



MEMORANDUM

ON THE HUNGARIAN ACT CCXI OF 2011 ON THE PROTECTION OF FAMILIES

submitted to the European Commission for Democracy through Law
(Venice Commission) and to the Monitoring Committee of the
Parliamentary Assembly of the Council of Europe (PACE)

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Introduction

On 23rd December 2011, the Hungarian Parliament adopted Act CCXI of 2011 on the Protection of Families. This Act was one of the cardinal laws required by the Constitution of 25th April 2011, entered into force on 1st January 2012. The new Hungarian Constitution requires cardinal laws to rule on important issues, among which the protection of families. They are adopted or amended by a majority of two thirds of the members of Parliament present to ensure stability and national consensus on these issues.

To analyse the law, the context must be kept in mind.

At present, the relations between Hungary and the European institutions are rather tense. Following the Constitution adopted in April 2011, several cardinal laws have been adopted. Those opposing the new Constitution and the cardinal laws have called for Europe's rejection of the Hungarian reform, labelling it as anti-democratic and discriminatory and they have raised concern within the European institutions. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) requested the European Commission for Democracy through Law (the Venice Commission) to give an opinion on the Constitution, which was done in June 2011, and on various laws including the law on the protection of families, and sent two rapporteurs in Hungary. These opinions are still being prepared and will be adopted and published during its next plenary session, in June 2012. The European Parliament adopted two very critical resolutions (5 July 2011 and 16 February 2012). On 17 January 2012, the European Commission decided to launch accelerated infringement proceedings against Hungary concerning the independence of the judiciary, the independence of the national data protection authority and the independence of the national central bank.

In the past months, the Venice Commission has already published an opinion on three legal questions arising in the process of drafting the New Constitution of Hungary¹, an opinion on the new Constitution of Hungary², an opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on

¹ Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011)

² Adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011)

the Organisation and Administration of Courts of Hungary³, and an opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary⁴. In May 2011, the ECLJ has also published a Memorandum on the Hungarian new constitution of 25 April 2011.⁵

The economic and financial situation in Hungary is highly problematic. The unemployment rate is over 11 %, and 26 % among the 15-24 year old. The forint has been severely devalued and recession is expected in 2012. Hungary had to apply for a 15 billion loan from the IMF and the EU.

The demographic state of Hungary is very worrying. At 1.33 children per woman, Hungary has the third lowest fertility rate across the OECD. The decline began much earlier than in other European countries, as early as 1960. The number of marriages has dropped in the past 30 years, together with the fertility rate. The number of deaths is higher than the number of births since the early 1980's, so the country is already estimated to have lost some 600,000 inhabitants. The population of Hungary is now less than 10 million.

The demographic issue is now a matter of survival for the Hungarian nation. Encouraging births is vital for the country. However, people do not have children because it is their patriotic duty. They have children if they are in an environment which gives them the necessary conditions for child-bearing and child-rearing. Establishing such conditions is the responsibility of the State, and that is the aim of the law at issue, in accordance with the concern of various international organisations. The OECD published a study in April 2011 entitled *Doing Better for Families*⁶. On 27 January 2012, the Parliamentary Assembly of the Council of Europe adopted Resolution 1864-2012 which states: "*Policies to improve the "human capital" in Europe should be complemented with appropriate family policies, which provide individuals and families with an environment where they can freely organise their lives*".

It must be recalled that family law and policy does not fall in the competence of the European institutions. The European Union is based on the principles of deferral and subsidiarity. Family law has not been deferred, so it belongs to the national authorities. The principle of subsidiarity requires the higher authority to refrain from doing what a lower authority can do, so the European Union cannot interfere with family policy and law. Concerning the Council of Europe, the European Court of Human Rights has repeatedly affirmed that issues concerning family law and policy fall within the scope of the margin of appreciation of national authorities provided the

³ Adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)

⁴ Adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012)

⁵ A copy is available on the ECLJ website. http://eclj.org/pdf/ECLJ_Memorendum-Hungarian-Constitution_20110519.pdf

⁶ http://www.oecd.org/document/62/0,3746,en_2649_34819_47654961_1_1_1_1,00.html

measures taken are not manifestly contrary to the European Convention on Human Rights.

However, since the Parliamentary Assembly of the Council of Europe and the European Parliament both questioned the conformity of the cardinal law on the protection of families with European law and values, the ECLJ proposes to assess this law with regard to the international commitments of Hungary.

The duty of the State is not only to support those who want to have children, it must also ensure these children live in a safe and stable environment. According to the 1989 Convention on the Rights of the Child, *“the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”*.

