

## NATIONAL LEGISLATION: HUNGARY

### DIE ELTERLICHE SORGE – ALLGEMEINE REGELN

#### § 71

(1) Die elterliche Sorge ist entsprechend den Interessen des minderjährigen Kindes auszuüben. Die Eltern haben zu gewähren, daß das urteilsfähige Kind zu ihn betreffenden Entscheidungen die Möglichkeit habe, seine Meinung zu äußern. Die Meinung des Kindes ist - mit Beachtung seines Alters und Entwicklungsstandes - zu berücksichtigen.

(2) Die elterliche Sorge umfaßt das Recht und die Pflicht der Pflege, der Erziehung, der Vermögensverwaltung sowie der gesetzlichen Vertretung des minderjährigen Kindes, ferner das Recht der Benennung eines Vormunds und der Ausschließung von der Vormundschaft.

#### § 72

(1) Die Eltern üben die elterliche Sorge gemeinsam aus, - mangels ihrer diesbezüglichen gegensätzlichen Vereinbarung auch dann, falls sie nicht mehr zusammenleben.

(2) Ist das Kind in einem Scheidungsverfahren oder in einem Verfahren über die Unterbringung des Kindes aufgrund einer Vereinbarung der Eltern oder eines Gerichtsurteils bei einem der Elternteile untergebracht geworden, übt derjenige Elternteil das Sorgerecht aus, es sei denn, daß das Gericht auf Antrag der Eltern gleichzeitig für die gemeinsame elterliche Sorge entschieden hat bzw. die diesbezügliche Einigung der Eltern bestätigt hat.

(3) Falls die Eltern in der Ausübung des gemeinsamen Sorgerechts nicht mehr kooperieren können, hebt das Gericht die gemeinsame Sorge auf Antrag von jedwedem Elternteil auf, falls dies auch im Interesse des Kindes begründet ist.

(4) Der sorgeberechtigte Elternteil bzw. die Vormundschaftsbehörde kann die Herausgabe des Kindes von demjenigen verlangen, der das Kind rechtswidrig bei sich hält.

#### § 72/B

(1) Getrennt lebende Eltern üben ihre Elternrechte in den den Lebenslauf des Kindes betreffenden Angelegenheiten - auch ohne eine gemeinsame elterliche Sorge - auch nach der Regelung der Unterbringung des Kindes (des Sorgerechts) gemeinsam aus, es sei denn das Gericht hat das Sorgerecht des getrennt lebenden Elternteils beschränkt, ausgesetzt oder aufgehoben.

(2) Die den Lebenslauf des Kindes betreffenden wichtigen Angelegenheiten sind: die Bestimmung des Namens und der Namensänderung des minderjährigen Kindes, die Bestimmung seines Aufenthaltsortes, und ferner die Wahl seiner Ausbildung und seines Berufs.

(5) Der von seinem Kind getrennt lebende Elternteil kann vom Gericht auch zur Vermögensverwaltung und zur gesetzlichen Vertretung in Vermögensangelegenheiten des Kindes berechtigt werden<sup>1</sup> bzw. es können die ihm sonst zustehenden Sorgerechtsbefugnisse - wie das Recht auf die Entscheidung über die den Lebenslauf des Kindes betreffenden Angelegenheiten - beschränkt oder entzogen werden bzw. das Ruhen der Ausübung einzelner Rechte angeordnet werden.

### § 73

(1) Sofern dieses Gesetz nichts anderes bestimmt, hat in Fragen der elterlichen Sorge, über die sich die die elterliche Sorge gemeinsam ausübenden Eltern nicht einigen können, die Vormundschaftsbehörde zu entscheiden - mit Ausnahme von Fragen der Gewissens- und der Religionsfreiheit.

(2) Können sich die getrennt lebenden Eltern über das gemeinsam auszuübende Sorgerecht nicht einigen, fällt die Entscheidung in die Zuständigkeit des Gerichts, mit Ausnahme der Bestimmung des Aufenthaltsorts eines Minderjährigen, der sein sechzehntes Lebensjahr vollendet hat (§ 77 Abs. 1).

## **DIE UNTERBRINGUNG DES KINDES**

### § 72/A

(1) Die Eltern des Kindes entscheiden, bei wem das Kind untergebracht wird. Mangels einer Vereinbarung der Eltern bringt das Gericht das Kind bei demjenigen Elternteil unter, bei welchem die günstigere körperliche, geistige und sittliche Entwicklung des Kindes gewährleistet ist. Wäre das Kindeswohl durch die Unterbringung des Kindes bei den Eltern gefährdet, kann das Gericht das Kind bei einer anderen Person unterbringen, vorausgesetzt, daß auch die Person die Unterbringung des Kindes bei sich verlangt.<sup>2</sup>

(2) Eine Veränderung der Unterbringung des Kindes kann dann beantragt werden, wenn sich diejenigen Umstände, auf die das Gericht seine Entscheidung gegründet hat, nachträglich wesentlich geändert haben und demzufolge die Veränderung der Unterbringung im Interesse des Kindes steht.

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<sup>1</sup> Nach § 32 der Verordnung Nr. 4/1987 des Justizministers werden in diesem Fall auch diese Rechte und Pflichten gemeinsam auszuübende Rechte und Pflichten der Eltern.

<sup>2</sup> Nach § 96 Abs. 2a UFGB wird in diesem Fall diese Person als Vormund für das Kind bestellt.

(3) Die Unterbringung des Kindes und auch die Veränderung der Unterbringung des Kindes können die Eltern, die Vormundschaftsbehörde und der Staatsanwalt beantragen.

(4) Falls im Interesse des Kindes in seiner Unterbringung (in der Sorgerechtsregelung) eine Sofortmaßnahme notwendig ist, beschließt dies das Gericht vorweg durch einstweilige Anordnung.

#### § 74

Das Gericht und die Vormundschaftsbehörde haben in einem Verfahren über die Angelegenheiten der elterlichen Sorge bzw. die Unterbringung des Kindes und die Veränderung der Unterbringung - sofern kein unüberwindliches Hindernis entgegensteht - beide Eltern anzuhören. In begründeten Fällen, so auch dann, wenn es von dem Kind verlangt wird, haben sie unmittelbar oder mittels eines Sachverständigen auch das Kind anzuhören. Falls das Kind das vierzehnte Lebensjahr vollendet hat, ist eine Entscheidung betreffend seiner Unterbringung nur mit seiner Zustimmung zu treffen, es sei denn die von ihm gewählte Unterbringung gefährdet seine Entwicklung. Das Gericht kann sich über die Stellungnahme des Kindes betreffend seiner Unterbringung auch durch eine diesbezügliche übereinstimmende Erklärung der Eltern informieren.

### **DAS UMGANGSRECHT**

#### § 92

(1) Das Kind hat das Recht, mit seinem getrennt lebenden Elternteil einen persönlichen und unmittelbaren Kontakt aufrechtzuerhalten. Der von seinem Kind getrennt lebende Elternteil hat das Recht und die Pflicht mit seinem Kind den Kontakt aufrechtzuerhalten, mit ihm regelmäßig zu verkehren (Umgangsrecht). Der sorgeberechtigte Elternteil oder eine andere Person, durch die das Kind erzogen wird, haben die Pflicht, die ungestörte Ausübung des Umgangsrechts zu gewähren.

(2) Die Eltern sind auch dann berechtigt, mit ihrem Kind den Kontakt zu halten, wenn ihr elterliches Sorgerecht ruht.

(3) In einem besonders begründeten Fall kann im Interesse des Kindes auch derjenige Elternteil zur Ausübung eines Umgangsrechts mit seinem Kind berechtigt werden, dessen Sorgerecht durch Gerichtsurteil entzogen wurde. Hierüber entscheidet das Gericht, das die elterliche Sorge entzogen hat - falls das Kind in Heimerziehung genommen wurde, die Vormundschaftsbehörde.

(4) Mangels einer Vereinbarung der Eltern bzw. im Falle einer Meinungsverschiedenheit zwischen den Eltern und dem Vormund entscheidet in den Fragen des Umgangsrechts die Vormundschaftsbehörde. Ist ein Ehescheidungs- oder Sorgerechtsverfahren anhängig, so entscheidet - mangels einer

Vereinbarung der Eltern - das Gericht über das Umgangsrecht.<sup>3</sup> Die Vormundschaftsbehörde bzw. das im Ehescheidungs- oder Sorgerechtsverfahren zuständige Gericht kann im Interesse des Kindes das Umgangsrecht des Elternteils, der gegenüber dem Kind in der Erziehung schuldhaft versagt hat, beschränken oder entziehen bzw. das Ruhen der Ausübung dieses Rechts anordnen.

(5) Falls das Gericht in der Frage des Umgangsrechts entschieden hat, kann eine Änderung dieser Entscheidung binnen zwei Jahren ab Eintritt der Rechtskraft dieser Entscheidung nur bei dem Gericht beantragt werden.

(6) Für die Vollstreckung der gerichtlichen Entscheidung über das Umgangsrecht hat die Vormundschaftsbehörde zu sorgen.<sup>4</sup>

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<sup>3</sup> Für eine einvernehmliche Scheidung ist eine Vereinbarung der Eheleute (der Eltern) über das Umgangsrecht Voraussetzung, § 18 Abs.

<sup>4</sup> Weitere Detailfragen des Umgangsrechts sind in den §§ 22 bis 26 der Verordnung Nr. 51/1986 des Ministerrates geregelt.

# ACT NO. XXXI OF 1997 ON THE PROTECTION OF CHILDREN AND THE ADMINISTRATION OF GUARDIANSHIP AFFAIRS \*

The Parliament, recognizing the importance of its responsibility to future generations, and in order to assert the rights of the child set forth in Act No. LXIV of 1991 on the Announcement of the Convention on the Rights of the Child signed in New York on November 20, 1989 as well as in the Constitution of the Republic of Hungary, and in accordance with Act No. IV of 1952 on Marriage, Family, and Guardianship as well as Act No. III of 1993 on Social Administration and Social Benefits, shall enact the following law:

## CHAPTER ONE

### BASIC PROVISIONS

#### Section 1

##### *General provisions*

##### *Purpose and principles of the act*

**Article 1** (1) This act aims to define the basic principles according to which the state, the local governments, natural and legal persons as well as other organizations not qualifying as legal persons, which are responsible for the protection of children, shall provide assistance, in the form of specified provisions and measures, in the implementation of the statutory rights and interests of children, and shall also ensure the prevention and elimination of endangerment of children, supplement absent parental care, and assist the social integration of adolescents leaving child protection.

(2) In order to achieve the goals set forth in section (1) above, the act defines the fundamental rights of children, the guarantees of the assertion of such rights, and the system and basic principles of the protection of children.

**Article 2** (1) Upon implementation of this act, local governments, guardianship authorities, courts of law, police, prosecution, and other organizations and persons responsible for the protection of children, shall act by taking the best interests of children into consideration and ensuring their statutory rights.

(2) The organizations and persons acting according to paragraph (1) above shall, in the course of their activities, cooperate with the family and - as provided for by law - facilitate the upbringing of the child within the family.

(3) All support assisting the upbringing of the child within the family shall be provided in accordance with the situation and needs of the child as well as his or her family.

(4) The safety, care according to the age, education, and healthy personality development of the child deprived, for any reason, of his or her family environment shall be ensured.

**Article 3** (1) Utilization of support provided for by law is usually voluntary. Parent or other legal representative of the child may only be forced to utilize any type of support in cases specified by law.

(2) Upon protection of the child, any type of discrimination - irrespective of his or her sex, nationality, ethnic origin, conscientious, religious or political views, origin, property, legal incapacity or disability, or based upon the fact that he or she is under child protection - is forbidden.

*Scope of the act*

**Article 4** (1) This act shall apply to all children and adolescents as well as their parents staying in the Republic of Hungary, who are Hungarian citizens, or immigrants entitled to permanent residence with personal identification cards, or those recognized by Hungarian authorities as refugees.

(2) Beyond the persons defined in paragraph (1) above, this act shall be applied to a child who stays in the Republic of Hungary and is not a Hungarian citizen, to protect his or her interest, if failure to take such measures would involve endangerment of the child or unavoidable damage.

(3) In the guardianship affairs of children and adolescents as well as their parents, who stay outside the Republic of Hungary, but are Hungarian citizens, this act shall be applied, if their personal rights apply according to international agreements or other legal regulations.

*Terms of reference*

**Article 5** For the purposes of this act

a) *child*: minor according to paragraph (2) of Article 12 of Act No. IV of 1959 on the Civil Code of the Republic of Hungary (hereinafter referred to as Civil Code),

b) *young person*: person between 14 and 18 years of age at the time of commission of a petty offense or a criminal act,

c) *adolescent*: major under the age of 24,

d) *relatives of the child*: biological parents and foster parents (the two hereinafter referred to as parents) of the child, spouses of parents, siblings of parents, grandparents, spouses of grandparents, siblings of grandparents, great grandparents, siblings, spouses of siblings, and own child,

e) *close relatives of the child*: unless otherwise provided for by this act, parents, spouses of parents, siblings of parents, grandparents, siblings, and own child,

f) *person obliged to bring up the child*: person defined in paragraph (4) of Article 61 and paragraph (1) of Article 62 of Act No. IV of 1952 on Marriage, Family, and Guardianship (hereinafter referred to as Family Law), and in Article 69/A and paragraph (2) of Article 69/D of the Family Law,

g) *child welfare*: guaranteeing of the child's physical, intellectual, emotional, and moral development as well as his or her personal, property, and other rights,

h) *rights of the child*: all the rights to which children are entitled set forth in the Constitution of the Republic of Hungary, Act No. LXIV of 1991 on the Announcement of the Convention on the Rights of the Child signed in New York on November 20, 1989, as well as in other legal regulations,

i) *support*: basic and professional support providing statutory financial, in-kind, and personal care,

j) *in-kind benefits*: support by which the state (local government) assists the child in satisfying his or her basic needs by providing material assets, paying for as well as providing services,

k) *guardianship authority*: the notary of the local government and the guardianship office,

l) *guardianship affairs*: range of affairs remitted to the scope of authority of the guardianship authority by law,

m) *child protection and welfare*: support and protection based upon administrative measures ordered according to the provisions of this act,

n) *endangerment*: conditions - as a result of certain behavior, failure, or circumstances - blocking or hindering the child's physical, intellectual, emotional, and moral development,

o) *social crisis of expectant mother*: situation of family, environment, or society or conditions as a result thereof causing the physical or emotional

shock or difficult social situation of the expectant mother and therefore endangering the birth of a healthy child,

p) *permanent illness*: certain disease entitling to a higher family allowance set forth by specific law,

r) *income*: as set forth in point a) of paragraph (1) of Article 4 of Act No. III of 1993 on Social Administration and Social Benefits (hereinafter referred to as Welfare Act),

s) *backer*: natural or legal person (local government, government agency, legal person of the church, foundation, public organization, public foundation, non-profit company, association, and other legal persons) and the companies thereof not qualifying as legal persons, which provide necessary conditions of support and the operation of institutions according to the provisions of this act as well as other legal regulations,

t) *natural personal identification data*: family and first name(s), maiden name(s) sex, place and date of birth, mother's maiden name(s), citizenship, as well as immigration or refugee status, place of abode and residence of the affected person (hereinafter referred to as personal identification data).

## Section 2

### *Fundamental rights and obligations*

#### *Rights of the child*

**Article 6** (1) The child shall be entitled to grow up in his or her own family environment ensuring his or her physical, intellectual, emotional, and moral development as well as his or her welfare.

(2) The child shall be entitled to obtain assistance in his or her upbringing within his or her own family, developing his or her personality, avoiding situations endangering his or her development, his or her social integration as well as in the establishment of his or her independent life.

(3) Disabled and permanently ill children shall be entitled to special care facilitating their development as well as the development of their personality.

(4) The child shall be entitled to protection against environmental and social effects harmful for the child's development as well as against substances damaging the child's health.



(5) The child shall be entitled to respect of his or her human dignity as well as protection against violence - physical, sexual, or emotional abuse -, neglect, and informational damage.

(6) The child shall be entitled to access programs in public service media which are appropriate for his or her age, assist the extension of his or her knowledge, are free of violence, and preserve the values of Hungarian language and culture.

**Article 7** (1) The child may only be separated from his or her parents or other relatives in the child's own interest, in cases and with methods provided for by law. The child shall not be separated from his or her family exclusively on account of endangerment prevailing for material reasons.

(2) Within a foster family or in the form of other support substituting family, the child shall be entitled to protection substituting parental care or care provided by other relatives.

(3) In the case of substituting care of the child, his or her freedom of conscience and religion shall be respected as well as his or her national, ethnic, and cultural background shall be taken into consideration.

(4) The child shall be entitled to knowledge of his or her origin as well as to maintaining relations with his or her biological family.

(5) The child shall be entitled to maintain relations with both parents, even if his or her parents live in different states.

**Article 8** (1) The child shall be entitled to freely express his or her views as well as to be informed of his or her rights, the ways of exercising such rights, and to be heard, either directly or in any other way, in all matters affecting his or her person and property, the views of the child being given due weight in accordance with his or her age, health, and maturity.

(2) The child shall be entitled to make complaints in all matters affecting the child toward the agencies defined in this act.

(3) Upon infringement of his or her fundamental rights, the child shall be entitled to institute proceedings at any judicial or other administrative organizations provided for by law.

**Article 9 (1)** In accordance with his or her age, health, and maturity as well as his or her other needs, the child in short-term or long-term foster care shall in particular be entitled to

- a) receive full provision and nursing ensuring stability and emotional safety, appropriate education and guidance - taking his or her national, ethnic, and religious origin into consideration -,
- b) initiate changes in his or her placement or joint placement with his or her siblings,
- c) participate in integrating programs or in those developing the child's talents as well as leisure activities suitable for his or her fields of interest,
- d) freely choose, express and exercise his or her views of religion or conscience as well as participate in religious education,
- e) express his or her opinion about the care, education, and provision the child receives as well as to be heard and informed in all matters affecting the child,
- f) initiate the establishment of a self-government of children to represent his or her interests,
- g) receive support from his or her caregiver, legal representative to return into his or her family environment,
- h) initiate his or her return into his or her family environment,
- i) maintain his or her personal relations,
- j) receive after-care.

