view, the proposed bill is problematic for two reasons:

1. The bill would declare refusing cooperation with primary health care or educational institutions as a ‘threat’ (for the safety children) hence jeopardising the fundamental rights of children to grow up in a family. This provision violates the rights of families raising children to access substantial assistance for the rearing of their child (Child Protection Act Paragraph 6 (1)-(2)).
2. The bill would make it mandatory to use health visitor services, moreover, without being given the opportunity to choose other professionals than the territorial jurisdictional health visitor. This is a serious violation of the right to self-determination and the right to the free choice of health care professionals.

The bill was drafted by Gabriella Selmeczi and László Horváth from the government majority to amend the XXXI. Act of 1997 on Child Protection and Public Guardianship Authority (hereinafter: Child Protection Act), the CLIV. Act of 1997 on Healthcare and the CXXIII. Act of 2015 on primary health care.1

1 http://www.parlament.hu/irom40/12477/12477.pdf

The proposal’s proclaimed goals are to enhance the safety and security of children. However, the proposal, in fact, includes planned austerity measures that do not represent a real solution to the problems of the child protection system or to the incomplete or otherwise problematic function of the child warning system. These amendments will not contribute to the prevention of tragic cases. In the meantime, the planned tightening will increase the risk of removing children *en masse* from their families without a real or serious threat and without reasonable justification. It also restricts the right of freedom to self-determination and the right to choose a doctor.

We respectfully request that the Honourable MEP speak up against the proposed bill during the general debate of the bill (20 October 2016) and to file a new amendment as detailed hereunder. Should the content of the bill remain problematic on the final vote, we further request the Honourable MEP to decline to support the bill and, ultimately, vote ‘no’.

The following explains in detail our professional opinion regarding the proposal.

1. **On the changes in the regulation of child protection**

We agree with the view of the Representatives that the recent, tragic events related to child protection services (the cases of Szigetszentmiklós, Agárd or Gyöngyös) shine a light on serious shortcomings and mistakes within the child welfare system and the mandatory reporting system.  In specific cases, the Commissioner for fundamental rights has pointed out serious professional mistakes: *„The Commissioner established that a series of ommissions and professionally unjustifiable steps of the general practitioner, Child Welfare Services and Guardianship Office have enabled the parents to deprive the child of nourishment for a longer period of time, thus contributing to the child’s death. (...) The Commissioner’s inquiries uncovered several shortcomings in the practices of the  Guardianship Office as well as the Child Welfare Services.”*

However, unlike the Representatives submitting the bill, HCLU and those signing this document propose that the already existing regulation works well in ensuring the effective cooperation of the mandatory reporting system. The real problem is, and always has been, the shortcomings in practice. In the cases examined by the Commissioner, the professionals are aware of their duties in specific cases, but failed to fulfill  them. If a family refuses to cooperate with health visitors, GPs or other members of the mandatory reporting system, these professionals are then obliged by law to notify child welfare services. The Welfare Services are then obligated to visit the family to determine the reasons for non-cooperation. Upon discovering signs of abuse or endagerment of the child, the child welfare services are required by current law to submit a proposal of action towards the Guardianship Office. In the above scenarios, a real and effective implementation of the mandatory reporting system as proscribed by law would have prevented the above-described tragedy, as well as similar tragic incidents. In the words of the Commissioner: ’This tragedy shows that the only viable solution is the effective cooperation within the child mandatory reporting system.’

Instead of promoting the cooperation of the members of the mandatory reporting system, however, the proposed bill focuses exclusively on the duty of parents and guardians in cooperating with the authorities. The proposed bill goes so far as to make parents’ and guardians’ cooperation with the authorities mandatory, the breach thereof punishable by heavy sanctions.

It is also important to note that failing to remove children from abusive families is only one side of the coin. The flip side is the unlawful removal of children from loving families. Currently, there are tragic cases of the system inflicting lasting trauma to both children and parents. This unlawful practice is also the consequence of the dysfuntional signalling system. The bill submitted excacerbates these problems and will allow further ground for this practice, infringing further upon basic human rights as much as on Hungarian legislation.

Article 4 (3) of the proposed bill would include the following into the Child Protection Act: „It is considered grave endangerment of the child, even  without any other warning signals, if the parent or legal guardian caring for the child refuses to cooperate with health services – the GP, pediatrician or health visitor – or the services responsible for pre-school care or public education.” According to Article 72 of the Child Protection Act, however, grave endagerment constitutes a reason to remove the child from  the family immediately and place him/her into temporary care. According to the proposed bill, a remark from the GP, health visitor, nursery or school about the parent not cooperating properly can therefore lead to the child’s immediate removal from the family. Removing the child from his/her family is a last measure that should only be employed in cases of abuse or grave endangerment. If nothing else justifies it, lack of cooperation with the welfare system in itself cannot and must not justify it.  The organizations and professionals signing this paper have encountered several cases where the relationship between the GP or health visitor and the family had severely deteriorated for professional or personal reasons; this conflict, however, did not jeopardize the child’s future well-being within the family. It is typical, for example, that parents of children with special needs accept other professionals’ approaches since the GP or the health visitor may lack the necessary specific knowledge to give relevant advice.