The Parliamentary Assembly of the Council of Europe (PACE) has very recently recalled the importance of stable families in time of crisis in Resolution 1720 (2010) of 19 January 2010 on Investing in family cohesion as a development factor in times of crisis: *“The Parliamentary Assembly recognises the force that the family represents in meeting life’s challenges and considers that the family unit is a fundamental element to aid in the economic recovery, especially during times of adversity and change. The family produces assets and is a factor for development. Peace, stability, cohesion and solidarity, child rearing, informal services and assistance, care, freedom and responsibility, well-being, savings, economic stability and intergenerational solidarity are some of the countless and often taken-for-granted spiritual virtues and material benefits that accrue from family cohesion”* (§ 2). The PACE adds that *“Confidence in the reliability of families is a vital element of the social fabric”* (§ 3).

In accordance with the relevant international and European instruments, the Hungarian Cardinal Law implements this necessary protection of families. It pursues a twofold objective: on the one hand, a direct and almost individual aspect, the protection of children, which implies the protection of families; on the other hand, a collective and indirect aim, to remedy the present demographic crisis. The collective dimension can only be a consequence of individual choices supported by the State.

The Act of 23rd December 2011 is composed of a preamble and five chapters. The first sets the objectives and principles of the law, the second is devoted to family status and the consequent principal obligations and rights, the third to the protection of the family and the commitment to have children in the field of employment, the fourth provides for State support for families and the commitment to have children and the last one contains the closing provisions.

This study will examine the law with regard to the international commitments of Hungary. It will focus first on the family as the fundamental unit of society, then on the concrete provisions of the law.

I. The family based on marriage, fundamental unit of society

This principle is set as the foundation of the whole text at the very beginning of the law. Its first words read:

“The family is an autonomous community established in human history before the emergence of law and the State, which rests on moral grounds.

The family is the most important national resource of Hungary. As the basic unit of society the family is the guarantee for the nation’s survival and the natural environment of the development of human personality, which must be respected by the State”.

This law rests on a natural law conception of the family, which exists prior to the State. This conception also underlies all the post-World War II international human rights treaties. The second paragraph shows the crucial role of the family for the nation. Affirming that the family is the fundamental unit of society is in accordance with international law. The protection of marriage is also required by the international commitments of Hungary.

A. An assertion rooted in international law

Some opponents contested the very existence of a cardinal law on the protection of families. They also argued that proclaiming that the family was based on marriage – union for life of a man and a woman – was discriminatory. However, it is perfectly in accordance with international and European law.

1. The family, fundamental group unit of society

Affirming that the family is the basic unit of society is unquestionably in accordance with international and European law. The 1948 Universal Declaration of Human Rights, which is the source of the treaties presently in force, proclaims that *“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”*. Many human rights treaties recall this principle, showing its crucial importance. The two 1966 Covenants which implement the Universal Declaration mention it. The International Covenant on Civil and Political Rights (ICCPR) states in Article 23-1 that *“The family is the natural and fundamental*

group unit of society and is entitled to protection by society and the State”, while according to the International Covenant on Economic, Social and Cultural Rights (ICESCR) *“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society”*. As already mentioned, the 1989 Convention on the Rights of the Child also recalls this principle. It is thus clear that the role of the family as fundamental unit of society is firmly established in international law.

This principle is also present in European law, both in Council of Europe law and European Union law. The European Social Charter recalls it, both in the 1961 text and in the 1996 revised version: *“With a view to ensuring the necessary conditions for the full development of the family, which is a⁷ fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means (Art. 16)”*. According to Article 33-1 of the Charter of Fundamental Rights of the European Union, *“The family shall enjoy legal, economic and social protection”*.

Being a Party to all the treaties mentioned, not only is it legitimate for Hungary to recognise the family as the fundamental unit of society, but it is an *obligation* to protect the family.

2. The family based on marriage

Section 1 begins with: *“The State shall protect the institutions of family and marriage, also by reason of their own dignity and value”*. Section 7 adds that the family is *“a system of relations which generates an emotional and economic community of natural persons, based on the marriage of a man and a woman, next of kinship or adoptive guardianship”*.

Once again, this is quite in compliance with international and European law. Human rights treaties mention marriage and family together but the link between them is so obvious that it was not thought necessary to explicit it. The ICCPR enshrines the right to marriage in Article 23-2, immediately following the affirmation that family is the fundamental unit of society. The ICESCR joins marriage and family in the same paragraph of Article 10-1, as do the European Convention on Human Rights in Article 12 and the European Social Charter in Article 16. It is a legitimate aim and even a positive obligation for the State to protect marriage and the family, as was confirmed by the European Court of Human Rights on several occasions. For example, in the case of *Sheffield and Horsham v. UK*, the Court noted that *“Article 12 is mainly concerned to protect marriage as the basis of the family”*⁸. In its decision on *Manec v.*

⁷ The French version reads *« la famille, cellule fondamentale de la société »* without article.

⁸ *Sheffield and Horsham v. UK*, nos. 22985/93 and 23390/94, [GC] judgment of 30 July 1998 § 66

*France*⁹, the Court decided that it is a legitimate aim for the State to protect the family based on marriage, therefore married couples and registered couples are not in the same situation and limiting some benefits to married couple is not discriminatory. Defining family as based on marriage is thus perfectly legitimate.

