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Child Access Services in Hungary: Importing a practice or renewing a service?

Ever since the late nineteenth century, Hungary has a tradition of family policy, often innovating. I use the notion of “family policy” as a more or less coherent set of measures oriented towards “family units”. The most common help is allowance, but the State can also set implements for family use in order to modify individuals' practices or decisions. Some of these measures aim to impact family organization and even sometimes their structure. This is the case of child access services, which try to maintain or reestablish a relationship between a parent and a child from who he or she had been separated. This service has a legal existence through the Child Protection Act voted in Hungary in 1995 and modified in 2005¹⁷. This Act gives the right and obligation for parents to maintain a contact with their child in case of separation from him/her. Since August 2007, all cities over forty thousand inhabitants must have a place where visitation rights can be practiced: a Child Access Service. This presentation will examine the implementation of this aspect of the law and its potential link to previous practices of social services. I will first present a short history of family policies, then the institutional and legal context, the earlier activities of the association which created child access services in Hungary, and finally what is the practice and how it could be linked to earlier practices of social services in the sixties. The material for this presentation is composed of interviews and observations carried in Budapest during an ongoing PhD investigation: other cities will be included in the research later on but could not be covered for this specific presentation.

The welfare society: the creation of guardianship authorities

Within the literature on the history of social and family law in Hungary, the book "Inventing the Needy" written by Lynn Haney is an inevitable reference. Her work focuses on social workers and their activities and defines three periods that shaped the actual welfare system in Hungary, each of them with its specific policy and institutional apparatus: the welfare society from 1948 until 1968, the maternalist welfare state from 1968 until 1985 and the liberal welfare state from 1985 until 1995. This chronology allows a better understanding of the actual Hungarian welfare state. I will try summarize it in this following part.

Coming out the Second World War, Hungary had a first communist regime, partly set by the soviets, which main activity was to reorganize the country according to the Party ideology. Equality between men and women was theoretically part of this ideology. In 1952, the Ministry of National Welfare, which handled family and marital allowances along with other government helps was dissolved to become the Ministry of Health. In a communist regime, the state was supposed to answer all the citizens needs and therefore considered that no welfare was needed. This official truth hid a complex system of helps, which could be qualified as an equivalent of a welfare system. The withdrawal of social help in cash

¹⁷ text:1997 évi XXXI tu 16 et 105 (4) bekesdése alapján 2005 Sept 01

worsened the misery already widely spread. In order to provide some relief, a network of local agencies, the "gyámhatóság" or guardianship authority, was developed. Anyone could access it. Having no budget, the caseworkers of guardianship authorities concentrated on their clientèle's institutional context and connections. Different tools were available to them.

In 1952, marriage reform established joint ownership of property obtained during marriage and outlawed single parenthood. This new aspect of family law allowed caseworkers to conduct paternity tests in order to track down fathers who had abandoned their partners. Through the Ministry of Labor, which had authority over all employers, caseworkers made sure that parental support was paid to mothers (20% of earnings). They also looked out that regular contacts between father and child was established. This "fathers tracking" was time consuming but efficient.

The communist system was centrally planned. Social benefits, such as emergency helps or marital allowances, were given through Unions. Therefore, caseworkers made sure that their clients were socially integrated and this meant were working.

They also intervened in favor of families in need of lodging. They had the ability to fasten up the process of attribution of social housing. However this was a limited power, since the social housing system was long to react and favored the highly positioned in the Party hierarchy. The caseworkers, aware of this, did not hesitate to contact the extended family of the clients for longer or temporary help. This was also solicited when children needed to be taken care of when a single mother had to work and no childcare center could take them in. In that case, it was the females of the extended family who were solicited.

Caseworkers addressed their clients' needs by looking at the whole picture: as much their social position than their material or emotional needs. Their different identities (worker, wife, member of a larger family group, parent...) were taken into account, especially their position in the family.

From the maternalist welfare state to the liberal welfare state: shifts in ideologies

With the slowing down of the economy, the state brought in ideas from the west to modify its system. Economists and demographers had a strong influence in these changes. These measures deeply affected the aims of the politics: this is what Lynn Haney called the maternalist welfare state (1968-1985). New Economic Mechanisms introduced "small size markets in central planning in supply and demand". Demographers blamed working women for the fertility drop, their opinion becoming part of the propaganda. Besides, research in psychology demonstrated the importance of maternal presence to the child in its young years¹⁸. These discourses combined with the fact that full employment was not any more sustainable brought the birth of the GYES: the three years maternity leave on a flat rate for every woman. Men could apply only if they were single parent or if the mother was ill. The government released a list of jobs considered dangerous for women, forbidding them to attend those. These new policies showed that the state had set women's prior responsibility on mothering.