(2) If exercising the right set forth in point i) of paragraph (1) above has a negative effect upon the development of the child's personality, then the right to maintain contact of the parent or other close relative entitled to maintain contact may be restricted, revoked or suspended according to provisions of this act.

**Article 10 (1)** The child shall in particular be obliged to

- a) cooperate with his or her parents or other legal representatives or caregivers in order to facilitate his or her care and education,
- b) fulfill his or her educational responsibilities in accordance with his or her abilities,
- c) refrain from leading a destructive life-style including substance abuse.

(2) The regulations of organizations responsible for the protection of children (hereinafter referred to as institutions) shall, based upon the provisions of this act, specify the rules of exercising the rights and fulfilling the obligations of children in accordance with the age, health, and maturity of the child.

(3) Upon backer's approval of the regulations of the institution, such regulations shall be displayed in an easily visible place and the announcement thereof as well as access thereto by the children, their relatives, and the employees of the institution shall be ensured.

*Protection of the rights of the child*

**Article 11** (1) The protection of the rights of the child is the obligation of all natural and legal persons responsible for the care, education, provision, and representation of the child.

(2) The protection of the constitutional rights of the child shall be assisted by the parliamentary commissioner of citizenship rights (hereinafter referred to as commissioner) with the commissioner's special means, and in conducting this activity

a) the commissioner shall be responsible for investigating - disclosed - infringements affecting the constitutional rights of the child and initiating general or individual measures to the remedy of such infringements,

b) the commissioner shall report the measures set forth in point a) above to the Parliament once a year.

*Parental rights and obligations*

**Article 12** (1) The parent of a child shall be entitled and obliged to provide care and guidance to the child within a family, ensure the conditions necessary for the physical, intellectual, emotional, and moral development of the child - accommodation, food, clothing in particular - as well as provide for the education and health care of the child.

(2) The parent of a child shall be entitled to receive information about the provision helping the care of the child as well as assistance in upbringing the child.

(3) The parent of a child - unless otherwise provided by law - shall be entitled and obliged to represent the child and his or her property.

(4) The parent of a child shall be obliged to

a) cooperate with his or her child and respect the child's human dignity according to paragraph (5) of Article 6 above,

b) inform his or her child about the matters affecting the child and take the child's views into consideration,

c) provide guidance, advice, and assistance to the child in exercising his or her rights,

- d) take necessary measures in order to assert the rights of his or her child,
- e) cooperate with the persons and agencies participating in the care of his or her child as well as with the authorities.

**Article 13** (1) The parent of a child in short-term foster care shall be entitled to

- a) receive regular information from the caregiver, guardian, or legal guardian of his or her child about the placement, care, and development of his or her child,
- b) request change of placement of his or her child at the guardianship office,
- c) receive help - to remove the reasons for foster care, settle circumstances, and integrate the child with the family - from the local government in order to reunite the child with his or her family,
- d) be heard, in accordance with the Family Law, in all material issues affecting the future of his or her child - defining or changing the child's name, selecting his or her place of residence, choosing schools and a carrier for the child,

(2) The parent of a child in short-term foster care shall be entitled and obliged to

- a) cooperate with the persons and institutions responsible for the care of the child - in order to facilitate his or her care,
- b) maintain contact with his or her child - as provided for by law.

(3) The parent of a child in short-term foster care shall be obliged to

- a) do his or her best to reunite the child with his or her family,
- b) respect the family and the home of the foster parent, the persons working in the institution, and observe the regulations of the institution,
- c) pay fostering allowance for the foster care of his or her child.

### Section 3

#### *System of the protection of children*

**Article 14** (1) The protection of children is an activity aiming to promote the upbringing of the child within a family, prevent and eliminate the endangerment of the child, and ensure the substitute protection of a child leaving care of parents or other relatives.

(2) The protection of children is ensured by basic child welfare provision providing financial, in-kind, and personal care as well as

professional child protection provision, and administrative measures set forth by this act.

(3) The system of the protection of children shall be operated by the state and the local governments.

**Article 15** (1) Financial support:

- a) regular child benefit,
- b) exceptional child benefit,
- c) advance payment of child support,
- d) housing benefit.

(2) Basic child welfare provisions falling under the category of personal care:

- a) child welfare service,
- b) day-time care of children,
- c) short-term foster care of children.

(3) Professional child protection provisions falling under the category of personal care:

- a) home-like provision,
- b) district professional child protective service.

(4) Administrative measures falling under the category of child protection and welfare:

- a) placement under protection,
- b) acceptance of the child in another family,
- c) temporary placement,
- d) short-term foster care,
- e) long-term foster care,
- f) after-care,
- g) after-care provision.

(5) Institutional care of young persons sent to young offender institutions or placed under preventive detention by a court order as well as the probation officer's supervision of young persons also constitute a part of the child protective system. The care of young persons in young offender institutions as well as their supervision by probation officers are regulated by a separate act.

(6) Professionals acting ex officio within the child protective system perform public duties.

**Article 16** (1) Powers and duties set forth in this act ensuring the protection of children shall be exercised by

- a) the representative body of local governments,
- b) the notary of local governments,
- c) the child protection and guardianship officer of the selected mayor's office of a city or a district of Budapest (hereinafter referred to as city guardianship office),
- d) the agency of the county or Budapest administration office responsible for child protection and guardianship affairs (hereinafter referred to as county guardianship office), [points c) and d) together hereinafter referred to as guardianship office]

**Article 17** (1) In order to promote the upbringing of the child within a family and to prevent and eliminate the endangerment of the child, the responsibilities in connection with the child protective system regulated by this act shall, within the framework of the basic activities provided for by law, be performed by

- a) health care service providers, in particular, district nurses, family doctors, family pediatricians,
- b) institutions providing personal care, in particular, family support service, family support centers,
- c) institutions of public education, in particular, fostering-educational institute, educational and behavioral counseling service,
- d) police,
- e) prosecution,
- f) court of law,
- g) refugee centers, temporary accommodation of refugees,
- h) social organizations, churches, foundations.

(2) The institutions and persons listed in paragraph (1) above shall be obliged to notify the child welfare service defined in Article 40 below of any endangerment of the child and, if justified, initiate administrative procedures. Any citizen or institution representing the interests of the child may also notify said service and initiate said procedures.

(3) In order to promote the upbringing of the child within a family and prevent and eliminate the endangerment of the child, the persons, service providers, institutions, and authorities listed in paragraphs (1) and (2) above shall be obliged to cooperate with each other.

## CHAPTER TWO

### *SUPPORT*

#### Section 4

*Financial and in-kind benefits*

*Forms of financial support*

**Article 18** (1) According to both this act and the decree of the local government, the representative body of the local government shall assign regular and exceptional child benefit to the child in need.

(2) As provided for by its decree, the local government may, with respect to the social needs of the child and the young person, supplement the financial support set forth by this act, moreover, determine further financial assistance.

(3) According to this act, the guardianship office may advance child support to the person responsible for the child, determine housing benefit for the young person in need, and assign such financial assistance.

(4) The determination of the financial aid set forth in paragraph (1) above may be initiated by fostering-educational institutions, guardianship authorities as well as by other institutions or persons responsible for family protection, or by social organizations responsible for the protection of the interests of children.

*Regular child benefit*

**Article 19** (1) The regular child benefit (hereinafter referred to as regular benefit) aims to promote the care and upbringing of the child in a family environment and prevent deprivation of the child of his or her family.

(2) The representative body of the local government assigns regular benefit to the child, if the monthly income per person in the family looking after the child does not exceed the minimum amount of old-age pension (hereinafter referred to as minimum amount of old-age pension), and upbringing within the family is not against the interests of the child.

(3) Upon determination of income, the six-month average prior to filing the application shall be considered. This rule may be departed from, if, for a justified reason, permanent deterioration of income conditions is expected.

(4) Upon calculation of the amount set forth in paragraph (2) above, the following persons shall be considered as close relatives living in the same household at the time of filing the application:

- a) parent, spouse or common-law spouse of parent,
- b) child under 20 years of age, without personal income,
- c) child under 25 years of age, without personal income, full-time university or college student,
- d) regardless of age, child suffering from permanent illness or with physical, sense organ, mental, language, or other disabilities (hereinafter referred to as permanently ill or disabled)
- e) relative not falling under categories specified in points a) - d), dependent on parents or spouse according to Family Law.

**Article 20** (1) The parent or other legal representative may file an application for regular benefit at the mayor's office of the appropriate local government at his or her place of abode or at the agency specified in the decree of the local government.

(2) The monthly amount of the regular benefit - per child - should not be lower than 20% of the minimum old-age pension.

(3) If regular benefit is granted based upon a final decision, it shall be payable from the time of filing the application. The period of payment shall last as long as conditions prevail. Conditions of entitlement to regular benefit shall be revised by the local government no less frequently than once a year.

(4) If person receiving regular benefit is a full-time student at an institute of secondary or higher education, such benefit may be granted after maturity of the child and paid as long as child's legal status as student exists, however, until his or her 25th birthday.

#### *Exceptional child benefit*

**Article 21** (1) The representative body of the local government assigns exceptional child benefit of an amount specified by the decree to the child (hereinafter referred to as exceptional benefit), if the family looking after the child temporarily faces existential problems or is in an extraordinary situation endangering the family's existence.

(2) Exceptional benefit shall, from time to time, be granted primarily to children whose family is not able to provide care in any other manner, or due to periodically incurring extra expenses - in particular promoting the maintenance of contact of the child in short-term or long-term foster care with his or her family, placement of the child back to the guardianship office after she or he ceases to be looked after, sickness, or schooling - they are in need of financial help.



(3) The parent or other legal representative may file an application for exceptional benefit at the mayor's office of the competent local government at his or her place of abode or at the agency specified in the decree of the local government.

*Advance payment of child support*

**Article 22** (1) Child support may be advanced, if the court has already granted the child support in a final decision, or there is a final decision made by a foreign court or other authority, which shall be executed in favor of the child living in Hungary based upon international agreement or reciprocity.

(2) The guardianship office shall advance the child support, if recovery of such child support is temporarily impossible and the person looking after the child is not able to provide necessary care for the child, provided that the amount of income per person in the family is less than three times the minimum old-age pension.

(3) The guardianship office shall regard child support as unrecoverable upon unsuccessful foreclosure upon the regular income of the person obliged to pay such child support. If foreclosure upon other property of the obligor is successful, the guardianship office shall ex officio review the necessity of advance payment of the child support.

(4) Upon calculation of the amount set forth in paragraph (2) above, persons specified in paragraph (4) of Article 19 shall be considered as close relatives living in the same household at the time of filing the application.

(5) Child support shall not be advanced, if

- a) obligor serves in the armed forces,
- b) obligor's place of residence is abroad and is unknown, or his or her place of abode is in a country, where there are no international agreements for the recovery of child support and there is also no reciprocity.
- c) obligor lives in the same household with the person entitled to such child support.

(6) Furthermore, child support shall not be advanced

- a) if, during procedures, the guardianship office declares that recovery of the advanced child support is hopeless, and
- b) upon expired child support.

(7) Upon rejection of the application for child support, the guardianship office shall simultaneously notify the local government at the place of abode of applicant.

**Article 23** (1) The guardianship office shall advance the amount specified in the court's final decision with respect to the compulsory payment of child support, while in the case of a percentage condemnation, the basic amount.

(2) The guardianship office may grant a lower amount than that specified in paragraph (1) above, if parent looking after the child is able to provide care for the child to some extent. In this case, the advanced amount shall not be lower than 50% of the amount ordered by court.

(3) The decision of the guardianship office ordering the advance payment of child support may, regardless of any appeals, be executed immediately.

(4) Based upon the decision of the guardianship office, the notary of the local government at the seat of the guardianship office shall advance child support from the central budget.

**Article 24** (1) If advance payment of child support is granted based upon a final decision, it shall be payable from the time of filing the application. The period of payment shall last as long as reasons for such advance payment are expected to exist, however, for a maximum of 3 years following the date of the first payment of advanced child support. In justified cases, advance payment may be ordered again.

(2) The guardianship office shall, ex officio or based upon the notification of agencies and persons specified in separate legal regulation, suspend payment of child support for a maximum of 6 months, if

- a) the conditions of applicant specified in paragraph (2) of Article 22 are modified,
- b) obligor directly pays child support to applicant,
- c) foreclosure upon the regular income or other property of obligor is successful,
- d) the child reaches majority and is no longer a student,
- e) the child receives regular income for an activity involving work,
- f) the child is taken into short-term foster care by the guardianship office,
- g) the child of legal age abandons or finishes his or her studies.

(3) As a result of the investigation following suspension of payment, the guardianship office shall either order continuing payment or discontinue the advance payment of child support. Advance payment of child support shall be discontinued, if child is taken into long-term foster care.

(4) Obligor shall, with an interest defined in paragraph (2) of Article 232 of the Civil Code, reimburse advanced child support to the state. The non-reimbursed part of advanced child support shall be recovered as if it were tax according to Act No. XCL of 1990 on taxation system.

*Housing benefit*

**Article 25** (1) The housing benefit aims to facilitate temporary or permanent housing of young persons leaving short-term or long-term foster care.

(2) A young person shall be entitled to such housing benefit, if his or her uninterrupted foster care of at least 2 years ceased upon his or her majority, and the value of his or her property (cash and real estate) at the time he or she reaches majority does not exceed 50 times the minimum amount of old-age pension. Savings from the regular income of the young person shall not be included in the calculation of his or her possession of cash.

(3) A young person shall be entitled to such housing benefit, if he or she was taken in foster care of less than 2 years for the reason specified in paragraph (1) of Article 80.

(4) Such housing benefit may be used for the purchase, building, accommodation, renovation, or extension of building land, apartment, family house, or for the payment of rent or renovation of rented apartment or room, or for the repayment of housing loan granted by a financial institution as well as precautionary savings for housing.

(5) In the application for housing benefit, the young person shall declare the conditions specified in paragraphs (2) and (3) above, and whether the young person cooperates or undertakes to cooperate - until the submission of the settlement specified in paragraph (2) of Article 26 below - with his or her after-carer in using the housing benefit.

(6) The after-carer shall provide assistance in the realization of the goals of such housing benefit for one year.

**Article 26** (1) The amount of housing benefit shall be determined based upon the number of years in foster care as well as the financial circumstances, so that, in the case of applicant without property it shall reach, while in the case of applicant with property, it shall, combined with the property, reach

- a) 20 times the minimum amount of old-age pension in the case of foster care of less than 3 years,
- b) 30 times the minimum amount of old-age pension in the case of foster care of at least 3 years,
- c) 40 times the minimum amount of old-age pension in the case of foster care of at least 4 years,
- d) 50 times the minimum amount of old-age pension in the case of foster care of at least 5 years.

(2) The young person shall, within 30 days following the execution of the contract (purchase or lease agreement), however, within 1 year following the granting of the housing benefit at the latest, be obliged to present a settlement of the use of the housing benefit - for a purpose approved by the guardianship office - by providing documents.

(3) Based upon the decision of the guardianship office, the notary of the local government at the seat of the guardianship office shall pay the housing benefit from the central budget.

(4) The guardianship office shall be entitled to register prohibition of transfer over the real estate acquired with the help of the housing benefit for 5 years in the land register in favor of the Hungarian state.

(5) Upon request of the young person entitled to housing benefit, in the case of material changes in his or her circumstances, the guardianship office may lift the prohibition of transfer registered by the guardianship office.

**Article 27** (1) The guardianship office shall inform the child 6 months before the child reaches maturity in writing about the availability of housing benefit.

- (2) Applicant may file an application for housing benefit
  - a) upon reaching maturity, however, before turning 24 years of age at the latest,
  - b) if the young person reaching maturity is still a student, until the end of his or her studies, however, before turning 25 years of age at the latest.

Failure to meet such deadlines shall involve forfeiture.

#### *In-kind benefits*

**Article 28** (1) Based upon the decision of the representative body of the local government, regular and exceptional child benefit may also be provided in the form of in-kind benefits, especially for children taken under protection.

(2) In-kind benefits are in particular the support of the supply of text books and school equipment for children, price allowance of food in child care institutions, tuition fee, fee for health care service, as well as payment for other services.

## Section 5

### *Provision of personal care*

#### *General rules of provision of personal care*

**Article 29** (1) The local government shall pass a decree on the forms of provision of personal care (hereinafter referred to as personal care), the use thereof, and the fees to be paid therefor.

(2) Unless otherwise provided for by law, the local government shall, in a decree, regulate

- a) the forms of personal care provided by the local government,
- b) the way of filing applications for the care provided by the local government and the considerations of judgment,
- c) provision falling within the scope of authority of the head of the institute to be ensured without special procedures,
- d) cases and ways of stopping provision,
- e) amount of fees to be paid, cases and ways of reducing and releasing thereof.

**Article 30** (1) Unless otherwise provided for, local governments as well as natural and legal persons, other organizations not qualifying as legal persons performing duties of the local government based upon agreements with the local government (hereinafter referred to as non-government agencies), and non-government agencies using normative state contribution shall provide personal care in accordance with the conditions set forth in this act as well as in separate legal regulation.

#### *Ways of using the provision*

**Article 31** (1) Unless otherwise provided for by this act, using personal care shall be voluntary, and it shall be received upon the

application of user (hereinafter referred to as applicant). Application of a legally incapable person shall be submitted by his or her legal representative, while a person of restricted capacity may submit his or her application upon consent of his or her legal representative. All disputes arising from the use of provision between the person of restricted capacity and his or her legal representative shall, upon ascertainment of the facts, be settled by the notary of the local government.

(2) If protection of the child is not ensured by the voluntary use of the provision, this act orders the compulsory use of the provision.

(3) Unless otherwise provided for by the decree of the local government, applicant may submit the application

a) to the head of the institute in the case of non-residential child care institute financed by the competent local government at the place of abode of applicant,

b) at the mayor's office of the local government at the place of abode of applicant in the case of other institutes.

**Article 32** (1) The use of provision of personal care shall, upon ascertainment of the facts, be based upon

a) resolution of the representative body of the local government,

b) measures of the head of the institute within the field specified by the decree of the local government,

c) resolution of the notary of the local government or the guardianship office.

(2) If provision is used based upon points a) and c) of paragraph (1) above, a copy of the resolution shall be sent to the head of the institute providing care, who shall arrange the placement of applicant. The head of the institute shall arrange exceptional placement of the child or young person entitled to such care based upon the resolution ordering immediate placement.