In any case, affirming that the family is based on marriage and encouraging marriage does not deprive those who are not married of any right, even if some rights are limited to married couples. Married people and unmarried people are not in the same situation, therefore they can be treated differently. Moreover, everybody has the right to marry, according to the national laws governing the exercise of this right.

3. Marriage between man and woman

In accordance with the Hungarian Constitution – a provision accepted by the Venice Commission¹⁰ – the law specifies that marriage is a union of a man and a woman. Once again, this is perfectly consistent with the international commitments of Hungary. The 1978 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) shows that the only marriage that is considered is between a man and a woman. Article 16 insists on the equality between “*men and women*” and “*husband and wife*”¹¹. Article 23-2 of the ICCPR reads: “*The right of men and women of marriageable age to marry and to found a family shall be recognized*”, while Article 12 of the European Convention states that “*Men and women of marriageable age have the right to marry and to found a family*”. Actually, in 41 of the 47 member States of the Council of Europe marriage is exclusively the union of a man and a woman.

Marriage is traditionally defined as the union for life of a man and a woman, with the intention of having children. According to the Vienna Convention on the law of treaties, “*A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its*

⁹ *Manec v. France*, no. 66686/09, decision of 21 September 2010: “*Par conséquent, la législation française en matière de droit aux prestations de survivants a un but légitime, à savoir la protection de la famille fondée sur les liens du mariage, et la limitation du champ d'application de cette législation aux couples mariés, à l'exclusion des partenaires d'un PACS, quelle que soit leur orientation sexuelle, s'inscrit dans le cadre de la grande marge d'appréciation que la Convention laisse aux Etats dans ce domaine* ».

¹⁰ “*In the absence of established European standards in this area and in the light of the above-mentioned case-law, the Commission concludes that the definition of marriage belongs to the Hungarian state and its constituent legislator and, as such, it does not appear to prohibit unions between same sex persons (although such unions cannot enjoy protection under the institution of marriage). The Commission notes in this context that registered same-sex civil partnerships enjoy legal protection (although within certain limits) in Hungary since 2009*”. Opinion no. 621 / 2011, 20 June 2011, CDL-AD(2011)016, § 50.

¹¹ Compare with the numerous international instruments which refer to the father and mother, *eg* Recommendation R(84)4 of the Committee of Minister to Member States on parental responsibilities (28 February 1984), European Convention on the Adoption of Children (1967, revised 2008), 1993 Hague convention on protection of children and co-operation in respect of intercountry adoption etc.

*object and purpose*¹². The ordinary meaning of marriage obviously means opposite sex spouses. The European Court has repeatedly stated “*that the right to marry guaranteed by Article 12 refers to the traditional marriage between persons of opposite biological sex*”¹³. In the case of *Shalk and Kopf v. Austria*, the Court noted that the wording of article 12, *men and women*, differed from that of all the other articles, *everyone* or *no one*. The Court concluded: “*The choice of wording in Article 12 must thus be regarded as deliberate. Moreover, regard must be had to the historical context in which the Convention was adopted. In the 1950s marriage was clearly understood in the traditional sense of being a union between partners of different sex*”¹⁴. Thus, only marriage between a man and a woman is protected under the European Convention on Human Rights. Everyone has the right to marry a person of the opposite sex, of marriageable age and stranger to his family.

It must also be noted that, though both the Hungarian Constitution and the Law on the Protection of Families specify that marriage is necessarily between man and woman, neither prohibits same-sex unions, as Hungary underlined in its response to the Venice Commission¹⁵, it simply gives them a different status, which, as already mentioned, does not constitute discrimination.

Therefore, it cannot be seriously contended that the foundation of the law on the protection of families, the principle that family based of marriage between a man and a woman is the fundamental unit of society, is contrary to international or European law and values.

B. The protection of marriage as the solid ground for the family

The Act on the Protection of Families explains in its Preamble the reason why marriage must be protected: it is “*the solid ground for the establishment of the family*”. Since, according to the Convention on the Rights of the Child, the family is “*the natural environment for the growth and well-being of all its members and particularly children*”, protecting marriage is a way of protecting children.

Marriage is the basis of the family and it is definitely a factor of stability, which is why the Parliamentary Assembly of the Council of Europe calls on States to encourage “*stable relationships, according to Article 12 of the European Convention on Human Rights*”¹⁶.