The funds given to the Unions shifted to the gyámhatóság, or guardianship authority, doubling the number of caseworkers and giving it a bureaucracy dimension unknown until then. With this newly available money and the change of ideology making women the only one responsible for children, caseworkers created domesticity tests conducted during home

¹⁸This affirmation should be nuanced since it has been showed that the nursery conditions were rather poor, as Julia Szalai's article show (reference in bibliography).

visits. When the caseworkers used to look for fathers to make sure that they took their responsibilities, they now became the controllers of women's mothering practices, denying help to those who did not fit their criterias.

International Organizations (the International Money Fund and the World Bank) pressured Hungary to reset priorities in order to maintain a stable economy. That signified reducing the budget of social help. Through lobby pressure, Hungarian sociologists drew attention to the quick spread of poverty. In 1986, and not in 1989, as commonly suggested, policies were changed so that welfare was restricted by eligibility criteria. In 1985, GYED had been invented: a maternity leave linked to income (70% of previous salary). It was targeted to professionals who tended to take shorter maternity leave or not take any at all. However, it introduced an income based difference between women.

From 1983 until 1993, the number of persons receiving child rearing assistance went up by 1000%. The state delegated its role to local assistance. It kept the handling of unemployment compensation, family allowances and maternity leave, delegating poor relief programs and childcare. In order to be able to answer to all demands, means and income tests were applied, replacing domesticity test. The first intention was to reject the ones who had sufficient second economy earnings. However, it turned out that this was the welfare shift from familial integration to poverty regulation. Another consequence of the shift from national to local base of poor relief program was the class segregation worsening. Poores had different quality and quantity treatments according to the wealth of the district they lived in. Some local authorities were crawling under demands and had very small budgets while others had barely any request and lots of resources.

The most important element of Lynn Haney's demonstration is how each period provided a gendered answer to social problems. My interest in her work was reinforced by an interview with one of the pioneers of the Hungarian child access services which I'll mention in details later. But before any further descriptions on the activities of the child access services, it is necessary to describe the legal and institutional contexts.

The legal and institutional contexts of the creation of Child Access Services

Until 1945, family legislation gave much more power to fathers, leaving little rights to mothers in case of separation (Weiss, 1993). Fathers were the only holder of parental authority. A 1945 Ministerial Decree legalized no fault divorce and in 1946 recognized equivalence of rights between non married parents in case of long term separation. In 1952, issued from an initiative of the Socialist State, the Hungarian family Act established the equality between spouses in marriage and in case of divorce. Even if reformed several times, it is still valid today. Unmarried couples who lived together acquired the same rights over children born in their home. In case of separation or divorce, the parent who did not receive the custody of the child lost all authority, only having the right to be heard for three reasons concerning the child: the name, the place of living and the decisions related to school education. This is still the case today. Ever since 1952, the changes in the Family Act concerned property matters but not custody.

In 1990, Hungary ratified the International Convention of Children's Rights and subsequently, initiated a reform of its child protection institutions. A practice of social services received the attention from different non profit organizations: just because their parents were poor, a high number of children were taken away from parental home to be placed in foster care. The Hungarian Child Protection Act voted in 1997 reminded the rights of children and the duties of the State towards them: it aimed to create a safety net before families fall into complete

misery and have a better follow up of the parents before, during and after the placement of a child. In the spirit of the law, the different institutions related to children care were reformed. It was decided that a child protection center would be created for every forty thousands inhabitants. These centers were right away under the financial responsibility of local authorities. They combine divers social services for families in need and emergency attendance for parents who are homeless. They are aimed to families "at risk". The notion of risk for children as it was defined by my informants includes marginalization by poverty, mental health problems, domestic violence, parents addicted to a product, and divorce.

How are the child access services fitting in that picture? Parts of these institutional reforms were consolidated with the 2005 addition law to the child protection act. A line mentioning that child access services was added to the law. It specifies that "in all child protection centers, a service insuring that contact between parents and the child from whom they are separated should be maintained". I will now explain how this one line is implemented.