(3) Based upon point b) of paragraph (1) above, the head of the institute shall not make any arrangements with respect to use of personal care, but immediately send application to the agencies specified in the resolution of the local government.

(4) Non-government agencies using normative government contribution and providing personal care shall not be obliged to comply with the provisions listed in paragraph (1) above. If the use of personal care is not based upon a resolution, applicant and the non-government agency shall sign an agreement on the use and the conditions of termination of the provision.

*Duty of disclosure*

**Article 33** (1) Upon filing the application, applicant shall be informed about the conditions of personal care.

(2) Upon commencement of provision in the case of provision of personal care, the child entitled to care and his or her legal representative or the young person shall be informed about

- a) the time period and conditions of such provision,
- b) records on him or her kept by the institute,
- c) the contact to be maintained between the child or young person and his or her relatives in the case of provision of personal care in accordance with Articles 50 and 57 (hereinafter referred to as residential child care institute) as well as in the case of provision of personal care in accordance with Articles 49 and 54, in particular about the regulation of visiting, leaving and returning,
  - d) the ways of keeping valuables and property,
  - e) the regulations of the institute,
  - f) ways of exercising his or her right to complaints,
  - g) the service fee and the fostering allowance to be paid.

(3) The legal representative of the child entitled to provision or the young person shall be obliged

- a) to declare the acknowledgment of information defined in paragraph (1) above,
- b) to provide information for the records of the institute,
- c) to report changes in the conditions of entitlement as well as in personal identification data.

*Contact between the child and his or her relatives*

**Article 34** (1) In the case of provisions set forth in point c) of paragraph (2) of Article 33 above, the forms of maintaining contact between the child and his or her parents or close relatives entitled to maintaining contact shall be as follows: continuous and periodic contact with the right to take away the child and the obligation of returning the child, and visiting the child at the place of residence of the child, correspondence, maintaining contact through telephone, gifts, sending packages.

(2) During the provisions set forth in paragraph (1) above, the parents' or other relatives' contact with the child shall be facilitated. Therefore, the

head of the residential institute shall ensure suitable and undisturbed circumstances of maintaining contact.

(3) Parents and other relatives may visit the child looked after in residential institutes at the times and in the rooms set forth in the regulations of such institute.

(4) In the case of provision of personal care set forth in Article 54 above and in residential institutes set forth in Article 57 above, visiting children temporarily placed in such institute or taken into short-term or long-term foster care as well as approval of leaving and holidays shall be based upon the resolution of the guardianship office.

#### *Safeguarding of interests*

**Article 35** (1) The backer of the institute shall determine the rules of formation and operation of a panel responsible for safeguarding the interests of those receiving provision.

(2) The elected members with voting rights of the panel responsible for safeguarding such interests shall be as follows:

- a) representatives of the self government of children,
- b) parents or other legal representatives of the child as well as representatives of the young person,
- c) representatives of the employees of the institute,
- d) representatives of the backer of the institute.

(3) The number of persons specified in points a) and b) of paragraph (2) above shall not be lower than the total number of persons specified in points c) - d) of paragraph (2) above.

(4) The panel responsible for the safeguarding of interests shall investigate the complaints submitted to such panel, and make decisions within its scope of authority, and initiate measures to be taken by backer, the guardianship office controlling the institute, and other agencies with authority.

(5) The panel responsible for the safeguarding of interests may express its opinion to the head of the institute regarding the issues affecting the child or young person, and make recommendations regarding the planning, operation, and use of the income from the services provided in connection with the basic activity of the institute. The panel responsible for the safeguarding of interest shall exercise its right of consent to the approval of the regulations of the institute.



**Article 36** (1) Parents or other legal representatives of the child, the self government of children, as well as the young person, and the agencies responsible for the safeguarding of interests of children may, in accordance with the provisions of the institute's regulations, complain to the head of the institute or the panel responsible for the safeguarding of interests

a) in order to address problems arising in connection with the provision,

b) upon infringement of the right of the child or violation of obligations of the institution's employees.

(2) The head of the institute or the panel responsible for the safeguarding of interests shall investigate such complaints and reveal other possible ways of addressing the problems. Parents or other legal representatives of the child, the self government of children, as well as the young person may appeal at the backer of the institute or the county guardianship office, if the head of the institute or the panel responsible for the safeguarding of interests fails to announce the outcome of the investigation within 15 days or if they do not agree with the measures taken.

**Article 37** (1) Children placed in residential institutes may form a self government of children in order to safeguard their interests.

(2) A self government of children elected by more than 50% of the children may represent the rights of all children of a residential institute.

(3) The self government of children may, upon requesting the opinion of the head of the institute, make decisions regarding its own operation. Its bye-laws shall be accepted by the community of voting children and approved by the head of the institute. Such approval may only be rejected, if such bye-laws infringe any legal regulation or are contrary to the bye-laws or the regulations of the institute.

(4) The self government of children may express its opinion to the head of the institute regarding all issues in connection with the operation of the residential institute as well as the children, which shall be taken into consideration by the head of the institute.

## Section 6

### *Basic child welfare provision*

#### *The purpose of basic child welfare provision*

**Article 38** (1) Basic provision shall contribute to the promotion of the physical, intellectual, emotional, and moral development, welfare, and upbringing in a family environment of the child, the prevention of endangerment and elimination of existing endangerment, and prevention of deprivation of the child of his or her family.

(2) Personal care provided within the framework of basic provision shall, as much as possible, be ensured at the person or institute providing care closest to the place of abode or residence of the child.

#### *Child welfare services*

**Article 39** (1) The duty of child welfare services, in order to promote the physical and mental health and upbringing in a family environment of the child, is to

a) provide information on the rights of the child and the support ensuring the development of the child, assist the child in accessing such support,

b) provide family planning, psychological, educational, health, and mental hygienic counseling as well as counseling with the aim of preventing substance abuse, or to organize access to these types of counseling,

c) support, help, and advise expecting mothers in social crisis,

d) organize leisure programs,

e) provide assistance in taking care of official errands.

(2) The duty of child welfare services, in order to prevent endangerment of the child, is to

a) operate a system recognizing and indicating endangerment, and encourage participation of non-government agencies and private individuals in such preventing system,

b) discover the reasons causing endangerment and make proposals for the solutions thereof,

c) arrange cooperation with the persons and institutions specified in point a) above as well as in paragraph (1) of Article 17 above, and coordinate their activities.

(3) The duty of child welfare services, in order to eliminate existing endangerment, is to

a) provide family support to counterbalance malfunction within the family,

b) promote solutions to family conflicts, especially in the case of divorce, placement of the child, and maintenance of contact,

c) initiate health and social provision, as well as intervention of the authorities,

d) make proposals for depriving the child of his or her family, the future place of his or her care as well as changes in such place.

(4) The duty of child welfare services, in order to return the child previously deprived of his or her family, is to

a) provide family support - with the cooperation of the institute providing home or professional child protective services in the district - to establish or improve the conditions of upbringing the child within the family, and re-establish the relation between the parents and the child.,

b) provide after-care - with the cooperation of the institute providing home or professional child protective services in the district - to re-integrate the child within his or her family.

#### *Child welfare service*

**Article 40** (1) The local government shall ensure the organization, management, and coordination of child welfare services defined in Article 39 above through the operation of child welfare service or within the framework of family assistance service as well as the employment of a person qualified in accordance with separate legal regulation (together hereinafter referred to as child welfare service).

(2) The child welfare service shall, coordinated with the district nurse service, perform duties with respect to organization, service and care provision. Beyond the activities listed in Article 39 above, the child welfare service shall

a) closely monitor social conditions and endangerment of children living in the area,

b) listen to children's complaints and in order to address such complaints it shall take appropriate measures,

c) develop plans for the care and upbringing of the child taken under protection,

d) organize the network of substitute parents,

e) assist the care provider and educational institute in the performance of its duty of child protection,

f) on request, prepare environmental study,

g) initiate the introduction of new provisions to be carried out by the local government,

h) in accordance with the request of the professional service responsible for child protection, investigate and reveal the conditions of those willing to adopt children.

(3) The child welfare service specified in paragraphs (1) and (2) shall be free of charge.

*Day -time provision of children*

**Article 41** (1) As the day-time provision of children, day-time care, nursing, education, and food according to the age of children living in families shall be arranged for children whose parents, foster parents, or caregivers are not able to look after them during the day due to their employment, illness or for other reasons.

(2) Day-time provision of children shall, in particular, be ensured for a child

a) in need of permanent provision during the day because of their physical or mental development,

b) who is looked after by single or elderly persons, or lives with three or more other children to be looked after in the family, except for a child whose caregiver receives child benefit, child support or nursing fee for the child.

c) whose parents, caregivers are not able to look after the child due to their social circumstances.

(3) Day-time provision of children may be organized based upon daily or weekly periods, especially in day nurseries, out-of-school care, kindergarten, within the framework of after-school care or child-minding.

*Day nursery*

**Article 42** (1) Day nurseries are institutions providing day-time care, professional nursing, and education of children living in families who are under three years of age. If a child reaches 3 years of age, but based upon his or her physical or mental development, the child is not yet mature to attend kindergarten, he or she may be looked after and nursed in day nursery until August 31 following his or her 4th birthday.

(2) Beyond the activities specified in paragraph (1) above, day nurseries may be responsible for the care and nursing of disabled children aiming at early habilitation and rehabilitation. Based upon the professional opinion of the committee of experts and rehabilitation regulated by the Act No. LXXIX of 1993 on Public Education (hereinafter referred to as Public Education Act, within the framework of day nursery provision, a disabled child shall, until the age of six, participate in pre-school training ensuring his or her development.

(3) Beyond their basic provisions, day nurseries may assist families with services such as special counseling, temporary child care, child hotel, or other services providing help for child rearing.

(4) Day nursery provision shall cease

a) at the end of the nursery year, if the child has already reached 3 years of age,

b) if the child has already reached the ages specified in paragraphs (1) and (2).

#### *Out-of-school care*

**Article 43** (1) The out-of-school care, which does not fall under the category of public education, of children not receiving day nursery or kindergarten care, as well as the out-of-school care outside of the opening hours of schools of those receiving school education, as well as of those not participating in day-time school activities or learning room provision shall be qualified as a day-time care provision of children.

(2) The out-of-school care provides day-time supervision, care, education, food, and activities for children living in families in accordance with their age. Disabled children shall be offered provision adjusted to their special needs.

#### *Child-minding*

**Article 44** (1) Within the framework of child-minding, the day-time care of the child may be ensured by a caregiver in the home of the parents or other legal representatives, if temporary or permanent provision of the child in day-time institutions is not possible (e.g. because of illness), and the parents of the child are not able to ensure day-time care of the child for the whole day.

(2) The time period of day-time care provided in the framework of child-minding shall follow the work schedule of the parents.

#### *Short-term foster care of children*

**Article 45** (1) Within the framework of short-term foster care of the child, food, clothing, mental hygienic and health provision, nursing, education, and accommodation of the child promoting the physical,

intellectual, emotional, and moral development of the child as well as in accordance with his or her age, health, and other needs (hereinafter referred to as full provision) shall be provided.

(2) Short-term foster care of the child shall, upon the request or approval of parents or other legal representatives of the child with parental responsibilities (hereinafter referred to as parents), be provided temporarily with full provision, if parent fails to ensure the upbringing of the child in the family because of his or her health condition, problems of his or her way of living, justified absence, or other interference. Disabled children shall be offered provision adjusted to their special needs.

(3) At the place of short-term foster care of the child, the homeless parent of the child may also be placed. A child under 14 years of age may only be separated from his or her parents in exceptionally justified cases. Parents shall participate in the care of their child in accordance with their work schedule.

(4) If possible, during the short-term foster care of the child, school education of the child shall be ensured without changing schools.

(5) The child welfare service at the place of abode - if there is none, the place of residence - of his or her parents shall be notified of the commencement of short-term foster care of the child.

(6) The short-term foster care of children shall last as long as the original reason exists, however, for a maximum of six months.

**Article 46** (1) Within the framework of short-term foster care of children, special provision and accommodation shall be ensured for children arbitrarily leaving their place of abode, thus staying without provision and supervision.

(2) Placement of children specified in paragraph (1) above shall in each case happen only upon the approval of parents. If parents fail to take care of the child within 3 days following the notification about the short-term foster care, or disapprove such short-term foster care, the guardianship office shall immediately be notified to take necessary administrative measures.

**Article 47** (1) The short-term foster care of the child shall be discontinued upon parents' request or if the original reasons do not exist anymore.

(2) The short-term foster care of the child shall be discontinued upon expiration of the period of foster care.

(3) If the period of foster care has already expired, however, the child is not able to return to his or her family environment,

- a) such foster care may be extended by three more months, or
- b) the guardianship office shall be immediately notified to take necessary measures.

(4) The guardianship office shall also notified before the end of the sixth month, if it becomes evident that the child will not be able to return to his or her family environment.

**Article 48** (1) The short-term foster care of the child may be arranged for weekly or longer periods, in particular with substitute parents selected by the notary of the local government, in temporary home of children or temporary home of families.

(2) As a form of temporary child-minding, a caregiver may, upon parents' request, provide care for the child at his or her home, if care of the child, due to his or her physical or mental health, in a residential institute is not possible and such care is in the best interests of the child.

#### *Substitute parents*

**Article 46** (1) The substitute parent shall provide temporary care in his or her own home for children living in families.

(2) The substitute parent may be a capable person of legal age and with a clean record, who has successfully participated in a training specified in separate legal regulation and, based upon his or her personality and conditions, is qualified for the temporary care of the child, and undertakes to look after and provide care for the child to be placed with such substitute parent for a period specified by parent.

(3) The substitute parent may provide care for no more than 5 children - including his or her own children - at the same time.

(4) The child welfare service shall assist the substitute parent with professional counseling. The substitute parent shall be obliged to cooperate with the child welfare service.

(5) The substitute parent shall perform his or her duties having the legal status as substitute parent set forth in separate legal regulation.

(6) In particularly justified cases, the number of children specified in paragraph (3) above may, in the interests of the child, be deviated from upon the request or consent of the substitute parent.

*Temporary home of children*

**Article 50** (1) The temporary home of children shall provide care for the child living in his or her family, however, staying temporarily without provision and supervision, or would stay lacking such provision and supervision without such placement, as well as for the child whose provision is endangered due to difficulties arising from the way of living of the family.

(2) The temporary home of children shall, in cooperation with the child welfare service, provide assistance in returning the child to his or her family.

*Temporary home of families*

**Article 51** (1) Upon the request of the homeless parent, the child and his or her parent may together be placed in the temporary home of families, if without such placement, their accommodation would not be ensured and the child would have to be separated from his or her parent.

(2) The temporary home of families shall

- a) ensure accommodation and necessary further provision of both parent and child,
- b) assist parent in the full provision, care, and upbringing of the child,
- c) contribute to the elimination of the family's homelessness and stabilize their situation.

Section 7

*Professional child protection provision*

*The purpose of professional child protection provision*

**Article 52** (1) Within the framework of professional provision, home-like provision for the child temporarily placed or taken into short-term or long-term foster care, further after-care for the young person as well as full



provision for the child requiring professional provision for other reasons shall be ensured.

*Home-like provision*

**Article 53** (1) Within the framework of home-like provision, the following provisions shall be ensured for the child temporarily placed or taken into short-term or long-term foster care

- a) full provision specified in paragraph (1) of Article 45 above,
- b) family support to help maintain contact with family members and preparing the return of the child into his or her family environment, or, if this is not possible, support of adoption,
- c) after-care necessary for the integration of the child into his or her family as well as for the beginning of his or her own life.

(2) In the course of home-like provision, special care shall be provided for the child with disabilities or integrating, behavioral or learning difficulties or for those with special needs due to their age.

(3) Such special care shall involve education, professional training, activities in accordance to the child's age, conditions, and needs as well as nursing, socializing, and re-socializing as well as habilitation and rehabilitation of the child.

(4) Accommodation and necessary further provision shall be ensured within the framework of after-care provision for the young person leaving short-term or long-term foster care, whose after-care provision is ordered by the guardianship office.

- (5) The child shall also be entitled to home-like provision, if
- a) his or her school education and upbringing is possible in a student home or dormitory,
  - b) his or her care is possible in an institute responsible for the care and nursing of disabled children (hereinafter referred to as other residential institute).

- (6) Home-like provision shall be ensured by
- a) foster parent with the support of backer, if this is not possible,
  - b) children's home, or
  - c) other residential institute with the assistance of the professional child protective service.

*Foster parents*

**Article 54** (1) The foster parent may be a capable person of legal age and with a clean record, who has successfully participated in a training specified in separate legal regulation and, based upon his or her personality and conditions, is qualified to ensure the child's balanced development as well as to assist the child to return to his or her family.

(2) A person who fails to meet the requirements specified in this act, or whose right to parental supervision has been revoked by a court order or suspended, except if the reason for such suspension is that the child is under the supervision of the other parent living separately, shall not be a foster parent.

(3) A professional foster parent is a foster parent meeting the qualification requirements specified in separate legal regulation.

(4) A specialized professional foster parent is a professional foster parent who meets the qualification requirements and is competent for ensuring the balanced development of the child with integrating, behavioral, or learning difficulties, or addicted to drugs, alcohol, etc., or requiring special care due to other circumstances as well as to assist such child in returning to his or her family.

(5) The foster parent may provide care for no more than 5 children - including his or her own children - at the same time.

(6) The professional foster parent may provide care for no less than 3 and no more than 8 children - including his or her own children - at the same time.

(7) The specialized professional foster parent may provide care for no more than 5 children - including his or her own children - at the same time.

(8) Upon determination of the number of children to be placed under the supervision of foster parent, professional foster parent, or specialized professional foster parent (hereinafter referred to as foster parent), disabilities or personality disturbance or other circumstances justifying for special care.

(9) In particularly justified cases, the number of children specified in paragraphs (5) - (7) above may, in the interests of the child, be deviated from upon the request or consent of the substitute parent.

**Article 55** (1) The foster parent shall, based upon individual nursing-fostering plans developed in accordance with the statutes, ensure full

provision in his or her own home for the child or young person temporarily placed or taken into short-term or long-term foster care.

(2) The foster parent shall, based upon the order of the guardianship office, perform guardian's responsibilities.