Marriage gives the child a name and a place in a lineage, in accordance with the Latin saying “*pater is est quem nuptiae demonstrant*”. The presumption of paternity

¹² United Nations, Treaty Series, Vol. 1155, p. 331 (23 May 1969), entered into force 27 January 1980, Article 31(1)

¹³ *Sheffield and Horsham v. UK*, nos. 22985/93 and 23390/94, [GC] judgment of 30 July 1998 § 66

¹⁴ *Shalk and Kopf v. Austria*, no.30141/04, judgment of 24 June 2010 § 55

¹⁵ CDL(2011)058, 2 August 2011

¹⁶ Resolution 1720 (2010) of 19 January 2010, § 6-2

answers the first security requirement for a child: to know his identity and filiation¹⁷. Except under exceptional circumstances, married couples live together. The child will thus know, live with and be cared for by both his parents, in conformity with Article 7 of the CRC: *“The child shall have (...) as far as possible, the right to know and be cared for by his or her parents”*.

The Preamble of the Act states that *“growing up in a family is safer than any other possibility”*. This is true not only for the psychological and emotional development of the child, but also from the economic point of view. Single parents often strive for a living and are more likely to fall into poverty, with all the consequences that follow for the children¹⁸ and for society¹⁹. The breakdown of a family also has long-lasting consequences on children²⁰. That is why, in Resolution 1720 (2010) §§ 6-6 and 6-8, the PACE encourages the States to consider:

- *tackling social exclusion, disruptions and poverty, particularly of single-parent families, families at risk, large families and migrant families. Discussions on different family models should focus on the consequences divorce has for children, including the risk of poverty, school failure, unemployment and other forms of social exclusion;*
- *focusing on children in families which are disadvantaged or dysfunctional as a consequence of family breakdown: the increased risk of poverty among children in single-parent families is found to be reinforced by disadvantages at school, as well as poorer health and housing problems. These children are more likely to be exposed to risks that jeopardise their educational achievement, which then affect their future prospects;*

Protecting marriage fosters the stability of families and consequently the well-being and harmonious development of the child. Since *“the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”²¹*, the State has the duty to create the best possible conditions for the well-being and stability of families.

¹⁷ Compare Article 8 of the CRC which guarantees *“the right of the child to preserve his or her identity, including nationality, name and family relations”*.

¹⁸ Among others, Jacques Delors, *Les enfants pauvres en France*, Conseil de l'emploi, des revenus et de la cohésion sociale, la Documentation Française 2004

<http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics//044000076/0000.pdf>

¹⁹ See *Quel avenir pour la famille? Le Coût du non mariage* Bayard 2006

²⁰ For example Paul Archambault, *Les enfants de familles désunies en France - Leurs trajectoires, leur devenir*, INED 2007; *Enfant au coeur des séparations parentales conflictuelles*, Rapport de la défenseure des enfants 2008, <http://www.defenseurdesenfants.fr/pdf/RappThem2008.pdf>

²¹ Preamble of the CRC

II. The concrete measures for the protection of families

To ensure an effective protection of families, the law sets general principles which must apply in all areas, be respected and implemented by other laws. In practice, the law provides for a sort of family mainstreaming. It also provides for concrete measures in the fields of employment and State support.

A. The guiding principles

The first principle is to recognise the primary responsibility of parents in the education of and care for their children, in accordance with the CRC²² and the ICESCR²³. This is essential in a democracy and of particular importance in a country which has endured a communist regime which indoctrinated the children. Parallel to this prerogative is a series of obligations for parents with regard to care and education.

The law provides that the State shall *“assist parents in fulfilling their commitment to have children”* (Sect. 1-3) and *“primarily contribute to responsible parenting by providing subsidies”* (Sect. 2-1). This is a crucial aspect: proclaiming rights is ineffective if the financial means to implement them are not provided. It is essential that *“the commitment to have children [does] not result in the impoverishment of the family”* (Preamble) so *“the support of families shall be a priority in planning the budgets of Hungary”* (Sect. 2-2). Section 2 specifies that the support of family shall be separated from the welfare system. This is important because, with a similar income, a childless couple has a much higher standard of living than a couple with children, while the latter ensures the future of the nation. It is thus fair to readjust in favour of families. It is also conform to Article 16 of the European Social Charter which distinguishes social and family benefits.

²² Convention on the Rights of the Child especially Article 5: *“States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”*; Art. 14: 1. *States Parties shall respect the right of the child to freedom of thought, conscience and religion.* 2. *States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child”*; and Art. 27-2: *“The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.”*

²³ Art. 13-3: *“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions”*. Compare with Article 18-4 of the ICCPR and Art. 2 of the first Protocol to the European Convention on Human Rights.

Another principle which underpins the whole law, in accordance with Article 3 of the CRC, is the interest of children: it is the *raison d'être* of the text. Families must be protected because they are the best place for the development and well-being of children, who are the future of the nation. The law recognises the right for minors “to be brought up in a family environment of their own”. According to Section 13, they “shall only be separated from their parents or other relatives for their own physical, psychological and mental development”, not “on the grounds of economic danger alone”. If they are separated from their families, they “shall be reunited with their families as soon as possible” (Section 13). These provisions correspond to Article 9 of the CRC. Though the words are not used, the interest of the child is obviously the determining point. In the Act, the words *interests of children* are used only with regard to adoption. Adoption is meant “to enable every child to be brought up in a family” (Sect. 1-4), not to fulfil the wish of adults to become parents. A fast procedure must be established, “keeping in mind the interests of children” (Sect. 1-4)²⁴.