According to the wording of this bill, even a case like this would constitute grave endangerment. Defining lack of cooperation with members of the welfare system – be it a one-off dysfunction or misunderstanding or simply not seeing eye to eye with the health care professionals– as grave endangerment is very dangerous and can put the whole child welfare system on the wrong track. In our view, it is not the regulation or the professional standards that should be changed. Rather, it should be ensured that social services professionals adhere to the high standard legislation already in force. In order to protect the children, the state should promote effective cooperation of members of the mandatory reporting system and provide the best possible circumstances for primary health and social services.

It is therefore our view that a stricter policy is a paper tiger. It will not bring any solution for the plight of abused children but will further deliver vulnerable, disadvantaged families to the mercy of the welfare system by forcing them to comply with all their expectations, regardless of whether the cooperation is reasonable or justified. A single signal from the GP, the pediatrician or the health visitor would suffice for them to lose their children.

Lasting results could be reached, on the other hand, by:

(1) educating members of the mandatory reporting system in recognizing and handling abuse and in cooperative communication techniques;

(2) making sure the signalling system cooperates intimately with the primary welfare system, with a manageable work load;

(3) creating a comprehensive preventive system and methodology;

(4) holding regular case study conferences for members of the signalling system to reveal and understand the real situation of the client families;

(5) holding child protection professionals should responsible for complying with professional and legal requirements by the same means as the parents, including, but not limited to, using the tools of the criminal justice system if necessary; and

(6) Specifying the duties and responsibilities of the members of the signalling system in the sectoral legislation.

**Hungary must have tangible and effective professional cooperation instead of purposeless modifications to legislation.**

**II. Regarding the changes to the Healthcare Legalisations**

The proposed changes would eliminate the possibility to refuse the care of health visitors. Treatment provided by health visitors, according to current rules in force, can be denied. The health visitor provides services that, as the legislature intended, help expectant mothers, newborns and young children. The services of the health visitor are, however, complementary, as the primary health care is provided by the paediatrician or family doctor and the child protection services are provided by the child welfare services. The health visitor service therefore is useful and relevant for the majority however this does not mean that it is a necessity for everyone.

Trust between the parent, the child and the health visitor is needed, the absence of which means that the health visitor service cannot fulfill its function. Hungarian health vistor services are generally considered to be of high quality. However, no national assessment, analysis or client satisfaction survey has ever been carried out. Proper review of the health visitor service is absolutely essential in propogating its socially useful function as laid down in the legalisation. The training systems, the health visitor’s responsibilities and duties and the practical fulfillment must be overviewed and reviewed.

Under current legislation, parents may decide that the family paediatrician and child service agency may provide a direct liaison with the state. If the parent refuses the health visitor, the health visitor may notify the child protecting agency, which can at any time verify the circumstances of the child’s upbringing. Therefore, considering that the health visitors do not perform medical interventions, epidemiological screening and have no statutory authority, the refusal by the parent of health visitor services alone does not result in jeopardizing the children’s development or their wellbeing.

It is our view that the refusal for care is a fundamental right, which can be deduced from the right to human dignity of the fundamental right of self-determination. In accordance with the established practice of the Constitution and the Constitutional Court, the right to self-determination can only be restricted if it will stand the test of necessity and proportionality [Constitution, Article 1 (3)]. As it can be seen above, the health visitor service provided by the state is considered as an additional service, which does not have essential public interest nor any rights protection role (given that these powers are exercised by the family doctor or the child protection authority). Consequently, the elimination of the possibility to refuse care provided by health visitors to exclude the rights of others are not necessary, therefore the proposed bill is against the Constitution and would limit the right to self-determination.

Further, it is also of concern that the elimination of the possibility for refusal of health visitor service is excluded uniformly by the proposal, even though the health visitors have tasks up until the child reaches 18 years of age. However, children over 12 years may already refuse the service in certain situations.

In case of the above mentioned relationship in which trust is lacking between the participants, not only the refusal of the health service should be an option but also the freedom to choose an individual professional as the family health visitor. The proposed bill makes no provisions for doing so, therefore the use of the given regional health visitor is compulsory. Patients currently have the right to choose the specialist providing the care. The proposed bill therefore does not consider the trust which is an essential constituent to the health visitor system, as this right is not explicitly stated.

The Hungarian Civil Liberties Union and other signatories therefore consider that the draft proposal of the Healthcare Law amendments is contrary to the Constitution and other laws, and thus the proposal which is currently in front of the National Assembly is ineligible for support.

Based on the above recommendations, together with the professional organisations we respectfully request the Honourable MPs to speak up during the general debate of the bill (26 October 2016), to stand up against the bill and to put forward a new proposal for amendment – according to the detailed accounts above. If the proposed bill continues to have the above-referenced problematic content, we further respectfully request the Honourable MP’s to decline their support for the bill and ultimately vote in the negative. A legislative amendment of such magnitude and importance can and should only take place after a meaningful, professional dialogue.

Budapest. 24 October, 2016.

Kind regards,

            Hungarian Civil Rights Union

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