(3) The foster parent shall, based upon the resolution of the guardianship office, ensure the relation of the child he or she is looking after to the child's parent and close relatives entitled to maintaining contact.

(4) Backer shall provide assistance in the activity of foster parent with counseling, family support, and after-care.

(5) The foster parent shall perform his or her duties having the legal status as foster parent set forth in separate legal regulation.

**Article 56** (1) The foster parent shall, for the provision of the child temporarily placed or taken into short-term or long-term foster care, or the young person who has previously been a foster child, be entitled to fostering allowance. The minimum amount of such fostering allowance per child shall be 120% of the minimum amount of old-age pension.

(2) The fostering allowance shall be 140% of the minimum amount of old-age pension, if the child in foster care is

- a) afflicted with severe integrating, behavioral, or learning difficulties according to the professional opinion prepared by the agency specified in paragraph (1) of Article 132 below,
- b) permanently ill or disabled.

(3) The foster parent shall, beyond said fostering allowance, receive special allowance for the clothing, text books, school supplies as well as other equipment of the child necessary for the child's studies, pocket money of the child, and for parts of the household expenses. The annual amount of such allowance per child shall not be lower than 25% of the annual fostering allowance.

(4) The special allowance specified in paragraph (3) above shall mainly be in cash and paid monthly together with the fostering allowance.

(5) The foster parent shall use the allowances set forth in paragraphs (1) - (3) exclusively for the appropriate provision of the child.

**Article 57** (1) The children's home shall ensure home-like provision for the child temporarily placed or taken into short-term or long-term foster care.

(2) If necessary, the children's home shall accept the child of the child specified in paragraph (1) above and the young person receiving after-care as well as his or her child.

(3) The children's home shall provide temporary care for the child in need - because of his or her health - who is under 3 years of age, not under child protection, and requires special care and may accept the homeless parents of the child as well as expectant mothers in social crisis.

(4) The children's home shall, in order to fulfill the provisions of paragraphs (1) - (3)

a) accept the child requiring temporary care and, in order to stabilize the situation of the child, initiate necessary measures,

b) arrange the acceptance of the child temporarily placed or taken into short-term or long-term foster care, and notify the guardianship office and the district professional child protective service,

c) accept the young person receiving after-care, who is not able to ensure his or her own existence, or is a full-time student, or is waiting for acceptance to a social institute (providing nursing, fostering, and rehabilitation),

d) based upon individual nursing-fostering plans developed by the children's home, ensure home-like provision, moreover, based upon the order of the guardianship office, performance of guardian's responsibilities, and preparation of regular supervision of provision; and according to this

da) help maintain contact between the child and his or her family, returning the child to his or her family, therefore, cooperate with the family, the child welfare service responsible for the family, the district professional child protective service, and the guardianship office.

db) inform the guardianship office of the development of relationship between the child and his or her family,

dc) prepare the child for family life and an independent way of living, and promote the child's preparation for independent life by successfully completing his or her studies, learning a profession, and precautionary savings.

dd) ensure after-care for the child or young person who has been a foster child before.

(5) The children's home may operate a network of foster parents and perform related preparations, family support, and provide professional counseling and support for foster parents.

(6) The children's home shall, in accordance with the requirements of the district and professional regulations set forth in separate legal regulations, develop its organization, fostering and nursing system. The basic document of the institute with respect to nursing and fostering shall be a professional program defining the goals, principles, and methods of fostering.

(7) The children's home may, in accordance with its basic activities, provide services for the local population (e.g. children's holidays, day-time care of children, temporary care of children), although such services of the children's home shall not endanger the performance of its basic responsibilities.

**Article 58** (1) The specialized children's home or the specialized team of the children's home shall provide nursing, socializing, re-socializing, habilitation and rehabilitation for the child temporarily placed or taken into short-term or long-term foster care, or suffering from permanent illness or disabilities, or integrating, behavioral, or learning difficulties, or addicted to drugs, alcohol, etc., or requiring special care because of his or her age.

(2) Upon the request of the guardianship office, the specialized children's home may perform a personality test of the children within the framework of residential care.

**Article 59** (1) The children's home shall ensure home-like provision for no less than 12 and no more than 40 children placed in individual habitation units.

(2) The group home is a children's home offering home-like provision for a maximum of 12 children in an individual apartment or family house, in a family environment.

(3) The children's home specialized for children with integrating, behavioral, and learning disabilities shall, with respect to their age, health, and maturity, ensure home-like provision, nursing, habilitation, and rehabilitation of no more than 15 children.

(4) If the children's home ensures full after-care of young persons exclusively, such children's home shall operate as an after-care home.

*District professional child protective service*

**Article 60** (1) The duty of district professional child protective service (hereinafter referred to as professional child protective service), in order to find the foster place of the child temporarily placed or taken into short-term or long-term foster care, is to

- a) perform the personality test of the child, prepare a professional opinion and placement recommendation with respect to the child upon the request of the guardianship office,
- b) develop individual placement plan of the child upon the request of the guardianship office,
- c) select foster parent and children's home performing the duty of temporary placement as well.

**Article 61** (1) The duty of professional child protective service, in order to organize, maintain, and operate a network of foster parents, is to

- a) test qualification of foster parent, select foster parent based upon professional requirements set forth in separate legal regulation,
- b) prepare foster parent - with training and further education - to be able to perform his or her duties and continuously assist him or her with professional counseling.

**Article 62** (1) The duty of professional child protective service, in order to professionally prepare adoption of the child, declaration of the child taken into short-term or long-term foster care to be available for adoption, and offer for adoption of the child, as well as perform the procedures of adoption, is to

- a) keep records on the child in short-term foster care declared available for adoption based upon the resolution of the guardianship office, the child available for adoption in long-term foster care as well as the child available for adoption based upon the report of parent, the agency or person providing health care service, the child welfare service, or other agency responsible for family protection,
- b) inform the person wanting to adopt a child and prepare him or her for the adoption,
- c) test the qualification of the person wanting to adopt of a child with respect to health and mental conditions in accordance with the professional requirements set forth in separate legal regulation, and keep records on such person based upon the resolution of the guardianship office.
- d) take necessary measures, within its jurisdiction as an ad hoc trustee, in the case of the child taken into short-term or long-term foster care.

(2) The professional child protective service shall continuously inform the National Institute of Family and Child Protection of the records kept in accordance with points a) and c) or paragraph (1) above.

**Article 63** (1) With respect to the duties of the children's home set forth in this act, the professional child protective service shall, for the assistance and professional control of the nursing-fostering activities of the guardian (legal guardian), caregiver of the child taken into short-term or long-term foster care according to individual programs

a) develop the individual nursing-fostering plan of the child,

b) upon the request of the guardianship office, or semi-annually without such request, ex officio inform the guardianship office of the duties performed in connection with nursing and fostering, the development of the relationship between the child and his or her parent as well as the cooperation of the parent with the institution or person responsible for looking after his or her child.

c) notify the guardianship office, if limitation of the jurisdiction of guardian (legal guardian) or revocation or suspension of his or her function is justified,

d) take care of the execution of the placement plan, therefore, in cooperation with the child welfare service, provide family support to establish the conditions of bringing up the child in the birth family and restore the relationship between parent and child,

e) perform family support and after-care, in cooperation with the child welfare service, to reintegrate the child into his or her family and encourage the child to start his or her independent life, if the child's foster place is not a children's home

**Article 63** (1) The professional child protective service shall, for the guardianship of the child temporarily placed or taken into short-term or long-term foster care,

a) represent the child within its jurisdiction as an ad hoc trustee, if guardian is not allowed to represent the child, or, in matters requiring special expertise, guardian is not qualified to represent the child,

b) perform property management duties in its jurisdiction as an ad hoc trustee, if the guardianship office fails to authorize guardian to manage the property of the child,

c) perform the duties related to the guardianship of individual children in its jurisdiction as a legal guardian, based upon paragraph (4) of Article 98 of the Family Law.

**Article 65** (1) The professional child protective service shall, within the framework of professional counseling,

a) provide professional, methodological assistance for performing professional duties related to personal care,

b) prepare recommendations for the development of professional provision and promote implementation of scientific research in practice.

*District professional child protective service*

**Article 66** (1) County and Budapest-based local governments shall ensure professional support of child protection specified in Articles 60-65 above through the operation of institutes of child protection or other institutions providing professional support (hereinafter referred to as district professional child protective service).

(2) The district professional child protective service shall in particular

- a) operate a network of ad hoc trustees, property managers, legal guardians,
- b) perform the duties of professional counseling, and
- c) based upon the decision of county and Budapest-based local governments, operate a home to enable short-term foster care or temporary placement of children.

### CHAPTER THREE

#### *CHILD PROTECTION AND WELFARE*

**Article 67** (1) If provision for the physical, intellectual, emotional, and moral development of the child can not be ensured upon the approval of parent, and such situation may endanger the development of the child, the notary of the local government or the guardianship office shall, depending on the extent of endangerment, take one of the measures set forth in paragraph (4) of Article 15.

(2) If a divorce or child placement suit is under way between the parents, and child protection seems to be justified in the best interests of the child, the court shall immediately request the guardianship office to take necessary measures.

(3) If the court refuses the request of the guardianship office to cease parental supervision and arrange the placement of the child, another means of child protection shall be chosen.

#### Section 8



*Taking the child under protection*

**Article 68** (1) If parent is not able or does not want to eliminate endangerment of the child through the optional use of basic provisions, however, it is presumable that, with assistance, development of the child within a family environment may be ensured, the notary of the local government shall take the child under protection.

(2) Simultaneously with taking the child under protection, the notary of the local government shall appoint a family caregiver from the child welfare service for the child in order to continuously help the care and organize the provision of the child and support parental care, and, if necessary,

a) oblige the parent to continuously use the day-time provision of children,

b) oblige the parent to contact, together with his or her child, a person or organization responsible for family protection,

c) initiate with the competent family practitioner - in the case of severe endangerment, with any practitioner - the medical examination of the parent or other relative living together with the child, who is permanently or temporarily in an abnormal mental state due to his or her illness or addiction to drugs, alcohol, etc.,

d) take care of the elimination of circumstances endangering the child's health with the cooperation of the competent authorities,

e) develop behavioral rules in order to eliminate certain manners of the child criticized by family caregiver,

f) warn parent of the consequences of his or her inappropriate way of living and behavior and order parent to change.

(3) Upon taking the child under protection, the family caregiver shall develop an individual nursing-fostering plan, to which, upon the request of the local government, the district professional child protective service shall provide assistance.

(4) The notary of the local government shall - upon request or ex officio annually - revise justification for taking the child under protection. If taking the child under protection is not suitable for eliminating the endangerment of the child, another means of child protection shall be chosen in the best interests of the child. Parent shall be warned of such legal consequences.

(5) Taking the child under protection shall not affect the right of the parent to supervision.

**Article 69** (1) The notary of the local government may take the following persons under protection

a) the young person of school-age or involved in regular school education, having committed a petty offence, based upon notification of the authority in charge of petty offenses,

b) the young person suspected of or charged with a crime, based upon information of police, prosecution, or court,

c) the child under 14 years of age, based upon the resolution of investigation authorities refusing investigation,

and, in order to continuously help their upbringing and support parental care, order a family caregiver for them. Simultaneously with taking the above persons under protection, the notary of the local government may take measures set forth in points a) -f) of paragraph (2) of Article 68, in order to promote their upbringing within a family environment.

(2) The provisions of paragraphs (3) - (5) of Article 68 shall apply to taking the persons specified in paragraph (1) above under protection.

## Section 9

### *Fostering the child in another family*

**Article 70** (1) Upon request of both parents exercising parental supervision or parent exercising parental supervision alone, by providing opportunity for the absent parent to express his or her views, the guardianship office may approve, that, due to health conditions or justified absence of parent or for other family reasons, the child shall temporarily be taken in, nursed, and fostered by another family selected by the guardianship office for the necessary period of time, provided that such action is in the best interests of the child.

(2) For the time of fostering the child in another family, the right of the parent to supervision shall be suspended.

(3) Fostering the child in another family shall not affect parent's obligation of support.

(4) Upon filing the request, the guardianship office shall inform parent of the consequences of his or her legal statement.

**Article 71** (1) The guardianship office shall approve of the fostering of the child in another family, if parent wanting to foster the child is, based upon his or her personality and conditions, qualified for nursing and

upbringing the child, performing guardian's duties, moreover, parent himself or herself undertakes to perform such duties.

(2) The guardianship office shall order parent(s) wanting to foster the child to act as guardian(s).

(3) Fostering the child in another family shall be expected to last as long as the justifying reason exists. Fostering the child in another family shall be revised annually by the guardianship office based upon the information provided by guardian.

(4) The parent shall be entitled to maintain contact as well as the right to make joint decisions in material issues affecting the future of the child. All disputes arising in connection with material issues affecting the future of the child, shall be settled by the guardianship office.

(5) In particularly justified cases, the guardianship office may entitle parent to manage the property of the child and to act as the legal representative of the child in the child's property issues.

(6) Fostering the child in another family shall be terminated, if it is required by parent or parent taking in the child. If the reason for fostering the child in another family still exist, the guardianship office shall, following the termination of fostering the child in another family, arrange other forms of child protection.

## Section 10

### *Temporary placement*

**Article 72** (1) If child remains without supervision, or his or her physical, intellectual, emotional, and moral development is severely endangered by his or her family environment, and, as a result, immediate placement of the child is necessary, the notary of the local government, the guardianship office as well as the court, police, prosecution, headquarters of the law enforcement institute (hereinafter referred to as assigning agency) shall temporarily, within the framework of professional provision, ensure placement of the child

a) with the absent parent, other relative or person who is both qualified for and undertakes such fostering, or, if this is not feasible,

b) with the closest foster parents also performing temporary nursing duties, of if this is not feasible, in a children's home or other residential institute

and immediately inform competent guardianship office thereof.

(2) The assigning agency shall be responsible for moving the child to his or her foster place.

(3) From the beginning of temporary placement, the right of parent to nurse and foster the child shall be suspended. The resolution of assigning agency may be immediately executed regardless of any appeals.

**Article 73** (1) Within 30 days following temporary placement, the competent guardianship office shall, regardless of which assigning agency initiated such placement, investigate

- a) whether such temporary placement can be terminated,
- b) whether the conditions of instituting proceedings for alteration of the child's placement or termination of parental supervision still exist upon maintenance or alteration of temporary placement.

(2) Alteration of the decision of the court with respect to placement of the child through institution of proceedings according to point b) paragraph (1) above shall only take place, if the circumstance upon which the court's placement decision was based, have later changed significantly.

**Article 74** (1) If, based upon the temporary placement, the guardianship office determines, that the reasons for terminating parental supervision do not exist, but the child's development is not secured in his or her former environment, the guardianship office shall, within 30 days, institute proceedings against parent(s) for the child's placement with the absent parent or third person.

(2) The guardianship office shall, simultaneously with the institution of proceedings, order suspension of the right of parent to supervise the child, re-establishment of the right of absent parent to supervise the child, or appoint the person, with whom the child is temporarily placed, as the guardian of the child.

**Article 75** (1) If, following the temporary placement, the guardianship office determines, that the reasons for terminating parental supervision exist, the guardianship office shall, within 30 days, institute proceedings against parent for the termination of the right of parent to supervise the child, and simultaneously with the institution of proceedings, order suspension of the right of parent to supervise the child, moreover,

- a) order the re-establishment of the right of absent parent to supervise the child and calls him or her to exercise such right, if child has been temporarily placed with absent parent,

b) appoint the relative or other person, with whom the child is temporarily placed, as the guardian of the child,

c) appoint a guardian (legal guardian), if the child has been temporarily placed with foster parents, at a children's home, or other residential institution.

**Article 76** (1) The guardianship office shall terminate temporary placement, if

a) it determines, that the reasons for terminating parental supervision did not exist, and the child's development can be secured in his or her former environment, if necessary, by taking the child under protection,

b) it takes the child into short-term foster care,

c) the court made a final decision in the proceedings for termination of parental supervision and alteration of the child's placement.

(2) The guardianship office shall alter temporary placement of the child, if it determines, that the conditions of temporary placement existed, but the fact, that there is an absent parent, other relative or other person, who is both qualified for and undertakes fostering, and with whom the child could be temporarily placed, becomes known only after the child has been placed with foster parents, at a children's home, or other residential institution.

## Section 11

### *Taking the child in care*

#### *Taking the child into short-term foster care*

**Article 77** (1) The guardianship office shall take the child into short-term foster care, if the child's development is endangered by his or her family environment, and such endangerment could not be eliminated by the services provided in the framework of basic provision or by taking the child under protection, or no positive outcome can be expected from such action, moreover, if appropriate nursing of the child within his or her family can not be ensured. Simultaneously with taking the child into short-term foster care, the guardianship office shall arrange placement of the child with foster parents, or, if this is not feasible, at a children's home or other residential institute and appoint a guardian (legal guardian).

(2) The right of the parent of the child taken into short-term foster care according to paragraph (1) above to parental supervision shall be suspended.

(3) Short-term foster care shall provide a home-like environment for the child according to the individual placement plan as long as the child's family is not able to take back the child.

(4) The guardianship office shall pass exceptional resolutions with respect to taking the child into short-term foster care. Regardless of any appeals, such resolution may be executed immediately.

(5) Subject to the decision of the guardianship office, the legal representative of the child or another person looking after the child, or the notary of the local government at the place of abode or residence of the child shall be responsible for moving the child to the foster parents, or children's home, or other residential institution.

**Article 78** (1) The guardianship office shall monitor the relationship between the child taken into short-term foster care and his or her parent, the cooperation of parent with the foster parent, children's home and other residential institution, and the changes in the behavior, way of living, and conditions of parent.

(2) If the parent of the child taken into short-term foster care abuses his or her right to maintain contact to the injury of the child or the person looking after the child, and with his or her behavior, the parent endangers the physical, intellectual, emotional, and moral development of the child, the person looking after the child or the guardian (legal guardian) of the child may initiate limitation, suspension, or revocation of the right to maintain contact by the guardianship office or court.

(3) If the parent of the child taken into short-term foster care, being at fault, fails to cooperate with the foster parent or institution looking after his or her child, as a result, severely hurts the interests of the child, fails to maintain contact with his or her child, moreover, fails to change his or her behavior, way of living, conditions to terminate short-term foster care of the child, and if other reasons for the elimination of parent's right to supervision prevail, the guardianship office shall institute proceedings against parent for the elimination of his or her right to supervision.