Section 3 holds that “embryonic and foetal life shall be entitled to protection from the moment of conception”. This is in conformity with the CRC which, quoting the 1959 Declaration on the Rights of the Child, stated in its Preamble that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.

It must be noted that no international human rights treaty admits a right to abortion. The European Court of Human Rights recently recalled that “Article 8 cannot, accordingly, be interpreted as conferring a right to abortion”²⁵. The Court has repeatedly admitted that protecting the unborn child was not only legitimate but also necessary²⁶. In any case, States enjoy the widest the margin of appreciation when ruling on the protection of the unborn and on abortion²⁷. Under European Union law, these issues fall within the competence of national authorities since they have not been deferred.

The guiding principles of the provisions of the law, the primary responsibility of parents, the interest of the child and the protection of the unborn child are definitely both in conformity with the Convention on the Rights of the Child and European law and values, and matters which belong to the national authorities.

²⁴ Compare Art. 21 of the CRC.

²⁵ *A, B and C v. Ireland*, Ap. 25579/05 16 December 2010, § 214

²⁶ *A, B and C v. Ireland*, Ap. 25579/05 16 December 2010, § 222, 227, 230 ; *Vo v. France*, 8 July 2004, Ap. 53924/00, § 79,87; *Open Door v. Ireland*, 29 October 1992, Ap. n°14234/88; 14235/88, § 63...

²⁷ *A, B and C v. Ireland*, Ap. 25579/05 16 December 2010, § 237 ; *Vo v. France*, 8 July 2004, Ap. 53924/00, § 82.

B. Family mainstreaming

The first chapter of the law establishes a kind of “family mainstreaming”, comparable to the “gender mainstreaming” of the European Union: the interests of families must be taken into account in all policies which may affect them.

This is clearly established in Section 6-1: “*The State shall promote and support the development and preservation of a family-friendly attitude in all fields of social and economic life*”.

All actors of social life must participate in family protection, as mentioned in the Preamble: “*Family protection and the reinforcement of family welfare is a task shared by the State, local governments, non-governmental organisations, media providers, and businesses. The achievement of these objectives also receives special attention from Churches*”.

An area mentioned is that of the media: Section 5 provides that they have to respect the institution of marriage and the values of the family and parenting and will be encouraged to do so. Of course freedom of expression must not be unduly limited, but the interests of families will be taken into account when balancing concurring rights. This is in conformity with Article 17 a) of the CRC according to which the State shall “*Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29*”.

Article 29 of the CRC lists the aims of education, among which the development of the child's personality, respect for the child's parents, for the national values of the country in which the child is living and for the natural environment as well as the preparation of the child for responsible life in a free society. The education to awareness of the value of human life, a healthy lifestyle, responsible and intimate relationships which serve to prepare for marriage and for family life provided for by Section 3-2 of the Act on the Protection of Families is consistent with Article 29 of the CRC.

Two major areas in which the protection of families must be ensured are those of employment and State support. A full chapter is devoted to each of them.

C. Employment and State support

In its Resolution 1864-2012 of 27 January 2012, the Parliamentary Assembly of the Council of Europe calls on States to “*encourage demographic renewal by:*

- *developing policies that help parents raise their children, including financial and fiscal measures;*
- *developing policies that promote a better work-life balance, including adequate arrangements for childcare, and for supporting elderly and frail people;*

- *developing policies that reduce the economic precariousness of young parents, combining flexibility and economic security (flexicurity)*".

Hungary answers this call in Chapters III and IV of the law.

1. Employment

The Preamble proclaims the will to reconcile work and family life, which has long been a concern of the Council of Europe²⁸. Chapter III of the cardinal law is devoted to this issue. It provides for allowances for pregnant mothers and parents who bring up minors in various circumstances. It guarantees the right for pregnant or young mothers to be employed in a job fit for their health status and grants protection from dismissal. The maternity leave shall be 24 weeks and both parents shall be entitled to supplementary leave. Parents who go back to work after receipt of the child-care allowance are entitled to part-time work if their children are under the age of three. The cardinal law announces several laws to implement these principles.

All the rules set forth in this chapter may be considered as implementing the international commitments of Hungary and they are often more favourable than the international standards.

For example, Article 10-2 of the ICESCR reads: *"Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits"*.

To protect mothers, the European Social Charter in Article 8 states that:

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

- 1- *to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;*
- 2- *to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;*
- 3- *to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;*
- 4- *to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;*
- 5- *to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or*

²⁸ See Recommendation 1769 (2006), Rec R(96)5

arduous nature and to take appropriate measures to protect the employment rights of these women.

These provisions for the protection of women are present in the Hungarian law, together with other measures, especially concerning both the father and the mother.

