



## ADVOCACY NOTE

# Act XXXI of 1997 on the Protection of Children and the Administration of Public Guardianship ("Child Protection Act")

Children comprise more than 40 per cent of those who have been forcibly displaced from Ukraine and reside in Hungary since the start of the full-scale invasion. Hungary has shown remarkable solidarity with refugees from Ukraine, including children. The Government of Hungary granted temporary protection status to over 38,000 refugees from Ukraine, including over 16,000 children.<sup>1</sup> The majority are cared for by single mothers who may struggle to re-establish their lives in Hungary amid ongoing insecurity in Ukraine that diminishes hope for an imminent return. The circumstances of being forcibly displaced can profoundly affect children throughout their lives, with long-lasting and serious consequences and risks that include violence, exploitation, and neglect.

The protection of the best interests and rights of children, in the spirit and by the letter of the UN Convention on the Rights of the Child, is enshrined in the Fundamental Law of Hungary and forms the basis of child protection legislation in Hungary, which includes the [Child Protection Act \(Act XXXI of 1997 on the Protection of Children and the Administration of Public Guardianship or 1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról\)](#).

This legislation provides for services to prevent and mitigate child protection risks and optimize parental support to eliminate factors endangering a child. It aims to preserve family unity wherever possible but stretches to protection measures and alternative care solutions where imminent risks and endangerment make it necessary in line with a child's best interest.

The Child Protection Act's scope extends to Hungarian citizens – children, young adults, and their parents or caregivers – residing in Hungary, as well as persons recognized by Hungarian authorities as refugees, beneficiaries of subsidiary protection, with tolerated status or stateless individuals.<sup>2</sup> The Act's personal scope does not explicitly cover children who hold temporary protection status.

**With great appreciation for the services and support that have been ensured by the Government of Hungary to refugees fleeing Ukraine at large, the members of the Protection Working Group are concerned about the apparent non-inclusion of children who hold temporary protection status to the full range of child welfare and protection services.** We argue that in legal interpretation and application, consideration should be given to fundamental principles, international obligations, and the spirit of the law. Of importance should be the legislator's intent which extended to refugees and beneficiaries of subsidiary protection status. Therefore, children with temporary protection should be considered on par with beneficiaries under international protection, considering the UN Convention on the Rights of the Child as well.

**Although not to be considered a legal source, many child and family welfare centers regard the [guideline](#) issued by the Ministry of Human Capacities in 2022 (Tájékoztató az Ukrajnából érkező családok támogatásához a család- és gyermekjóléti szolgáltatók számára), as a guiding principle in interpretation.** It stipulates that temporary protection holders have an entitlement to

<sup>1</sup> UNHCR obtained data

<sup>2</sup> See [paragraph 4 \(a\) for the full scope of the Act](#)



parts of services *only* – namely the Sure Start Children's House ('biztos kezdet gyerekház') services, nurseries, and daycare options ('gyermek napközbeni ellátása'); and certain specialized child protection services ('gyermekvédelmi szakellátások') in case they are 'endangered'/at risk<sup>3</sup> including unaccompanied children – such as long-term alternative care.

**Humanitarian partners working with children and families, child welfare centres, and refugee shelters problematized that child welfare and care services** ('gyermekjóléti alapellátás' 'gyermekjóléti szolgáltatás'), child protection measures ('védelembe vétel') and temporary placements ('gyermek átmeneti gondozása') **are unattainable as per the 2022 guideline**. Examples include municipal-level services that employ social work tools and methods to ensure the physical and mental well-being of children and their families where dedicated social, mental health, and crisis support is requested by them. Unavailable are also services for a parent or caregiver who cannot provide appropriate care due to health status, difficult life situations, or justifiable temporary absences momentarily, and where the state may temporarily take in the child. Child protection stakeholders emphasize that such services are vital in supporting Ukrainian refugee children and their families or caregivers, as they promote that children are safe and raised in their families if possible, considering the child's best interest.

**Protection Working Group members call on the Government of Hungary to ensure that irrespective of their legal status in Hungary, all children forced to flee Ukraine must be entitled to the full scope of child rights and protection services in Hungary.**

#### Case example

*A primary-school-aged refugee girl from Ukraine disclosed to a child protection organization that her mother is an alcoholic, who physically and verbally abuses her while drunk. She found some support in attending her school and afternoon activities from civil society organizations. When it was noted that she increasingly resorted to cutting herself in her upper arm, the child welfare department was involved. They opened a case file due to child endangerment concerns and provided a range of family-centered support services despite the interpretation ambiguity around the 2022 guideline. The staff however faced difficulties because the department's case management system requires TAJ number and permanent address.*

**Protection Working Group members also call for the removal of technical administrative barriers when it comes to protecting temporary protection holders and Hungarian-Ukrainian dual citizens who fled Ukraine.** They respectively do not or may not have a TAJ ('társadalombiztosítási azonosító jel', social security number) and address card, the latter forming the basis of the territorial jurisdiction applied by child protection actors. Practical consequences include that the national child protection case management system ('Gyermekeink Védelmében

Informatikai Rendszer') would only be available on *temporary* basis - potentially impeding effective casework, documentation, and recordkeeping. Although children with temporary protection formally have access to daycare ('gyermek napközbeni ellátása'), in practice, nurseries and daycare options

<sup>3</sup> Based on Government Decree 106/2022 of 12 March on certain rules relating to the employment and benefits of persons recognized as beneficiaries of temporary protection and amending Government Decree 301/2007 of 9 November on the implementation of Act LXXX of 2007 on asylum during the state of danger due to humanitarian catastrophe in a neighboring country, available at: <https://nit.hu/jogszabaly/2022-106-20-22> [accessed: 1 May 2024].



often cannot enrol children without a TAJ number because the registration systems are not designed to accept the temporary protection card number. Without the formal enrolment, childcare facilities would risk e.g., the inability to receive the linked securities and resources from the state.

**The Protection Working Group members call on the Hungarian Government to:**

- **Strengthen** the protection of children with temporary protection through their full inclusion into the scope of the Child Protection Act on the same footing as Hungarian nationals and beneficiaries of international protection. This could be ensured either through legislative change or through administrative instruction, allowing an inclusive interpretation of the current legislative framework.
- **Address** administrative and technical barriers that prevent children with temporary protection and dual citizens from being registered in the national child protection case management system and from accessing the platform to register children for nursery care, so that children can enroll in nurseries and facilities can receive the respective financial support.
- **Build** awareness and capacity of child welfare and child protection service providers (e.g., social workers, guardians, educators in schools and kindergarten) on the rights and needs of children with temporary protection and their families. Members of the Protection Working Group may provide support as required, for example by organizing a refugee child rights foundational training series, highlighting the UNHCR / Protection Working Group perspective.

Supporting organizations (alphabetical order): ACAPS, Chance for Families 2005 Foundation, Cordelia Alapítvány a Szervezett Erőszak Áldozataiért, Dorcas Ministries, EMMA Association, Evangélikus Diakónia, Háttér Társaság, Hungarian Helsinki Committee, Hungarian Interchurch Aid, International Committee of the Red Cross, Kárpátok Alapítvány, Litera Egyesülete, Menedék Egyesület, Migration Aid, Municipality of Budapest, NestingPlay, Országos Kríziskezelő és Információs Telefonszolgálat (OKIT), Romaversitas Alapítvány, Terre des hommes Hungary, The Foundation for Global Human Dignity, Ukrán Remény Egyesület, United Nations High Commissioner for Refugees (UNHCR), United Nations International Children's Emergency Fund (UNICEF)