**Article 79** (1) The guardianship office shall, based upon the information provided by guardian (legal guardian), annually revise the existence of the conditions of short-term foster care, and, according to the result of such revision, make a decision about maintaining or modifying the individual placement plan.

(2) The guardianship office shall, upon request of parent or ex officio, terminate the short-term foster care of the child, as soon as the reasons thereof no longer prevail.

(3) Short-term foster care shall terminate, if the child is taken into long-term foster care or reaches legal age.

*Taking the child into long-term foster care*

**Article 80** (1) The guardianship office shall take the child into long-term foster care, if

a) due to the elimination of parent's right to supervision or for other reasons, the child has no parent to supervise him or her, provided that the upbringing of the child can not be ensured by a guardian appointed in accordance with Articles 95-97 of the Family Law.

b) parent submitted a declaration of consent with respect to the adoption of his or her child without knowing the adopting person or his or her identification data, provided that the child can not be placed temporarily with the would-be adopting parent.

(2) Simultaneously with taking the child into long-term foster care, the guardianship office shall place the child with foster parents or, if this is not possible, at a children's home, or other residential institution and appoint a guardian (legal guardian).

(3) Long-term foster care of the child shall ensure a home-like environment for the child according to individual placement plan in an adopting family, or, if this is not possible, in a foster family, children's home, or other residential institution, and prepare the child for independent life.

(4) The guardianship office shall pass exceptional resolutions with respect to taking the child into long-term foster care. Regardless of any appeals, such resolution may, be executed immediately, unless the child is already at his or her foster place.

(5) The notary of the local government at the place of abode or residence of the child shall be responsible for moving the child to the foster parents, or children's home, or other residential institution.

(6) The guardianship office shall, based upon the information provided by guardian (legal guardian), annually revise such long-term foster care.

**Article 81** (1) Long-term foster care shall be terminated, if

- a) the court has re-established parental supervision,
- b) the child has been placed under the guardianship of another person as a result of the decision of the court with respect to placement of the child,
- c) the child has been adopted,
- d) the child has reached legal age.

(2) Based upon the provisions of paragraph (3) of Article 92 of Family Law, the guardianship office shall, upon request of parent entitled to maintaining contact, terminate long-term foster care, if

- a) the child has not been adopted, and
- b) the person and environment of parent is suitable for the upbringing of the child,

provided that such termination is in the best interests of the child.

(3) Simultaneously with the termination of long-term foster care, the legal statement of parent made in accordance with paragraph (3) of Article 48 of Family Law shall cease to have effect.

*Determination of the child's foster place*

**Article 82** (1) Upon recommendation of the notary of the local government, the guardianship office shall, after listening to the views of the child as well as the parent of the child taken into short-term foster care, determine the foster place of the child temporarily placed, or taken into short-term or long-term foster care with the help of the professional opinion of the district professional child protective service.

(2) Upon placement, the guardianship office shall consider the desired continuity of the child's upbringing, joint placement of siblings, national, religious, and cultural background, as well as age, health, social level of the child, and the distance from his or her former place of abode and educational institution.

(3) In order to ensure a permanent - family-like - environment for the child, simultaneously with taking the child into short-term or long-term foster care, or within 30 days of taking the child into short-term or long-term foster care at the latest, the district professional child protective service shall, taking the views of the child into consideration, develop an individual placement plan, which shall be submitted for approval to the guardianship office.



(4) During the implementation of the individual placement plan and the performance of duties, the caregiver, guardian (legal guardian) of the child as well as the parent of the child taken into short-term foster care shall cooperate with the local government.

(5) The guardianship office shall, as a result of the annual review of taking the child in care, make a decision about maintaining or modifying the individual placement plan specified in paragraph (3) above.

**Article 83** (1) Ex officio or upon request, the guardianship office shall change the child's foster place, if

a) the circumstances upon which the placement decision was based have later changed significantly, and, as a result, the upbringing of the child in his or her former environment can no longer be secured appropriately,

b) changing the child's foster place is necessary for other reasons in the interests of the child.

(2) The guardianship office shall inform parent, whose right to parental supervision is suspended, as well as the institution or person ensuring home-like provision for the child, of changing the foster place.

(3) In the case of discharge or removal of guardian (legal guardian), the guardianship office shall simultaneously appoint a new guardian (legal guardian), and, if necessary, determine the child's new foster place.

## Section 12

### *Guardianship of individual child under child protection*

#### *Appointment and legal status of guardian*

**Article 84** (1) The guardianship office shall appoint a guardian for the child, if

a) guardianship office has placed the child temporarily with foster parents, at a children's home, or other residential institute, and instituted proceedings for the suspension of parental supervision.

b) guardianship office has taken the child into short-term or long-term foster care.

(2) The following persons, if qualified for performing guardian's responsibilities, may be appointed as guardians

a) foster parent,

b) head of the children's home,

where the child has been placed by the guardianship office.

(3) If the guardianship office has placed the child temporary placed or taken into short-term or long-term foster care in another residential institution, or if foster parent did not undertake guardianship based upon paragraph (3) of Article 100 of the Family Law, moreover, if the persons specified in paragraph (2) above can not be appointed as guardians, the guardianship office shall appoint a guardian for the child selected by the district professional child protective service. Such legal guardian may be responsible for the guardianship of no more than 40 children.

**Article 85 (1)** If guardianship is performed by a guardian specified in paragraph (2) of Article 84, with the exceptions contained in this act, the provisions of the Family Law regarding guardianship shall apply to such guardian.

(2) If the duties of guardianship are performed by the foster parent or the head of the children's home appointed by the guardianship office, such guardian shall be the caregiver, nurser, legal representative, and, if authorized by the guardianship office, property manager of the child.

(3) Guardian shall be both entitled to the rights and responsible for meeting the obligations related to guardianship from the day of delivering the resolution on his or her appointment, unless beginning of nursing-fostering is delayed because of the place of residence of the child.

(4) The activity of guardian shall be controlled and supervised by the guardianship office, and performance of his or her duties shall be assisted by the district professional child protective service.

(5) Guardian shall semi-annually inform the guardianship office in writing of his or her job and the affairs of the child under his or her guardianship. Such duty of disclosure shall not affect the statutory reporting obligation.

(6) If the guardianship office removes guardian from his or her office or suspends him or her with immediate effect, guardianship office shall simultaneously appoint a new guardian, and, if necessary, determine the child's new foster place.

*Nursing and fostering the child*

**Article 86** (1) Guardian shall promote the physical, intellectual, emotional, and moral development of the child, his or her fostering, and take care of full provision of the child.

(2) If foster parent acts as a guardian, foster parent shall nurse and foster in his or her own home.

(3) Guardian shall not be entitled to the right of the child's placement, and the child's foster place shall only be changed by the guardianship office.

(4) Guardian shall choose a career for the child together with the child, taking the views of the parent, the capability, and other circumstances of the child taken into short-term foster care into consideration. All disputes arising in connection with choosing a career, shall be settled by the guardianship office.

*Representation of the child*

**Article 87** (1) It shall be the guardian's right and obligation to represent the child in the issues affecting his or her person and property, if authorized to do so by the guardianship authorities.

(2) Guardian shall not make a declaration of consent for the adoption of the child. The validity of guardian's legal statements shall be subject to the approval of the guardianship office, if such legal statement relates to the legal status of the child within the family or institution of proceedings with respect thereto.

(3) Guardian shall be obliged to monitor and promote submission of applications for housing benefit and after-care provision.

(4) Upon request of the child or the guardian as well as ex officio, the guardianship office shall appoint an ad hoc trustee to represent the child, if guardian, as a legal representative, can not represent the child according to Family Law, or in issues requiring special expertise, guardian does not undertake to represent the child.

(5) The guardianship office shall appoint an ad hoc trustee specified in paragraph (4) above primarily from the employees of the district professional child protective service specialized in this field.

*Management of the child's property*

**Article 88** (1) The guardianship office may, upon request of guardian, authorize guardian to perform the duties related to management of the child's property.

(2) The validity of legal statements concerning the execution of less significant agreements ensuring usual requirements of everyday life shall not be subject to the approval of the guardianship office.

(3) The approval of guardianship office regarding property management shall relate to the entire property or certain group of issues.

(4) Within his or her scope of duties, it shall be the right and obligation of guardian authorized for management of the child's property to safeguard the interests of the child, arrange the appropriate utilization of the property, and take care of the issues of the child in accordance with the rules of ordinary property management.

(5) Guardian shall take over the property of the child based upon an inventory.

(6) From his or her own income, the child shall not be obliged to contribute to the expenses of the household of foster parent, guardian shall not demand reimbursement from the child for guardian's expenses incurring in connection with his or her job.

**Article 89** (1) If guardianship office did not authorize guardian for the management of the child's property, guardianship office shall appoint an ad hoc trustee for the management of the child's property primarily from the employees of the district professional child protective service specialized in this field.

(2) The guardianship office shall judge the ad hoc, ordinary and final report of guardian or ad hoc trustee responsible for property management.

#### *Legal status of legal guardian*

**Article 90** If guardianship is performed by a legal guardian specified in paragraph (3) of Article 84, with the exceptions specified in paragraphs (3) - (8) of Article 85 as well as Article 91, the provisions of the Family Law regarding guardianship shall apply to his or her duties.

**Article 91** (1) If guardianship is performed by a legal guardian, the duties concerning the nursing and fostering of the child shall be performed by foster parent, children's home, or other residential institution.

(2) The legal guardian shall not be entitled to the right of the child's placement, and the child's foster place shall only be changed by the guardianship office.

(3) Ex officio as well as upon request of legal guardian, the guardianship office shall appoint an ad hoc trustee to represent the child, if legal guardian, as a legal representative, can not represent the child according to Family Law.

(4) The legal guardian shall be obliged to assist and monitor submission of applications for housing benefit and after-care provision.

(5) The legal guardian shall not demand reimbursement from the child for his or her expenses incurring in connection with his or her job.

### Section 13

#### *After-care*

**Article 92** (1) After the termination of short-term and long-term foster care, the guardianship office shall order after-care at least for a period of one year, through which guardianship office shall promote the reintegration of the child or young person into his or her family environment as well as the beginning of his or her individual life.

(2) In cooperation with the child welfare service, such after-care shall be provided by the children's home or the after-care institute of the district professional child protective service with the participation of social organizations, foundations, and legal persons of the church.

#### *After-care provision*

**Article 93** (1) The guardianship office shall, upon recommendation of guardian (legal guardian) as well as upon request of the young person, order further after-care provision, if the young person is not able to ensure his or her own existence, or is a full-time student, or is waiting for acceptance to a residential social institute.

(2) In the cases specified in paragraph (1) above, the young person may stay in the home of foster parent, children's home, or after-care home.

(3) If the young person fails to use the after-care provision within a certain time and to inform foster parent or the head of the children's home of the reason, the person or institute ensuring the provision shall contact the competent guardianship office to initiate termination of such provision.

(4) The young person receiving after-care provision who is not a full-time student and is able to work shall be obliged to cooperate with the county or Budapest-based employment center. Further obligations of the young person shall be subject to the regulation of the institution.

(5) The after-care provision of the young person shall terminate

- a) within a certain time - specified in the regulation of the institution - after the announcement with respect to the provision's termination,
- b) upon the 24th birthday of the young person.

(6) The guardianship office shall terminate the after-care provision, if

- a) the conditions of such provision no longer prevail,
- b) due to relocation, his or her provision is ensured by another institution,
- c) young person infringes the regulation of the institution several times,
- d) young person's behavior towards his or her foster parent is unacceptable.

## CHAPTER FOUR

### *PERFORMANCE AND MANAGEMENT OF THE DUTIES OF CHILD PROTECTION*

#### Section 14

##### *Duties of local authorities*

##### *Duties of the local government*

**Article 94** (1) The local governments, and in Budapest, the district local governments, shall be responsible for developing and operating the local system of child protection as well as organizing the provision of children living in their area.

(2) The local government shall, in accordance with the provisions of this act, ensure regular child benefit, exceptional child benefit, child welfare service within the framework basic support providing personal care, day-time provision of children, and temporary care of children as well as organize and promote access to provisions available elsewhere.

(3) The provision area of the institutions backed by the local government shall include the population of the district, unless the institution is backed jointly by a partnership, or the local government has signed a contract for the provision of the population of another local government as well.

(4) If the provision area of the institution exceeds the area falling under the administration of the local government backing the institution, unless otherwise provided for, provision shall be ensured for each person entitled to such provision according to the same conditions. This rule shall apply to the cancellation of provision as well.

(5) The local government backing the institution shall not, upon request of another local government backing no such institution, reject provision, if the local government has at the time this act took effect or based upon their separate agreement already ensured such provision.

*Duties of county and Budapest-based local governments*

**Article 95** (1) The county and Budapest-based local governments shall, in accordance with the provisions of this act, ensure home-like provision within the framework of professional support providing personal care and district professional child protective service.

*Ways of the performance of duties*

**Article 96** (1) Those obliged to provide personal care shall perform their duties themselves, or, in accordance with the provisions of this act, through contracting with other agencies or persons, or in the form of partnership.

(2) The provisions of paragraph (1) above shall not apply to the provision specified in paragraphs (3) - (4) of Article 101.

(3) The local government shall, in accordance with the provisions of a separate legal regulation, annually prepare a comprehensive evaluation of the performance of its duties regarding child welfare and child protection,

which shall be discussed by the representative body of the local government. The local government shall inform the county guardianship office and the National Institute of Family and Child Protection of such evaluation.

(4) The local government may initiate - for the performance of professional methodological and educational duties of child welfare and child protection - the determination of an institution providing personal care by the county guardianship office.

*Provision contract*

**Article 97** (1) The local government as well as the government agency may ensure the provision of personal care set forth in this act or the performance of certain distinguishable and separable duties through provision contract signed with non-government agencies.

(2) If, based upon the provision contract, a non-government agency with religious or ideological commitment takes part in the performance of duties, the execution of the contract shall not exempt the local government or the government agency from the obligation to perform duties in the case of a child whose parent does not want to use the service of such non-government agency.

(3) The parties may freely define the content of such provision contract, so that it shall, beyond the provisions of Article 121 of the Welfare Act, contain

a) the duration of the contract, which shall not be less than 5 years in the case of residential child institution,

b) the statement of the non-government agency providing the service with respect to knowledge of and compliance with the recording obligation as well as the rules of data management and data protection.

(4) The execution of such provision contract shall be publicly announced according to accepted methods in the affected district.

(5) The representative body of the local government shall not transfer the right to execute, modify, and terminate such provision contract.

*Licensing of the operation of non-government agencies  
providing child protective service*



**Article 98** (1) Subject to separate legal regulation, any non-government agency may deal with services ensuring protection of children, establish and operate a network of substitute or foster parents, child welfare service, and district professional child protective service (together hereinafter referred to as child protective service).

(2) Within the framework of child protective service, services assigned by legal regulations to the exclusive competence of government agencies may not be offered.

**Article 99** (1) With the exceptions contained in this act, regulations for the operation of social institutions providing personal care shall apply to the child protective service.

(2) Within the framework of child protective service, services may be provided by a person qualified in accordance with the provisions of a separate legal regulation.

(3) The child protective service shall comply with the requirements contained in this act as well as in professional regulations.

**Article 100** (1) Each child protective service provider with operating license for services defined in accordance with professional regulations shall be part of the child protective system.

(2) The operating license necessary under the conditions specified in a separate legal regulation shall be issued by

a) the notary of the competent local government at the headquarters or local office of the child protective service in the case of child welfare service and day-time provision of children,

b) the competent county guardianship office at the headquarters or local office of the child protective service in the case of services not regulated by point a) [points a) and b) together hereinafter referred to as licensing agency].

(3) The licensing agency shall control the professional activity of the child protective service in accordance with the provisions of a separate legal regulation.

## Section 15

### *Powers and duties of the Minister of Welfare*

**Article 101** (1) The Minister of Welfare shall be responsible for the sectoral control of duties ensuring the protection of children.

(2) Within his or her jurisdiction specified in paragraph (1) above, the Minister of Welfare shall

a) define the professional and qualification requirements of duties ensuring the protection of children and the methods of legislative and professional control of such duties,

b) establish and maintain national professional institutes and councils,

c) perform the duties in connection with the professional supervision and management of guardianship authorities,

d) organize the network of institutions to ensure the nursing of children who require special care,

e) guarantees the conditions of the development of scientific research serving child protection as well as of international relations,

f) in cooperation with other affected ministers, initiate measures to be taken for the care of abandoned Hungarian children staying abroad,

g) harmonize and organize the registration and information system necessary for the management and uniform operation of the system ensuring the protection of children.

(3) The Minister of Welfare shall take care of the conditions of education of young offenders sent to young offender institutions or placed under preventive detention by a court order, maintain young offender institutions and, together with the Minister of Justice, perform the duties of their supervision.

(4) The Minister of Welfare shall ensure the execution of probation officer's supervision becoming necessary according to Article 119 of Act No. IV of 1978 on the Penal Code through probation officers operating with the county guardianship office and, together with the Minister of Justice, perform the duties of their sectoral control.

*The National Institute of Family and Child Protection*

**Article 102** (1) The National Institute of Family and Child Protection is an institution of further education, science, and methodology. The Institute shall perform the duties in connection with professional methodological control, promotion of scientific research, and international relations as well as duties regarding counseling and providing special service assigned to its competence by a separate legal regulation.

*Professional Council(s) of Family and Child Protection*

**Article 103** (1) The Professional Council(s) of Family and Child Protection (hereinafter referred to as Council(s)) is (are) the consulting, advising, and proposing agency (agencies) of the Minister of Welfare.

(2) The Minister of Welfare shall ensure the operating conditions of the Council(s) through the National Institute of Family and Child Protection.

## Section 16

### *Managerial authority of the institution's backer*

**Article 104** (1) The backer of the institution responsible for the protection of children shall

a) make decisions about the foundation documents, sphere of operations, reorganization, termination, modification of the scope of activities, and name of the institution,

b) determine the budget of the institution as well as the institutional service fee,

c) control the management and the legitimacy of operation of the institution,

d) approve the bye-laws and professional program of the institution,

e) evaluate the successfulness of professional work,

f) take care of the further education of experts.