In Hungary, two authorities can take a decision over child visitation rights: the court and the guardianship authority, called "gyámhivatal". Created by the the 1997 law, this institution is a branch of the gyámhatóság which was studied by Lynn Haney. Divorcing couples go to the court. Divorced couples who want to change an agreement more than two years old go to guardianship authority. Children removed from parental care are under the supervision of the guardianship authority. Conflicting unmarried couples disagreeing with each other over the child can either go to the guardianship authority or to the court. Both authorities often work with the local "Névelési Tanácsadó" which is the "Educational Center". This center is controls the children's ability to be enrolled in school and follows their psychological health: mostly psychologists and educators work there. Any state institution in contact with children who needs some child psychologist advice or expertise will send the child to this Educational Center.

The first Hungarian child access service was invented in such a center, in 1988, in a Hungarian city of average size. The initiative came from the director of this "nevelési tanácsadó". The guardianship authority called him regarding the separation of a couple which argued over the custody and the visitation rights of a child. Unable to determine which parent should have the custody, the authority requested a psychological evaluation of the parents. As a psychologist, my informant considered that "it was part of his job to cure people". Rather than giving an expertise that would withdraw one parent's rights over the child, he decided to experiment: he invented the first Hungarian child access service. The practice was developed within the facilities of the educational center. The guardianship authority kept on sending them cases. Parents came to them by word of mouth. Between 1988 and today, the team of this educational center set up a protocol of practice, created a foundation and spread the word. They trained themselves to mediation with "Partners Hungary", a non-profit organization which imported the knowledge from United States. They then started their own training to family mediation. They lobbied in order to introduce child access services in the 2005 law reforming the Child Protection Law. Between 2005 and today, the foundation has trained a large number of the civil servants who are running the child access services in Hungary. They are still lobbying for family mediation and as the current debates on the reform of family law sets it, family mediation will be compulsory for parents who disagree on the custody and the visitation rights. It is clear that the law makers see mediation as a simple way to avoid the costs of long cases in justice courts.

The current situation and the actual practice

The 2005 law has the specificity to be neutral enough not to refer to the association practice, or mediation. When the decree of application came, no directives were given on how to practice child access services. Child Protection Centers and therefore the quality of their services depend on the local authorities budget, which is still the case for most of social helps since this delegation of the State to local authorities hasn't changed ever since the nineties. Whether the district is rich or not and the mayor wants to carry a social policy or not completely affect their abilities to sustain their activities and therefore the presence or the lack of a child access service. To my knowledge, no measure has been taken against any district not providing child access services. As for today, many child protection centers simply do not offer this service. On who the financial burden should fall is a rather serious issue. Some settlements have a contract delegating it to an association. In one of the cases I observed, the first child protection center which received me offered to take in cases from other districts. Since the other districts didn't agree on the fee, the contract wasn't signed and these districts do not provide child access services. Conflicting parents are usually not eager to pay for this type of services: it then becomes another source of conflict. Without any control of the enforcement of the law, the existence of a child access service and its proper running relies on individual initiatives of civil servants.

Located in an Educational Center, the first child access service I observed is one of the pioneers amongst Hungarian child access services. The employees have developed a practice of child access service from their professional knowledge as educators and psychologists. They shaped the protocol which is currently taught in the trainings of the foundation. To these employees, the contact point activities were a continuity of the center's everyday life. They thought that ultimately, it should have been added to their "official" duties. The 2005 law came as a disappointment to them since it stated that the child access service should be in child protection centers, therefore categorizing child access service as an "emergency solution" to an at risk situation rather than a prevention activity, like the other activities of the Educational Center. To worsen the situation, the director of the Educational Center, who is also the leader the association, retired in December 2007. Since this service was relevant to the child protection centers duties, the new director of the Educational Center considered that the employees were not paid to provide such a service, however good it was said to be and even if they were pioneers. She made clear that any activity related to the contact point had to be done outside the center and outside of working hours. The association had to find a new place to register administratively, to receive the families and store its administrative files. They moved to the House of associations. This situation, combined with the personality of this new director, created pressure on the employees. They felt that a professional knowledge that they had help to develop was being discredited for "political" and financial reasons.

The second contact point I observed is run in a Child protection center. The child access service was started in September 2005, as an implementation of the new law. Foreseeing this event, the director had recruited three future "mediators" who received a six months training from the foundation. These mediators' activities consist in family mediation, family therapy and child access service arrangement. During my interviews with the mediators, I had to constantly remind them that I was interested in child access services and not mediation, situation I had also encountered with the first contact point. It forced me to double check whether the cases we talked about were mediation cases or child access services cases. Only one type of situation was specific to child access services: parents who arrived with a court decision that clearly stated the time and the hours of visitations. With such a judgment, the contact point was forced to apply the decision without mediation. One of my informants told

me that in such a case, she called herself "toilet lady" since she received all the anger from people and was limited in her ability to modify the parents behaviors.