At the junction of employment and State support are the provisions concerning the care of children. The parents who wish to take care of their children themselves shall be granted unpaid leave (Section 17) and *“the State shall offset pension disadvantages arising from the commitment to have children”* (Section 25) because parents contribute to the pension system by parenting. The State shall also provide day-care and help parents find a place for their children during their working time.

2. State support

To ensure *“the right of everyone to an adequate standard of living for himself and his family”* as recognised by Articles 7 and 11 of the ICESCR, State support for families is essential. It is the object of Chapter four.

To make sure having children does not result in the impoverishment of families, *“the State shall take in consideration the costs involved by the commitment to have children and parenting”* in determining taxes and contributions (Section 22). This is done in some countries with a favourable family policy, like France.

The law also rules that *“The State shall provide financial support or in-kind benefits as a contribution to the costs related to pregnancy and childbirth and to the costs of parents related to childcare and parenting at least until the age of three, and to schooling”* (Art. 23). The support varies according to the specific situation of each family. This answers the requirements of Article 16 of the European Social Charter.

An original provision ensures the predictability of the situation for families: in case of an unfavourable change of legislation, the new provision can enter into force only one year after its promulgation.

Conclusion

This law is undoubtedly in conformity with the international commitments of Hungary. It also corresponds to present concerns of international organisations like the OECD and the Council of Europe such as the link between stable families and demography and the role of the family during a crisis. The link between a favourable family policy and demography is clear in Europe. Family policy is an important issue in France, which has one of the highest fertility rates in Europe. State support for families, reconciliation between work and family and promotion of parenting are necessary to ensure adequate conditions for child-bearing and child-rearing. The stability of

families is an essential aspect. More and more studies in various countries highlight the link between broken families and poverty, failure at school, health problems and the subsequent costs for society. It is the duty of the State to establish the best possible conditions for the stability of families, and the protection of marriage is one of them. Hungary has drawn the consequences of this statement and endeavours to create such an environment. Hungary is not the only country on this way. Many other countries, like Germany or Albania²⁹ protect marriage and the family in their constitution. France refers to the protection of the family in the Preamble of its Constitution and protects families especially through the Civil Code and the *Code de l'action sociale et des familles*. Poland and Russia also have recently taken measures to protect families, in answer to the demographic and economic crises.

Many of the criticisms regarding this law appear to be based on ideological prejudice. They come from abortion and same-sex marriage promoters, who claim to hold the unanimous European position, which is obviously unfounded. A good faith observer can only conclude that the Hungarian cardinal law on the protection of families, both in its philosophical basis and concrete measures, is in accordance with international and European law, and with *“the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy”*³⁰.

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²⁹ German *Grundgesetz* Art. 6, Albanian Constitution Art. 53

³⁰ Preamble of the Statute of the Council of Europe

Annex: Act CCXI of 2011 on the Protection of Families

The family is an autonomous community established in human history before the emergence of law and the State, which rests on moral grounds.

The family is the most important national resource of Hungary. As the basic unit of society the family is the guarantee for the nation's survival and the natural environment of the development of human personality, which must be respected by the State.

Growing up in a family is safer than any other possibility. The solid ground for the establishment of the family is marriage, which is a union for life based on mutual love and respect, therefore it must always be held in great esteem. The family fulfils its mission if a lasting and firm relationship of the mother and the father reaches fruition in their responsibility for children.

There is no sustainable development or economic growth without the birth of children and the expansion of families. The commitment to have children must not result in the impoverishment of the family.

There is no well-functioning society without harmoniously functioning families.

Intergeneration relationships, including those between grandparents and grandchildren, have particular significance in the lives of families.

The State shall promote the reconciliation of work and family life.

Family protection and the reinforcement of family welfare is a task shared by the State, local governments, non-governmental organisations, media providers, and businesses. The achievement of these objectives also receives special attention from Churches.

In order to preserve and reinforce each of the preceding values, to create a predictable and safe regulatory environment for family protection and the promotion of family welfare, and to enforce the Fundamental Law, Parliament hereby adopts the following Act by virtue of Article L), paragraph (3) of the Fundamental Law:

CHAPTER I - OBJECTIVES AND BASIC PRINCIPLES

Section 1 (1) The State shall protect the institutions of family and marriage, also by reason of their own dignity and value.

(2) The protection of sound family relations has particular significance for the safeguarding of physical, mental and psychical health.

(3) In support of demographic processes which ensure the nation's survival, the State shall promote the commitment to have children under the relevant Acts of Parliament, and shall assist parents in fulfilling their commitment to have children.

* The Act was passed by Parliament at its sitting held on 23 December 2011.

(4) In order to enable every child to be brought up in a family, the State shall support adoption and shall strive to establish a fast adoption procedure which is completed within reasonable time, keeping in mind the interests of children.