(2) Backer may reject the approval of bye-laws, if they infringe any legal regulation. Backer may reject the approval of the professional program, if it fails to comply with the requirements set forth in this act as well as in professional legal regulations.

(3) Backer shall, in order to ensure legitimacy, control the legitimacy of the regulations of the institution as well as other in-house regulations.

(4) As a result of control specified in paragraph (3) above, backer shall order the head of the institution to remedy the infringement of any legal regulation, and, upon failure to do so, backer shall nullify such regulations.

(5) In order to guarantee successful professional work, the institution shall continuously cooperate with backer and, upon request, provide a comprehensive evaluation of its activities.

(6) Backer's authority specified in paragraphs (3) and (5) shall not violate the sovereignty determined in the professional program of the institution.

## CHAPTER FIVE

### ORGANIZATION AND DUTIES OF GUARDIANSHIP ADMINISTRATION

#### Section 17

##### *Agencies of guardianship administration*

**Article 105** (1) The performance and management of guardianship duties specified in this act as well as the control of operation of the system ensuring child protection is the responsibility of the state.

(2) The state shall perform the duties specified in paragraph (1) above through

- a) the notary of the local government,
- b) the municipal and county guardianship office,
- c) the probation officers operating with the county guardianship office.

(3) The Minister of Welfare shall be responsible for the supervision of the duties specified in paragraph (1) above.

**Article 106** (1) The authority of first instance in administrative issues of guardianship shall be

- a) the notary of the local government,
- b) the municipal guardianship office.

(2) The appointed municipal guardianship office shall also perform its responsibilities with respect to the villages located in its area of competence specified in government decree.

(3) With the exceptions specified in this act, the municipal guardianship office shall perform all responsibilities, which are assigned by legal regulation to the competence of the guardianship office of first instance.

(4) The authority of second instance in administrative issues of guardianship shall be the county guardianship office.

## Section 18

### *Powers and duties of the notary of the local government*

**Article 107** (1) The notary of the local government shall

- a) accept an acknowledgment of paternity with full effect,
- b) in cases specified in separate legal regulation, appoint a guardian ad litem or ad hoc trustee, discharge appointed trustee, and determine his or her remuneration,
- c) upon request of the guardianship office, take inventories and prepare environmental studies in guardianship and trusteeship issues, and participate in the enforcement of the resolution of guardianship office,
- d) accept the affidavit of parent, in which parent agrees to the adoption of his or her child by an unknown person,
- e) decide about taking the child under protection as well as terminating such protection,
- f) in cases requiring immediate action, arrange the placement of the child with the absent parent, other relative, other suitable person or foster parent, or, if this is not possible, in a children's home or other residential institution,
- g) in accordance with Article 132, appoint and discharge an expert as well as determine the expert's remuneration,
- h) decide about licensing the operation of child protective service according to point a) of Article 100,
- i) in accordance with the provisions of international agreements, participate in the recovery of child support,
- j) participate in the recovery of fostering allowance as well as advanced child support,
- k) perform other guardianship duties assigned by law or government decree to his or her competence.

## Section 19

### *Powers and duties of the guardianship office*

**Article 108** (1) Within its area of competence, the guardianship office shall perform the responsibilities set forth in this act as well as separate legal regulation.

(2) The guardianship office shall

- a) control support providing personal care,
- b) control performance of the duties of guardianship administration,

- c) form an opinion about the proposals regarding changes in the provision system,
- d) participate in the performance of duties regarding training and further education,
- e) act as an authority of first instance in issues specified in law or government decree,
- f) act as a superior authority in authority issues of guardianship administration specified in law or government decree,
- g) perform other administrative duties assigned by law or government decree to its competence.

*Powers and duties of the municipal guardianship office*

**Article 109** (1) The municipal guardianship office shall, in order to ensure the protection of children,

- a) arrange the temporary placement of the child with the absent parent, other relative, other suitable person or foster parent, or, if this is not possible, in a children's home or other residential institution,
- b) determine the re-establishment of the right of parent to supervise the child,
- c) decide about terminating or changing the temporary placement ordered by another agency,
- d) take the child into short-term foster care and simultaneously appoint a guardian (legal guardian),
- e) take the child into long-term foster care and simultaneously appoint a guardian (legal guardian),
- f) decide about the maintenance of contact of the child taken into short-term or long-term foster care,
- g) monitor the development of the relation between the child taken into short-term foster care and the parent as well as parent's cooperation with the nursing person or institution,
- h) decide about the termination of short-term or long-term foster care of the child,
- i) decide about ordering after-care or after-care provision,
- j) decide about determining and ending payment obligation of fostering allowance,
- k) determine the place of residence of the child taken into short-term or long-term foster care.

**Article 110** (1) Regarding financial support, the municipal guardianship office shall decide about

- a) the determination of housing benefit,
- b) the advancement of child support.

**Article 111 (1)** In order to settle the child's legal status within the family, the municipal guardianship office shall

- a) accept an acknowledgment of paternity with full effect,
- b) determine the family and first name of the child,
- c) in the case of a legally incapable person entitled to provision, approve the institution of proceedings for the determination of the person's legal status within the family and simultaneously appoint an ad hoc trustee.

**Article 112 (1)** In connection with adoption, the municipal guardianship office shall

- a) decide about qualification of the persons wanting to adopt the child and, upon request, order registration of the persons qualified for adoption,
- b) decide about declaring the child to be adoptable,
- c) judge and approve the legal statement of parent, in which parent agrees to the adoption of his or her child by an unknown person,
- d) decide about authorizing adoption,
- e) upon joint request of the parties, decide about canceling adoption,
- f) upon request, disclose data of biological parent.

**Article 113 (1)** The municipal guardianship office may institute or initiate proceedings for

- a) the placement or release of the child,
- b) the enforcement of the claim entitling the child to support,
- c) the termination or re-establishment of parental supervision,
- d) the cancellation of adoption of the child,
- e) the placement under trusteeship affecting capability as well as the termination thereof,
- f) the determination of reporting obligation as well as the accuracy of reporting.

(2) The municipal guardianship office shall report

- a) the endangerment of the child or the failure to support the child,
- b) the crime committed to the injury of the child.

**Article 114 (1)** In connection with the parental right to supervision as well as child support, the municipal guardianship office shall

- a) decide about how the child and his or her parent shall maintain contact with each other,
- b) take measures in order to enforce the maintenance of contact regulated by court or guardianship office,
- c) decide about the approval necessary for the validity of parent's legal statement,
- d) decide about issues of parental supervision, about which parents jointly performing parental supervision were not able to agree,

- e) approve foster care of the child in another family,
- f) approve affidavit with respect to the child's intention to leave the country for good,
- g) authorize the child to leave parental home or other place of residence selected by parents, or, if conditions change, withdraw such authorization,
- h) decide about authorization of the child's marriage,
- i) take care of the issues in connection with claims of child support of a person living or staying abroad.

**Article 115 (1)** In connection with guardianship and trusteeship, the municipal guardianship office shall

- a) appoint a guardian and a legal guardian for the child,
- b) appoint a temporary trustee, a trustee, and a professional trustee,
- c) control and supervise the activities of guardian and legal guardian,
- d) suspend, remove, or discharge guardian and trustee,
- e) in cases specified in separate legal regulation, appoint and discharge an ad hoc trustee, a sequestrator, a guardian ad litem as well as a trustee to represent a person hindered in the performance of his or her duties as well as for an unborn child, and determine their remuneration.

**Article 116 (1)** In connection with property management, the municipal guardianship office shall

- a) decide about keeping the cash possessions of children and those under trusteeship in a guardian's tied deposit or checking account as well as using such deposited money, investing it in government securities or insurance bonds, keeping it in safe custody as well as keeping other objects in safe custody,
- b) approve the legal statement of guardian or trustee in connection with management of property or leased apartment necessary for validity thereof,
- c) perform the regular supervision of property management, if parents fail to meet their obligations with respect to management of the child's property,
- d) judge the regular and ad hoc report, in certain cases, the final accounts,
- e) participate in issues in connection with movables and immovables as well as intangible assets of children and those under trusteeship,
- f) participate in the probate of a will.

**Article 117 (1)** In accordance with Article 132, the municipal guardianship office shall appoint and discharge an expert as well as determine the expert's remuneration.

*Powers and duties of the county guardianship office*



**Article 118** (1) The county guardianship office shall perform the professional control and supervision of the notary of the local government in its area of competence as well as the municipal guardianship office, and act as the authority of second instance in administrative issues of guardianship of the notary of the local government and the municipal guardianship office.

(2) Upon initiative of the local government, the county guardianship office shall, with the participation of the National Institute of Family and Child Protection, appoint the institutions to perform duties of professional methodology and further education from the child institutions providing basic provision and professional provision.

(3) The county guardianship office shall, with the participation of the National Institute of Family and Child Protection or the institution performing duties of professional methodology appointed by the Institute, control the operation of government and non-government child welfare and child protection institutions in accordance with separate legal regulations.

**Article 119** (1) During the performance of duties specified in Article 118, the county guardianship office shall be entitled to

- a) request information, documents, and facts as well as gain information on the spot,
- b) convene a professional meeting for coordination.

**Article 120** (1) The county guardianship office shall act as an authority of first instance regarding authorization of the operation of child protective services specified in point b) of paragraph (2) of Article 100.

(2) In accordance with the instructions of the Minister of Welfare, the county guardianship office shall participate in the organization of sectoral training and further education.

**Article 121** (1) The county guardianship office shall, with the participation of the National Institute of Family and Child Protection or Professional Council(s) of Family and Child Protection, judge the proposals regarding changes in the provision system of the local government, and, if necessary, initiate modifications of such proposals.

(2) The local government shall be obliged to request the opinion of the county guardianship office in advance, if the local government

- a) intends to close an institution providing personal care, or change the area of provision or the scope of obligation of provision,

- b) intends to utilize the assets serving the operation of the provision system for other purposes,
- c) intends to introduce a new provision not regulated by this act or separate legal regulation.

**Article 122** (1) The probation officer operating with the county guardianship office shall perform the supervision of the young person.

## Section 20

### *Main rules of the administration of child protection and guardianship affairs*

**Article 123** (1) With the deviations specified in this act, the provisions of Act No. IV of 1957 on the general rules of administrative procedures shall be implemented for the determination of entitlement to provision as well as the rights and obligations of those entitled to provision, and for child protection and guardianship procedures.

### *General competence*

**Article 124** (1) The representative body or the notary of the local government, or the guardianship office (hereinafter referred to as proceeding agency) shall be competent for procedures, where the parent or guardian of the child performing parental supervision, or the trustee of the person hindered in the performance of his or her duties or under trusteeship affecting his or her capability, has his or her place of abode.

(2) If registered place of abode of parents jointly performing parental supervision is in different areas of competence, the proceeding agency shall be determined by the registered place of abode of the child. If registered place of abode of the child is not the same as that of either parent, the proceeding agency competent in the area of mother's place of abode shall proceed.

(3) Without place of abode, the place of residence shall determine the competence of proceeding agency as set forth in paragraphs (1) and (2) above.

(4) Without place of abode in Hungary, or if place of residence is unknown, the last known place of abode in Hungary shall determine the competence of proceeding agency, lacking such place of abode, the senior notary of Budapest shall be competent for procedures.

*Other competence*

**Article 125** (1) The representative body of any local government shall provide exceptional child protection benefit for the child in need, if without such support the life or physical integrity of the child would be at risk. The local government providing such support shall immediately notify the competent local government and may demand reimbursement for the support paid to the child.

(2) The notary of any local government or any guardianship office shall, upon prevalence of statutory conditions, arrange the temporary placement of the child and immediately notify the competent guardianship office.

(3) If parent gives a statement, in which parent agrees to the adoption of his or her child by not knowing the person and identification data of the adopting person, the notary of any local government or any guardianship office shall be competent for accepting such statement.

(4) If the child or the person hindered in the performance of his or her duties or under trusteeship affecting his or her capability has no legal representative, or such legal representative can not be identified, the agency of the area shall be competent for procedure, in which appointment of guardian or trustee becomes necessary.

(5) The notary of the local government at the place of abode of the obligor shall be competent for the procedure to recover the fostering allowance as well as the advanced child support.

(6) The guardianship office at the permanent residence of the person to be placed under trusteeship shall be competent for the procedure in connection with appointment, operation, and discharge of an ad hoc trustee as well as legal proceedings for placement of such person under trusteeship.

(7) Trustee for an unborn child shall be appointed by the guardianship office of the area, in which the mother's place of abode is located.

(8) An ad hoc trustee shall be appointed by the notary of the local government or the guardianship office of the area, in which operation of the trustee is necessary.

(9) Upon the intention of a child of at least 16 years of age to get married, the preliminary permit shall be given by the guardianship office at the place of abode of either party to the marriage.

(10) If the child has left the parental home with the permit of the guardianship office, the competence of guardianship office shall be determined by the place of abode of the child.

**Article 126** (1) If the child has been temporarily placed by the guardianship office with the absent parent, other relative, or other suitable person, competence shall not be changed until final decision is made in the legal proceeding for the placement of the child.

(2) If the child has been taken into short-term foster care, the competence of the guardianship office shall prevail as long as the place of abode of the child remains the same. Upon changes in the place of abode of the child, the competence of the guardianship office shall be determined by the place of abode of the child.

(3) The competence of the guardianship office shall remain unchanged during the long-term foster care of the child.

(4) The guardianship office instituting legal proceedings for canceling parental supervision shall be competent for taking the child into long-term foster care as well.

(5) If, upon termination of adoption, the adopted person has already reached legal age, competence shall be determined by the adopted person's place of abode, without this, the place of abode of the adopting person.

(6) If the young person does not stay at his or her place of abode, or the court or prosecutor - upon postponement of accusation - as a behavioral rule, did not determine his or her place of abode as the place of residence, supervision shall be performed by the competent probation officer at his or her place of residence.

(7) For the after-care provision of the young person, the guardianship office shall be competent, which has decided that the young person shall become legally independent.

*Other procedural rules*

**Article 127** (1) Unless otherwise provided for in legal regulation, the notary of the local government or the guardianship office may institute proceedings in issues falling within their competence *ex officio* as well.

(2) In the procedure, entitlement to representation shall be proved by a public instrument [in accordance with paragraphs (1) and (2) of Article 195 of Act No. III of 1952 on civil procedure (hereinafter referred to as Code of civil procedure)] or a conclusive private instrument [in accordance with paragraph (1) of Article 196 of the Code of civil procedure].

**Article 128** (1) In guardianship procedures, the parent, other legal representative, the caregiver, the person of restricted capacity, and the legally incapable child with a power of judgment as well as, in each case, the person against whom an obligation shall be determined, and, if necessary, other close relatives of the child shall be heard. Such hearing may be ignored, if delays due to such hearing would involve inescapable damage or danger.

**Article 129** (1) The proceeding agency shall, every time, consider the nationality, legal status, and personal right of applicant.

(2) The proceeding agency may oblige applicant for the judgment of entitlement to provision, to declare and prove property and income conditions of his or her family.

(3) The parent or other legal representative of the child may be obliged to declare and prove his or her or the child's health, employment, as well as enrollment in any educational institution.

**Article 130** (1) If proceeding agency performs an on-site inspection to clarify applicant's property, social, health, cultural, living, or other conditions, all statements and declarations important from the standpoint of the issue shall be recorded in minutes (hereinafter referred to as environmental study).

(2) The proceeding agency may use environmental studies prepared by other authorities, or other agencies or persons involved in family protection, provided that less than 6 months have passed since the preparation of such study.

(3) The guardianship office may request the notary of the local government to prepare an environmental study of applicant's conditions specified in paragraph (1) above.

(4) Upon request of court or prosecution, the proceeding agency shall prepare an environmental study.

(5) The person receiving provision shall notify the proceeding agency within 15 days following changes in the facts and circumstances affecting entitlement to provision.

**Article 131** (1) In the case of provisions falling within the competence of the local government, the content as well as detailed rules of the submission of proof and declaration, the detailed standpoints of judgment, and the period to be considered upon calculation of income shall be regulated by the decree of the local government.

(2) Unless otherwise provided for by law, the period to be considered upon calculation of income shall not exceed 6 months in the case of regular monthly income, and 1 year in the case of other types of income.

(3) Cash and in-kind provision shall, upon final determination thereof, be payable from the date of submission of application.

**Article 132** (1) If in a particular issue, special expertise is needed for judgment of an important fact or circumstance in connection with the personality of the child, an educational and behavioral counseling service, a professional and rehabilitation committee, psychiatric institute offering professional provision, or an agency involved in family protection shall be the primary choice to contact.

(2) In the cases specified in paragraph (1) above, the notary of the local government or the guardianship office shall oblige parent or legal representative to visit together with the child the agency or person appointed as an expert and with his or her cooperation contribute to the success of such investigation.

**Article 133** (1) Provisions lacking the conditions set forth in this act or infringing the provisions of this act shall be terminated.

(2) Those using provision in bad faith without being entitled shall be obliged to repay provision in cash, pay cash equivalent of in-kind provision, or pay institutional service fee in the case of personal care (hereinafter referred to as reimbursement).

(3) Reimbursement for continuous provision may be ordered retrospectively for no more than one year.

(4) The proceeding agency may order reimbursement for the provision within 3 months of learning about lack of entitlement to such provision. Reimbursement shall no longer be ordered, if one year has passed since the use or end of such provision.

(5) The proceeding agency may equitably cancel or reduce reimbursement.

## CHAPTER SIX

### *OTHER PROVISIONS*

#### Section 21

#### *Data management*

#### *General rules*

**Article 134** (1) The government and non-government agency responsible for child protection (hereinafter referred to as data manager agency) may manage personal data defined in Articles 135-136 in order to perform its duties regulated by this act.

(2) The data manager agency shall, in order to protect personal data, ensure that

- a) the affected person can, unless exceptions are specified by law, access his or her data, and exercise his or her right to correct or delete data,
- b) stored data is deleted, if the reason for their storage, in accordance with the provisions of this act, no longer prevails.

(3) The data manager agency shall ensure protection of data against accidental or intentional deletion, destruction, alteration, disclosure thereof as well as unauthorized access by any agency or person thereto.

(4) Based upon authorization of this act, the data manager agency may use stored data without personal identification data as well as provide information thereof for statistical purposes.