In the current law, judges are not allowed to send parents to mediation and when they send them to a child access service, their judgment cannot require mediation. When they read a judgment, my informants qualify judges as "good" judges and "bad" judges. "Good" judges are the ones who call the center before writing their decision, ask the mediators about their time availabilities, eventually specify in the judgment that parents should consult the child access service to make an arrangement. "Make an arrangement" is interpreted as organizing a mediation session with the parents about schedules, activities and other different sources of disagreement that can be raised during the practice of visitation rights. "Bad" judges do not call, set a date and time without consulting the center or worst write down that the meeting should take place in the center but specify neither the time and place nor the possibility that the center can help the parents. The parents then come to the center, argue there, refuse mediation and end up screaming in front of the clients of the center. This dichotomy of good and bad to describe whether judges obviously refers to the judges' will or not to cooperate and recognize the mediators professional activity as valuable.

At this point, it became obvious to me that "child access services" were not just about parents having the possibility to see their children from whom they were separated. It was also about professionals trying to achieve a status and having an agenda for a new practice: mediation.

Importing a practice or renewing a service?

So far, I have limited material to formulate hypothesis. However, substantial questions start to emerge. The first one is the relationship that employees of the child access service have with judges and the normative consequences they might have. If the judge request it, they have to write a report on the events that took place during the visitations. Those reports are used by judges to evaluate the ability of the non guardian parent to receive more time to practice his or her visitation rights. The employees are aware that these reports are extremely subjective and they often cooperate with each other to try to diminish this subjectiveness. I suppose that there is in this activity of creating or recreating a parental relationship a certain notion of "care". In this idea of "care", men and women are not expected to behave the same way and this interpretation that the employees carry on in their report is used in a judgment. I cannot yet describe how different these expectations are.

The second question which is coming to mind is the relationships between mediation and social services. Child access services are present in social services. Mediators are often social workers and if they are not, mediators and social workers are working in the same service, sharing their stories just like any professionals who work together. Child access service files, once the case is "closed" are kept in the social services files: the social worker has a full access to the story of the "child access". In this case, a distinction is made between rich and poor, since it is unlikely that rich parents will have a "social file" opened.

Comparing the practice of the *gyamhatosag* in the sixties and the current situation of the child access services, a number of similarities appear: a higher authority delegating its power to caseworkers, the will to solve conflicts, the merging with "social work" and the lack of budget. During the sixties, caseworkers were tracking fathers to help mothers financially and to maintain a relationship between them and their child. They were also convincing new partners to become the father of the child from the previous relationship of the mother, while asking the "biological" father to give up his rights. In the sixties, the father had duties: he had

to pay child support. Now, these duties are under-looked compared to the rights which are emphasized and have been reinforced by the law, more specifically the one which is collecting the rights of children. Through the International Convention of Children's Rights, children have a right to have regular contacts with both parents. As minors, they rarely formulate any personal requests to have this right enforced. The parents are the ones who want their rights to see their child: divorced fathers as a lobbying group played a central role in this recognition of the visiting parent as a partner with rights, rather than duties. The role of the state changed slightly between the sixties and now, adding rights to the father but also withdrawing itself from the support of mothers in everyday activities, like nurseries or other social helps. In both historical periods, the State interprets the role of fathers as a relationship with the mother and then with the child. On the other hand, the legal duties of the guardian parent haven't changed except for the enforcement of giving visitation access to the other parent. But there is a common feature: in both historical eras, the state felt a responsibility to intervene in the conflict that the parents were fueling. So, is the presence of mediation in child access service a practice which was imported or the renewal of a service that used to exist in another form?

As a conclusion, I would like to submit an hypothesis which came to me as I reread the reform project on family law. Some of the proposals sounded familiar to me since they had been introduced in the French civil law in 2002. I think more specifically of the alternate residency (the child being at the mother's for one week and at the father's the week after). This practice is rare in Hungary. But since demographic and practices are converging all over Europe, would there be a tendency of legal texts to converge as well? I am also thinking of the impact of the International Convention of Children's Rights on national legislations. Or rather, as children are becoming more and more the subject of protection from the state, would there be a common tendency to control parental practices to make them fit state expectations?

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