Section 2 (1) The support of families shall be separated from the eligibility-based social provision system. The State shall primarily contribute to responsible parenting by providing subsidies. The State shall strive to ensure the conditions of home making and housing to families which bring up minors.

(2) The support of families shall be a priority in planning the budgets of Hungary from time to time.

Section 3 (1) Embryonic and foetal life shall be entitled to protection and respect from the moment of conception, and to support under the relevant Acts of Parliament.

(2) Awareness of the value of human life, a healthy lifestyle, responsible and intimate relationships which serve to prepare for marriage and for family life shall be the subject of education provided in primary and secondary educational institutions.

Section 4 (1) Working parents shall be entitled to receive assistance from the State in finding a place for their children for the period of their working time.

(2) The State shall assist parents who bring up children in securing employment by providing such day care and supervision services for minors that cater for the needs of families in a flexible manner.

(3) The State shall especially encourage and support the day care and supervision of minors in small communities and in homely circumstances.

Section 5 In support of the objectives enshrined in this Act and of child protection, media providers shall be obliged to provide their services by according respect to the institution of marriage and the value of the family and parenting. The State shall encourage the presentation of programs and media contents which convey the values of the family and parenting. The legal consequences applicable to breaches of law committed by media providers shall be regulated by the relevant Act of Parliament.

Section 6 (1) The State shall promote and support the development and preservation of a family-friendly attitude in all fields of social and economic life.

(2) The State shall make sure to simplify administrative procedures related to family life, and shall strive to enable families to use their rightful subsidies and services with a minimum of administrative burdens.

CHAPTER II - FAMILY STATUS AND THE CONSEQUENT PRINCIPAL OBLIGATIONS AND RIGHTS

1. Establishment of family status

Section 7 (1) The family shall be a system of relations which generates an emotional and economic community of natural persons, based on the marriage of a man and a woman, next of kinship or adoptive guardianship.

(2) Next of kinship shall be established by descent or adoption.

2. The right to succession

Section 8 (1) In the event of intestate succession (hereinafter: legal succession), succession shall primarily be a right of spouses and persons that are related to each other by next of kinship or lineal relation up to the statutory degree of relation or by adoption.

(2) The State and other persons shall only be entitled to legal succession in the absence of the persons mentioned in subsection (1).

(3) The spouse of the testator shall be entitled to dower as regulated by the relevant Act of Parliament.

(4) A legal share of inheritance shall be due to the testator's descendant, spouse and parents if the testator has no legal heir on devolution of the inheritance or in the case of intestacy. The amount, basis, calculation and distribution of the legal share of inheritance and the detailed rules for disinheritance are laid down in the relevant Act of Parliament.

3. Parental obligations and rights

Section 9 (1) The mother and the father shall have the same obligations and rights in the family on the grounds of parental responsibility, with the differences laid down in the relevant Act of Parliament.

(2) Parents shall have the obligation and right to responsibly care for and bring up their minors in a family, and to ensure the conditions required for the physical, mental, psychical and moral development of their children, and their access to education and healthcare.

(3) The parents of minors shall especially be obliged

a) to respect the human dignity of their children,

b) to cooperate with their children,

c) to inform their children about the issues that affect them according to their age and maturity and to take into consideration their opinions,

d) to provide their children with guidance, advice and help to assert their rights,

e) to take the necessary measures to assert the rights of their children,

f) to cooperate with the persons and bodies which contribute to the provision of their children and with the authorities,

g) to cater for the supervision of their children under the relevant law when their

children stay in a public area and/or an entertainment facility by night.

(4) Parents shall be obliged to use all support received in respect of their children to care and bring up their children.

(5) The parents of minors shall be entitled to receive information about the provisions which facilitate the responsible upbringing of their children and assistance in parenting.

Section 10 Parents shall be obliged to support children, even by restricting their own necessary support in the case of minors, in the way and with the exceptions defined by the relevant Act of Parliament.

Section 11 The annulment of marriage, the establishment of its validity, existence or non-existence, and the dissolution of marriage shall fall within the competence of courts as defined by the relevant Act of Parliament.

4. Obligations and rights of children living in families

Section 12 (1) School-age children, as defined by the relevant Act of Parliament, shall be obliged to meet their learning requirements to the best of their abilities.

(2) Minors shall be obliged to abstain from any lifestyle which damages their health according to their age and maturity, and to cooperate with their parents for their care and upbringing.

Section 13 (1) Minors shall have the right to be brought up in a family environment of their own, which ensures their welfare and physical, mental, psychological and moral development.

(2) Minors shall have the right to receive assistance in being brought up in a family, developing their personality, averting any situation which endangers their development, and in adapting to society.

(3) Minors shall only be separated from their parents or other relatives for their own physical, psychical and mental development in the cases and manner defined by the relevant Act of Parliament.

(4) Minors shall not be separated from their families on the grounds of economic danger alone. In such cases the State shall be obliged to ensure the conditions of providing care to minors in a family as necessary.