(5) During procedures of child protection and guardianship administration, the competent agency may request information in order to determine entitlement from the agency registering personal data and address of citizens.

(6) The Minister of Welfare, the local government, the agency competent for child protection and guardianship administration as well as social affairs, the person and institute providing personal care, institutes of public and higher education, the judiciary as well as real estate registration agencies, financial institutes, and foreign authorities and courts shall be entitled to use personal data in accordance with the provisions of this act.

(7) The provisions of Act No. LXIII of 1992 on the protection of personal data and publicity of data of public interest shall apply to data management ordered in this act as well as to data protection in general.

**Article 135** (1) The following agencies and persons shall be entitled to manage the personal data of child, parent and other legal representative, foster parent, and close relative entitled to maintaining contact with the child (together hereinafter referred to as affected person) for the purposes set forth in paragraphs (1) - (4) of Article 15:

- a) the representative body of the local government,
- b) the notary of the local government,
- c) the senior notary of Budapest,
- d) the guardianship office,
- e) the head of the child welfare service,
- f) the head of the institution providing day-time provision,
- g) the head of the temporary home,
- h) the head of the district professional child protective service,
- i) the head of the children's home,
- j) the head of other residential institution,
- k) the substitute parent,
- l) the foster parent.

(2) Data regarding the property, health, and clean records of the child, parent and other legal representative, substitute parent and foster parent as well as the school grades, behavior, and educational level of the child shall be managed by the agencies listed in points a) - i) of paragraph (1) above for the purposes set forth in paragraphs (1) - (4) of Article 15.

(3) Personal identification data as well as data regarding the health and property of the adopting parent as well as the person taking the child in his or her family may be managed by the district professional child protective service and the guardianship office.

(4) The agencies and persons listed in points a) - l) of paragraph (1) above may pass on personal identification data of the affected person as well as data of the child specified in paragraph (2) above to each other for the purposes set forth in paragraphs (1) - (4) of Article 15.



**Article 136** (1) Personal identification data of the child as well as

a) data regarding the real estate in the case of changes affecting any rights in connection with the real property may be passed on to real estate registration agencies,

b) data regarding the child's cash possessions may be passed on to financial institutions in order to execute agreements with respect to management of guardian's tied deposit book or checking account as well as other agreements.

(2) Personal identification data of the child as well as data regarding his or her health and property may be passed on to

a) the agency responsible for social affairs in order to determine social provision,

b) police, prosecution, court, and forensic expert in order to perform criminal investigation and crime prevention as well as legal proceedings,

c) foreign authority and court for the purposes of legal status within family, child support, maintenance of contact, guardianship, adoption, temporary actions in the best interests of the child, and termination of illegal abduction of the child to a foreign country.

(3) Beyond the personal identification data of the child,

a) data regarding the child's health may be passed on to agencies of defense administration in order to serve as a soldier in the military service,

b) data regarding the child's health may be passed on to health institutions in order to cure the child,

c) data regarding school grades of the child may be passed on to institutions of public and higher education.

(4) Personal identification data as well as data regarding health and property of parent and other legal representative may be passed on to the agencies listed in paragraphs (1) - (3) above.

#### *Keeping records*

**Article 137** (1) The institution and person shall keep records in accordance with the provisions of this act and supply data specified in the National Program of Statistical Data Collection as well as in the decree of the local government.

(2) Any data storing device or method able to ensure protection in accordance with paragraph (3) of Article 134 may be the means of keeping records.

**Article 138** (1) The notary shall keep records in order to determine, change, and cancel entitlement to provision. Such records shall contain

- a) natural personal identification data of child, parent or other legal representative, or any person obliged to look after the child,
- b) data regarding the conditions of entitlement as well as the changes thereof,
- c) decisions with respect to provision,
- d) income figures necessary for the determination of entitlement and fee to be paid to child care institution.

(2) The notary shall keep records on the child taken under protection with administrative measures. Such records shall contain

- a) data set forth in point a) of paragraph (1) above,
- b) data regarding the child's health and educational level,
- c) decision regarding such administrative measures and the date thereof,
- d) date and results of the review of such administrative measures.

(3) The notary shall keep records on the child registered without his or her father's data, including data on the decision regarding the administrative procedure, beyond data set forth in point a) of paragraph (1) above.

(4) The notary shall keep records on the child protective service authorized by notary as well as the decision regarding control.

**Article 139** (1) The caregiver or the head of the institute shall keep records on the persons receiving personal care. Such records shall contain

- a) data set forth in point a) of paragraph (1) of Article 138,
- b) date of use and ending of provision,
- c) data regarding performance, postponement, collection, and limitation of payment obligation of fostering allowance or fee to be paid to an institute.

**Article 140** (1) The municipal guardianship office shall keep records on

- a) cash provision determined and paid by guardianship office,
- b) children temporarily placed or taken into short-term or long-term foster care, or living under guardianship or trusteeship by recording data set forth in Article 139,
- c) the property of the persons specified in points a) and b) above and children, which is not managed by parent, regularly supervised by guardianship office, or submitted to guardianship office,
- d) the child with property upon reaching legal age.

(2) The county guardianship office shall keep uniform records on the child protective services authorized by county guardianship office as well as the decision regarding control.

(3) The county guardianship office shall keep uniform records on the young persons on probation under its supervision recording data set forth in point a) of paragraph (1) as well as paragraph (2) of Article 138.

**Article 141** (1) The head of the district professional child protective service shall keep records on

a) children placed with foster parents, at a children's home or other residential institution as well as on vacancies,

b) foster parents and children's homes providing temporary foster care as well,

c) adoptable children or children declared adoptable as well as parents waiting for adoption by recording data set forth in paragraph (3) of Article 135,

d) persons qualified for performing the duties of ad hoc trustee or legal guardian appointed by district professional child protective service.

(2) Upon request, the district professional child protective service shall inform parents as well as parents waiting for adoption on the records specified in point c) of paragraph (1) above with the exception of secret adoption.

(3) The district professional child protective service shall regularly inform the county guardianship office and the National Institute of Family and Child Protection of data of the records specified in paragraph (1) above as well as any changes thereof.

**Article 142** (1) Unless otherwise provided for by law, in 25 years after the termination of entitlement or the date when the child has reached legal age, data regarding a certain person shall be deleted from the records kept in accordance with Articles 138-141.

(2) In the case of non-government agency's undertaking of the organization of personal care from the local government as well as records kept on provisions not regulated by law, however, falling within the competence of the representative body or the notary of the local government, the provision of Articles 138-141 shall apply.

## Section 22

### *Main financial rules of the protection of children*

**Article 143** (1) Funds for the operation of the child protective system shall be ensured by the central budget and contribution of local government, which shall be completed by the service fee and fostering allowance paid by the user of provision.

(2) The state shall reimburse the local government for the expenditure of cash and in-kind provisions determined and paid by the local government as well as for the operational and development costs of provisions falling under the category of personal care and backed by the local government.

(3) The state shall contribute to the performance of duties of the local government with

a) a differentiated social and child welfare normative government contribution to be paid for each permanent resident (hereinafter referred to as social and child welfare normative contribution),

b) a normative government contribution to be paid for each child looked after in institutions,

c) a normative government contribution to be paid for each child temporarily placed or taken into short-term or long-term foster care based upon the resolution of the notary of the local government or the guardianship office as well as for each young person who has previously been in foster care,

d) support to be used for particular purposes.

(4) The amount of social and child welfare normative contribution shall vary according to the social conditions of people living in the area of the local government and the number of permanent resident children. Figures serving as the basis of such differentiation shall be determined annually by the act on budget.

(5) The methods and extent of the support through normative government contribution suitable for professional purposes shall be defined by the act on budget.

**Article 144** (1) The full cover of the advanced child support and the housing benefit shall be ensured by the central budget through advance payment.

(2) The support of establishment, development, and modernization of forms of provision defined for the local government shall be promoted by organizing professional programs, so that such development and modernization shall enable the local government to perform its obligation set forth in this act.

**Article 145** (1) The following persons and agencies providing personal care of child welfare and child protection and performing public service shall be entitled to normative contributions specified in separate legal regulation:

- a) legal person of the church,
- b) foundation,
- c) public foundation,
- d) non-profit organization,
- e) public organization,
- f) one-man or joint business.

(2) The normative government contributions of provisions providing personal care of child welfare and child protection shall be requested and paid in accordance with the provisions of government decree. Such contribution may only be paid, if the operation and activity as well as institutional service fee of the provision comply with legal regulations.

*Service fees*

**Article 146** (1) Except for provisions of this act, the provisions of the Welfare Act regarding service fees shall apply to service fees.

(2) In accordance with the provisions of this act, personal service fee shall be paid by the following persons to the institution:

- a) the entitled person who has already reached legal age and uses the provision,
- b) in the case of the child using the provision, the parent or other legal representative performing parental supervision,
- c) in the case of the person under trusteeship, the legal representative (hereinafter referred to as obligor).

(3) With the exception of food provision of children provided within the framework of day-time provision of children, the regular monthly income of obligor may be taken into consideration upon determination of personal service fee for basic provisions providing personal care.

**Article 147** (1) The institutional service fee for provisions providing personal care may be determined twice a year by

- a) the representative body in the case of the institution backed by the local government,
- b) the owner in the case of non-government agency.

(2) Personal service fee shall not exceed the amount of institutional service fee.

(3) The entitled person shall receive provision free of charge, if the person obliged to pay service fee does not have any income.

(4) The people living in the provision area of the institute shall be informed of the institutional service fee.

**Article 148** (1) Parent or other legal representative performing parental supervision shall be obliged to pay personal service fee for the day-time provision of children provided within the framework of basic provisions of personal care.

(2) In the institute providing day-time provision of children, service fee may only be determined for food provision from the services provided within the framework of basic provisions.

(3) The basis of the institutional service fee for day-time provision of children (hereinafter referred to as food provision of children) shall be the daily amount of raw material costs of food per child.

(4) The head of the institute shall determine personal service fee by taking the daily amount specified in paragraph (3) above plus VAT, the number of meals, and the normative allowances listed in paragraph (5) below into consideration.

(5) In the case of food provision of children,

a) for children of kindergarten and elementary school age placed in student's home, dormitory, or institution for backward children, a 50% allowance of the institutional service fee shall be ensured,

b) for vocational school and high school students placed in student's home, dormitory, or institution for backward children, however, receiving day school provision, a 30% allowance of the institutional service fee shall be ensured,

c) in the case of families with three or more children, a 50% allowance of the institutional service fee per child shall be ensured,

d) for disabled child and disabled student, provided that they do not receive the allowance specified in points a) - c), a 30% allowance of the institutional service fee shall be ensured (points a) - d) hereinafter referred to as normative allowance).

(6) Normative allowance may only be used based upon one legal title. Student shall not be entitled to the allowance specified in point b) paragraph (5) above for his or her meals, for which student has already

received allowance based upon his or her student agreement in accordance with provisions on vocational training.

(7) Based upon individual needs of the child, the appropriate local government at the place of abode of the child may determine further allowances per child, especially if per capita income in the family looking after the child is below the minimum amount of old-age pension. Upon calculation of the amount, persons listed in paragraph (4) of Article 19 shall be taken into consideration as close relatives living in the same household.

**Article 149** (1) Upon determination of the service fee for child-minding ensuring day-time provision of children, provisions of Article 148 shall be applied with the following departures.

(2) The institutional service fee for personal service provided within the framework of child-minding shall be the hourly fee determined based upon the costs of such provision.

(3) The personal service fee for the provision shall not exceed 15% of the regular monthly income of obligor.

(4) If meals are also provided within the framework of child-minding, the total amount of personal service fee shall not exceed 20% of the regular monthly income of obligor.

**Article 150** (1) The basis of the institutional service fee for basic provision providing personal care shall, in the case of temporary care, be the daily amount of prime costs per child.

(2) The personal service fee for the provision shall not exceed 25% of the regular monthly income of obligor, while in the case of more children, 50% of the regular monthly income of obligor.

**Article 151** (1) The basis of the institutional service fee for professional provision providing personal care shall, in the case of after-care of the young person, be the daily amount of prime costs per person.

(2) The personal service fee for the provision shall not exceed 30% of the monthly income of obligor.

#### *Fostering allowance*

**Article 152** (1) Provisions of the Family Law regarding child support shall, with the departures contained in this act, apply to the determination of fostering allowance.

(2) Unless otherwise provided for by law, the person obliged to support the child in accordance with provisions of the Family Law shall contribute to the nursing costs of the child taken into short-term or long-term foster care.

(3) The payment obligation of fostering allowance shall begin upon taking the child into short-term or long-term foster care. If the child is taken into care previously, the guardianship office may determine such payment obligation from the beginning of care, however, for a maximum of six months retrospectively.

(4) The guardianship office shall oblige parents, who are equally obliged to support the child, separately to pay fostering allowance.

(5) The resolution determining fostering allowance may be executed immediately.

**Article 153** (1) Upon determination of the amount of fostering allowance, social conditions of the person obliged to pay shall also taken into consideration.

(2) If no regular income of the person obliged to pay fostering allowance can be determined, fostering allowance shall be determined based upon the minimum amount of old-age pension.

**Article 154** (1) Fostering allowance shall not be determined, if

- a) the child has been taken into long-term care, because parent had agreed to the adoption of his or her child by an unknown person,
- b) parent looks after his or her child in the children's home,
- c) obligor does not have any income.

(2) The child shall not be obliged to pay fostering allowance, his or her earnings, scholarship, orphan's allowance, or other income and property shall not be used for this purpose.

(3) The guardianship office may equitably cancel arrears of fostering allowance to be collected, or allow deferred payment or payment in installments.

## Section 23



*Closing provisions*

*Entering into force*

**Article 155** (1) Present act shall, with the exception of the article specified in paragraph (2) below, enter into force on November 1, 1997.

(2) Article 22 of the act shall enter into force on January 1, 1998.

*Temporary provisions*

**Article 156** (1) This act shall be applied to issues which began after this act has entered into force. To pending issues of first and second instance previous regulations shall apply.

(2) The local government shall take care of provisions falling under the category of personal care (except for Article 40) gradually, however, until December 1, 1999 at the latest.

(3) New children's home may only be established or reorganized in accordance with the provisions of this act. The county local government or the local government of Budapest shall take care of the transformation of residential institutions gradually, however, until December 1, 2002 at the latest.

(4) If the child temporarily placed or taken into short-term or long-term foster care is placed in student's home or dormitory, the child shall receive home-like provision in accordance with paragraph (5) of Article 53

a) the fostering-educational institution, provided that it accommodates no less than 15 children taken into short-term or long-term foster care, shall, before the deadline specified in paragraph (3) above, be transformed into a multipurpose institution of public education serving as school, student's home, dormitory, and children's home, or

b) if home-like provision in accordance with point a) above can not be ensured, the child shall be placed with foster parents or at a children's home by maintaining the provision of dormitory and student's home.

(5) Upon the entering into force of this act, the kindergarten and the school operating in the children's home - as multifunctional child protection institutions under joint administration - shall keep functioning as independent units of the institution in accordance with the provisions of the Act on Public Education.

**Article 157** (1) Justification for further provision of the child taken into institutional care or state care before the effectiveness of this act shall be reviewed within 2 years of the effectiveness of this act, and, upon maintenance of such provision, institutional guardianship shall be terminated and, simultaneously, guardian or legal guardian shall be appointed.

(2) Records contrary to the provisions of this act shall be deleted. Storage of previously collected data in accordance with this act shall be taken care of gradually, however, until the end of the review specified in paragraph (1) above at the latest.

(3) Service fee and fostering allowance to be paid for provisions within the framework of personal care shall be reviewed and determined again within one year following the effectiveness of this act.

(4) Within the framework of district professional child protective service, the county local government and the local government of Budapest shall, upon the entering into force of this act, be obliged to operate a temporary home for the short-term care of children temporarily placed or taken into short-term or long-term foster care or for those in need, until it appoints foster parents undertaking temporary care or a children's home providing temporary care.

(5) The local government shall perform its legislative obligation set forth in this Act within 6 months following the effectiveness of this act.

(6) The regular nursing benefit and other forms of financial aid determined and paid before the effectiveness of this act based upon resolutions of the local government shall be reviewed within 6 months following the effectiveness of this act in accordance with the provisions of this act.

**Article 158** (1) If there is a child in the home of foster parents or in a children's home in institutional placement, parent shall, within 6 months following the entering into force of this act, be obliged to declare, whether he or she wants to change the placement of his or her child. Upon parent's approval of the child's continuous placement, the child shall, under the conditions provided for by legal regulations in effect prior to the effectiveness of this act, stay in the home of foster parents or in a children's home.

**Article 159** (1) The guardianship office shall advance child support, with the exception of cases specified in paragraph (2) below, upon application filed following the effectiveness of Articles 22 - 24 of this act.

(2) In the case of issues, in which the court has not yet made a decision about the advancement of child support at the time of effectiveness of this act, proceedings shall be terminated, and the application shall be forwarded to the guardianship office at the place of abode of the entitled person.

(3) If, based upon a court decision, the advancement of child support is already under way, payment shall remain the duty of the court for the period specified in the court order in accordance with previous legal regulations, however, the advancement of child support shall not be ordered repeatedly. The same rule shall also be applied to the collection of paid amount from debtor, when only the collection of advanced amount is under way.

(4) The court shall, within 60 days following the entering into force of this act, inform the appropriate guardianship office at the place of abode of the entitled person of pending advancement.

**Article 160** (1) Housing benefit may only be determined based upon the application filed by the young person, who has reached legal age after the entering into force of this act. Upon calculation of the period of foster care in accordance with paragraph (2) of Article 25, the number of years, during which the young person has uninterruptedly been in institutional placement or in institutional care or state care shall be taken into consideration.

(2) The application of the young person, who has reached legal age prior to the entering into force of this act, for supporting the start of his or her individual life, shall be judged in accordance with decree No. 21/1989 (VII. 25.) of the Ministry of Welfare and Health Care, and such support shall be ensured in a way specified by the county local government or the local government of Budapest.

**Article 161** (1) The following terms of legal regulations shall be interpreted as follows:

- a) protective-safeguarding measures as taking the child under protection,
- b) institutional or state care as short-term or long-term foster care,
- c) assignment to an institute with temporary effect as temporary placement,
- d) institutional placement as temporary care,
- e) institutional guardianship as guardianship,
- f) state care as child protection and welfare,

- g) institution of child and youth protection as district professional child protective service,
- h) infant or nursery home as children's home.

*Authorization*

**Article 162** (1) The Government shall be authorized to define in decrees

- a) detailed rules of the housing benefit and the advancement of child support,
- b) scope of evidence to be used for the application for particular provisions,
- c) detailed rules of service fees,
- d) the detailed list of powers and duties of the guardianship office as well as the detailed rules of its procedures,
- e) qualification requirements of persons acting as probation officers as well as of those responsible for the professional supervision of child protection,
- f) area of competence of the municipal guardianship office,
- g) detailed procedural rules of the management of personal data,
- h) particular factors of the legal relation of substitute parent and foster parent,
- i) detailed rules of the licensing and operation of institutions providing personal child welfare and child protective service.

(2) The Minister of Welfare shall be authorized to define in decrees

- a) the professional duties as well as operational conditions of institutions and persons providing personal child welfare and child protective service,
- b) qualification requirements of persons performing certain duties falling under the category of personal child welfare and child protective service,
- c) qualification requirements and assignment of the heads of certain institutions providing personal child welfare and child protective service as well as tendering procedures in connection with the position of head of the institution,
- d) operational conditions of the National Institute of Family and Child Protection and the Professional Council(s) of Family and Child Protection,
- e) professional and test requirements of the training of substitute and foster parents.

(3) The Minister of Justice shall be authorized to take care of the amendments of the enforcement regulations of Family Law in accordance with the provisions of this act.

*Expiring regulations*

**Article 163** (1) Upon the entering into force of this act, the following regulations shall expire:

a) Article 69/E, 92/A, and subtitle “6. State care of minors” preceding Article 92/A of the Family Law, regulation of Article 24 of Act No. IV of 1986 on the amendment of the Family Law determining Article 69/E of the Family Law, regulation of Article 31 of said Act determining point b) of paragraph (1) of Article 88 of the Family Law, regulation of Article 32 of said Act determining paragraph (2) of Article 91 of the Family Law, regulation of Article 33 of said Act determining paragraph (3) of Article 92 of the Family Law, regulation of Articles 34, 35, 36, and 38 of said Act determining paragraph (2) of Article 106 of the Family Law, and regulation of Article 3 of Act No. XV of 1990 on the amendment of the Family Law determining paragraph (3) of Article 48 of the Family Law, regulation of Article 4 of said Act determining paragraph (1) of Article 48/A of the Family Law, regulation of Articles 7 and 9 of said Act determining paragraph (1) of Article 98 of the Family Law,

b) points b) - f) of paragraph (2) of Article 129, Article 130, points b) - d) of Article 134, and points n) and p) - s) of Article 135 of Act No. XX of 1991 on the powers and duties of local governments and their agencies, republican commissioners as well as certain centrally subordinated agencies,

c) point a) of paragraph (1) of Article 57, Article 60, subtitle “Day-time care of children” preceding Article 60, Article 61, point a) of paragraph (3) of Article 80, Article 81, point b) of Article 85, Article 111, subtitle “Special rules regarding the temporary home of children” preceding Article 111, and Article 115/A of the Welfare Act,

d) Articles 1 - 21 as well as the introduction “State care of minors” of Section 1 of the decree of the Council of Ministers No. 51/1986 (XI. 26.) on the state care of minors and the regulation of maintaining contact between parent and child.

*Modifying regulations*

**Article 164** The following regulation shall replace paragraph (1) of Article 47 of the Family Law, a new paragraph (2) shall be added, instead of currently used numbers, paragraphs (2) - (4) shall be numbered as (3) - (5):

“(1) Only a fully capable person of legal age may be an adoptive person, who, based upon his or her personality and conditions, is qualified for adoption according to the resolution of the guardianship office passed

during its pre-adoption procedure. Based upon legal regulations, adoption may be subject to participation in pre-adoption educational counseling.

(2) The guardianship office shall determine the qualification specified in paragraph (1) above of relatives, the spouse of parent, the person, who has, with the consent of parent, been looking after the child uninterruptedly for more than a year and wants to adopt the child as well as the foreign citizen, who wants to adopt the child, during the licensing procedure of adoption."

**Article 165** (1) The following sentences shall be added to paragraph (2) of Article 48 of the Family Law:

"Parent shall not withdraw - except in the case specified in paragraph (3) - his or her affidavit of consent and parent shall be reminded thereto. Upon the consent of the interested parties, the person, who wants to adopt the child shall care for the child at least for a month. Adoption may only be licensed following such care."

(2) The following regulation shall replace paragraph (3) of Article 48 of the Family Law:

"(3) Parent may also give his or her consent to the adoption by not knowing the person and identification data of the adoptive person. Such affidavit may be made prior to the birth of the child as well. Parent may withdraw his or her affidavit of consent before the child reaches two months of age, however, parent shall be reminded thereto. Upon making such affidavit, the guardianship office shall place the child younger than two months of age primarily with another person, foster parent, or, if this is not possible, in a children's home or other residential institution. The guardianship office shall take the child older than two months of age into long-term foster care, provided that the child can not be temporarily placed with the would-be adoptive parent and parent's right to supervision terminates."

**Article 166** The following regulation shall replace paragraph (1) of Article 48/A of the Family Law, paragraph (2) and (3) shall be added, instead of the currently used number, paragraph (2), shall be numbered as (4):

"(1) The guardianship office shall declare the child taken into short-term foster care adoptable, if parent, through his or her own fault, fails to maintain regular contact with his or her child for a year as well as change his or her life-style and conditions, therefore, short-term foster care shall not be terminated. Parent shall be reminded of such legal consequences in the resolution ordering short-term foster care.

(2) The guardianship office shall also declare the child taken into short-term foster care adoptable, if parent changes his or her place of

residence without reporting his or her new place of residence, and efforts to locate parent fail within a year, provided that parent fails to maintain any form of contact with his or her child during this period.

(3) In order to facilitate adoption of the child, the guardianship office may, simultaneously with the declaration that the child is adoptable, restrict or suspend parent's right to maintain contact with the child."

**Article 167** The following paragraph (2) shall be added to Article 52 of the Family Law, and, simultaneously, the current text of the Article shall become paragraph (1):

"(2) If one of the spouses adopts the child of the other spouse from his or her previous marriage, and the marriage, in which the child was born, terminated as a result of death of the spouse, the right of the deceased spouse's relatives to maintain contact with the child shall not be affected by adoption."

**Article 168** The following Article 53/A shall be added to the Family Law:

"Article 53/A (1) The adopted person may request information on his or her biological parent from the guardianship office. The parties shall be informed thereof during the adoption procedure.

(2) Disclosure of information shall be subject to hearing the biological parent and, if the adopted child is still a minor, the adoptive parent or other legal representative.

(3) Neither biological parent, nor adoptive parent or other legal representative shall be heard, if he or she is legally incapable, is at an unknown place, or his or her hearing is impossible due to any unavoidable interference.

(4) Under the conditions set forth in the above regulations, disclosure of data of biological parent shall not be allowed, if it is contrary to the interests of the adopted minor, particularly, if parent's right to supervision has been terminated by the court based upon point a) or c) of paragraph (1) of Article 88."

**Article 169** The following regulation shall replace point b) of paragraph (1) of Article 88 of the Family Law:

*(The court shall terminate parental supervision)*

"b) if the child has been placed with another person or taken into short-term foster care, and parent, in a manner severely interfering with the child's interests, fails to cooperate with the foster parent or institution looking after his or her child, to maintain contact with his or her child, and

to change his or her behavior, life-style, and conditions in order to terminate short-term foster care.”

**Article 170** (1) The following regulation shall replace point d) of paragraph (1) of Article 91 of the Family Law, and, simultaneously, the following point e) shall be added:

*(Parental supervision shall be suspended)*

“d) if the guardianship office has taken the child into short-term foster care,

e) if the guardianship office has agreed to fostering the child in another family.”

(2) The following regulation shall replace paragraph (2) of Article 91 of the Family Law:

“(2) In the case of the parent, whose child has been temporarily placed by the guardianship office with the absent parent, other relatives or persons, or foster parent, children’s home or other residential institution, parental supervision shall be suspended until final decision is made in the proceedings for termination of parental supervision and placement of the child.”

**Article 171** The following regulation shall replace paragraph (3) of Article 92 of the Family Law:

“(3) In particularly justified cases, in the best interests of the child, the parent, whose right to parental supervision has been terminated by court order or based upon paragraph (3) of Article 48 without the adoption of the child, may also be entitled to maintain contact with the child. Decision regarding these cases shall be made by the court terminating parental supervision, or the guardianship office, if the child has been taken into long-term foster care.”

**Article 172** The following regulation shall replace paragraph (1) of Article 94 of the Family Law:

“(1) The guardianship office shall appoint a guardian for the minor under guardianship.”

**Article 173** The following regulation shall replace paragraph (2) of Article 96 of the Family Law:

“(2) The person,

a) with whom the guardianship office has temporarily placed the child [paragraph (2) of Article 91],

b) with whom the court has placed the child [paragraph (1) of Article 72/A],

c) who has accepted the child in his or her family upon the approval of the guardianship office,



shall be appointed as the guardian of the child.”

**Article 174** The following regulation shall replace paragraph (3) of Article 97 of the Family Law:

“(3) Unless otherwise provided for by law, the guardianship office may appoint the person (legal guardian) selected by the administration agency for this purpose as the guardian of one or more children.”

**Article 175** The following regulation shall replace Article 98 of the Family Law:

“Article 98 (1) The child, who has been taken into short-term or long-term foster care, or temporarily placed with foster parent, children’s home or other residential institution and against whose parent proceedings are under way for the termination of parental supervision, shall be under guardianship [paragraph (2) of Article 91].

(2) In the case specified in paragraph (1) above, the guardianship office shall appoint a guardian for the child. The following persons, if qualified for the performance of guardian’s responsibilities, may be appointed as guardians:

- a) foster parent,
- b) head of the children’s home

where the child has been placed by the guardianship office.

(3) The provision of points b) and c) of paragraph (2) of Article 100 shall not apply to the guardian appointed in accordance with points a) and b) of paragraph (2) above.

(4) If the guardianship office has placed the child temporarily placed or taken into short-term or long-term foster care in another residential institution, or foster parent does not undertake guardianship set forth in paragraph (2) of Article 100, or the persons listed in paragraph (2) of Article 98 can not be appointed as guardians, the guardianship office shall appoint a legal guardian for the child selected by the district professional child protective service for this purpose.

(5) The guardianship office shall make a decision about the appointment of the persons specified in paragraphs (2) and (4) as guardians to serve the best interests of the child by taking all circumstances into consideration.”

**Article 176** The following points d) and e) shall be added to paragraph (2) of Article 99 of the Family Law:

*(Guardian’s responsibilities shall not be performed by the person)*

- d) whose right to parental supervision is suspended, because his or her child has been taken into short-term or long-term foster care by the guardianship office,
- e) whose child has been declared adoptable.”

**Article 177** The following paragraph (3) shall be added to Article 100 of the Family Law:“(3) The foster parent shall not be obliged to undertake guardianship.”

**Article 178** The following regulation shall replace paragraph (1) of Article 101 of the Family Law:

“(1) In the absence of provisions of law to the contrary, the guardian shall be the caregiver, property manager, and legal representative of the person under guardianship.”

**Article 179** The following regulation shall replace paragraph (2) of Article 106 of the Family Law:

“(2) Guardian’s function shall terminate  
a) upon the termination of guardianship,  
b) upon the discharge or removal of guardian by the guardianship office.”

**Article 180** The following paragraph (2) shall be added to Article 107 of the Family Law, and, simultaneously, the current text of the Article shall become paragraph (1):

“(2) The guardianship office shall also discharge guardian appointed in accordance with point a) or b) of Article 98, if  
a) it has placed the child somewhere else,  
b) the managerial position of the head of the children’s home has terminated.”

**Article 181** The following regulation shall replace paragraphs (1) - (2) of Article 108 of the Family Law:

“(1) If guardian abuses his or her rights, neglects his or her obligations, or commits an act, which makes him or her unworthy of performing the responsibility, the guardianship office shall remove guardian from his or her function.

(2) If it is presumable, that guardian shall be removed from his or her function and delay involves risk, the guardianship office shall suspend guardian from this function with immediate effect.”

**Article 182** The following paragraph (5) shall be added to Article 30 of Act No. II of 1972 on Health Care:

“(5) Health care institutions and service providers operating in the field of basic health care provision and professional health care provision shall, in the course of performance of their responsibilities, pay special attention to the prevention, identification, and elimination of health, mental, and environmental risks the child may be exposed to. Therefore, such institutions shall cooperate with institution and persons operating in the field of public education, social welfare, family assistance, and child protection, and, if necessary, initiate provision or administrative measures.”

**Article 183** The following regulation shall replace paragraph (2) of Article 103 of law-decree No. 11 of 1979 on the Execution of Penalties and Measures (hereinafter referred to as law-decree on EPM):

“(2) Supervision of young persons shall be performed by the probation officer operating with the county guardianship office.”

**Article 184** The following Article 112/A shall be added to law-decree on EPM:

“Article 112/A (1) The young offender institution shall notify the appropriate probation officer at the place of abode of the young person of the expected date of temporary discharge of the young person, and, in cooperation with the probation officer, prepare temporary discharge.

(2) In the course of the preparation of temporary discharge, the young offender institution shall

a) prepare the young person’s family and caregiver for reintegration, and, if return to the family is not possible, take care of appropriate accommodation,

b) try to provide opportunities for the young person to continue his or her studies, or get a job.

(3) Primarily, the probation officer shall provide after-care for the young person temporarily discharged from the young offender institution. The young offender institution shall provide after-care for the temporarily discharged young person, if the young person stays at the after-care department of the young offender institution to finish his or her studies or for other reasons.

**Article 185** The following regulation shall replace point a) of paragraph (1) of Article 4 of the Welfare Act:

*(For the purposes of this act)*

“a) income: asset (intake) defined in the income tax law as income less employee contribution, personal income tax, social security tax and pension premium as well as the costs allowed by the income tax law, regardless of being qualified as tax-free or subject to tax.

The following terms shall not qualify as income: death benefit, occasionally provided temporary aid, exceptional child benefit, fostering allowance and special allowance for foster parents, maternity benefit, and - with the exception of personal service fee for personal care - transportation aid for the seriously disabled, disability allowance, and personal allowance for the blind."

**Article 186 (1)** The following third sentence shall be added to paragraph (4) of Article 33 of the Public Education Act:

"Institutional units performing duties in connection with nursing and education, which do not belong to the cultural sector, may also operate in the institution of public education under joint administration."

(2) In paragraph (11) of Article 33 of the Public Education Act, the words "In the general culture center" shall be replaced by the words "In the institution of public education under joint administration and the general culture center".

(3) The following third sentence shall be added to paragraph (6) of Article 41 of the Public Education Act:

"The performance of duties in connection with child and family protection shall be assisted by the child welfare service."

(4) The second sentence of paragraph (7) of Article 108 of the Public Education Act shall be replaced by the following regulation:

"Backer shall be entitled to support from the public budget for each Hungarian citizen accepted in kindergarten or school - licensed in accordance with paragraph (6) operating abroad or at a Hungarian foreign representation, if parent is staying abroad as an official state delegate.

(5) In point 22 of paragraph (1) of Article 121 of the Public Education Act, the words "foster home nursing" shall be replaced by the words "children's home nursing".

(6) The introduction of point 7, Section II, Chapter three in Appendix No. 1 of the Public Education Act shall be replaced by the following regulation:

"7 Unless the head of the fostering-educational institution, upon the approval of backer, determines a longer time period, a time period calculated for one academic year equaling 5% of the total kindergarten activities in kindergartens, the total preparatory dormitory activities in dormitories, and the total compulsory classes - projected in accordance with paragraph (3) of Article 52 of this act - in schools shall be available for the performance of the following duties in fostering-educational institutions:"

**Article 187** (1) The following sentence shall be added to point 19.e) of paragraph (2) of Article 2 of Act No. I of 1996 on Radio and Television (hereinafter referred to as RT):

“Children and youth programs as well as informative, educational programs serving the purpose of child protection.”

(2) The following sentence shall be added to point d) of paragraph (4) of Article 23 of RT:

“To make important information available to groups seriously impaired due to their age, mental or psychic state, or social conditions, particularly, to broadcast programs presenting children’s rights, serving the protection of children, or providing information on available services in peak time.”

**Article 188** (1) Paragraph (4) of Article 1 of Act No. XXV of 1990 on Family Allowance and Family Support (hereinafter referred to as FA) shall be amended as follows:

“(4) For the child temporarily placed with foster parent or at a children’s home or taken into short-term or long-term foster care, the guardian vested with the right to manage property or, if there is none, the property manager ad hoc trustee shall be entitled to family allowance, regardless of whether he or she meets the statutory income requirements. In other cases - provided that foster parent or parent accepting the child in his or her family meets the requirements set forth in paragraph (1) - foster parent or parent accepting the child in his or her family shall be entitled to family allowance, if the biological or adoptive parents of the child are not able to look after the child in their own home due to their permanent interference.”

(2) The following regulation shall replace points a) and b) of paragraph (6) of Article 1 of FA:

*[Beyond those specified in paragraph (1), family allowance shall also entitle the child]*

- a) temporarily placed with foster parent or at a children’s home,
- b) taken into short-term or long-term foster care,”

(3) Paragraph (8) of Article 1 of FA shall be amended as follows:

“(8) Family allowance shall be paid to guardian vested with the right to manage property, or if there is none, the property manager ad hoc trustee for the child temporarily placed with foster parent or at a children’s home or taken into short-term or long-term foster care as well as to the head of the social institution for the child placed in social institution.”

(4) Paragraph (9) of Article 1 of FA shall be amended as follows:

“(9) If the child taken into short-term or long-term foster care serves his or her sentence in young offender institution or law enforcement institute, his or her guardian vested with the right to manage property, or if there is none, the property manager ad hoc trustee shall deposit family allowance for the child in guardian’s tied deposit or checking account. The social institution shall manage the family allowance for the child placed in the institution separate from its budget and ensure its personal use.”

Árpád Göncz  
Dr. Zoltán Gál  
President of Hungary  
President of Parliament