(5) Minors separated from their families shall be reunited with their families as soon as possible if the statutory conditions are met. To this end, the State shall adopt all necessary measures.

Section 14 Children of age shall be obliged to support either of their parents who is incapable of supporting themselves through no fault of their own under the relevant Act of Parliament.

CHAPTER III - THE PROTECTION OF THE FAMILY AND THE COMMITMENT TO HAVE CHILDREN IN THE FIELD OF EMPLOYMENT

Section 15 (1) Parents who bring up minors shall be entitled to special labour law protection under the relevant Act of Parliament and to allowances which ensure the reconciliation of their parental role and work and the protection of family life throughout their employment. In order to reconcile family and work, the State shall encourage work in a part-time regime and in other atypical work arrangements.

(2) Parents who bring up at least three minors, bring up minors alone or bring up children with a permanent illness or serious disability shall be entitled to further allowances in consideration of such circumstances throughout their employment under the relevant Act of Parliament.

Section 16 (1) Pregnant mothers and parents who bring up minors shall be entitled to allowances under the relevant Act of Parliament in respect of

- a) an amendment of their employment agreements due to a change of workplace,
- b) the possibility of working in an extraordinary and/or night regime,
- c) the obligation to work in another town or village, and
- d) the working time allowance of a medical examination related to pregnancy.

(2) Women who are pregnant or bring up a child under the age of one year may only be employed in such a job fit for their health status to which they gave their consent and where their basic salary is not lower than in their previous jobs. Offering or creating the right job shall be the duty of employers. Employers who cannot provide such jobs shall release such women from work and pay their basic salary as defined by the relevant Act of Parliament.

Section 17 Parents shall be entitled to unpaid leave under the relevant Act of Parliament for

- a) the home provision of their children at least until the age of three or the age limit defined by the relevant Act of Parliament in the case of seriously disabled children or twins,
- b) the home care of their children at least until the age of twelve and as long as they can certify the justification of personal care later on.

Section 18 The relevant Act of Parliament shall grant protection from dismissal to parents who

- a) bring up children under the age of three,
- b) care their ill children,
- c) are pregnant or are on maternity leave or unpaid leave for the home care of their children, and who participate in a human reproduction treatment or in a child adoption procedure.

Section 19 Parents who return to work after receipt of the child care allowance shall be employed part-time as defined by the relevant Act of Parliament at least until their children turn the age of three years.

Section 20 (1) In order to assist families in performing their tasks related to the commitment to have children and to parenting under the relevant Act of Parliament,
a) both parents shall be entitled to supplementary leave,
b) breastfeeding mothers shall be entitled to a working time allowance, and
c) women who are pregnant and give birth shall be entitled to maternity leave.
(2) The period of maternity leave shall be at least twenty-four weeks unless the mother is unable or unwilling to care her child after birth.

Section 21 Other laws, employment regulations and individual employer arrangements may establish rules that are more favourable than the employment protections and allowances under this Act for employees who bring up children, especially if such employees must not only bring up children but also care other family members in need.

CHAPTER IV - STATE SUPPORT FOR FAMILIES AND THE COMMITMENT TO HAVE CHILDREN

Section 22 (1) In determining taxes and contributions deductible from the income from work of families bringing up children, the State shall take into consideration the costs involved by the commitment to have children and parenting.
(2) In order to enforce the provisions in subsection (1), the State shall support families with family allowance for their children as defined by the relevant Act of Parliament.

Section 23 (1) The State shall provide financial support or in-kind benefits as a contribution to the costs related to pregnancy and childbirth and to the costs of parents related to childcare and parenting at least until the age of three, and to schooling.
(2) The form and amount of support shall be different for each family as defined by the relevant Act of Parliament, especially according to family structure, the number and age of children brought up in the family, the child's permanent illness or serious disability, the existence of the social security status of parents as defined by the relevant Act of Parliament and to the preliminary period of such status.
(3) In case the provisions on the amount of support and on the period and criteria of eligibility for support are amended, a period of at least one year after promulgation of such amendment shall be provided in preparation for its coming into force, unless it is favourable for the beneficiary of such provision.

Section 24 The State shall provide a discount on contributions as defined by the relevant Act of Parliament for the part-time employment of parents who bring up children and for their employment after receipt of a financial provision for child care.

Section 25 (1) In order to encourage intergeneration cooperation, the State shall strive to achieve that family members assume increasing responsibility for each other and that such responsibility is recognised.

(2) Parents who bring up children shall contribute to the maintenance of the pension system by parenting. The State shall offset pension disadvantages arising from the commitment to have children under the relevant Act of Parliament.

CHAPTER V - CLOSING PROVISIONS

5. Coming into force

Section 26 (1) This Act shall come into force on 1 January 2012 with the exception laid down in subsection (2).

(2) Sections 7, 8, 17 and 19 shall come into force on 1 July 2012

6. Compliance with the cardinal Act requirement of the Fundamental Law

Section 27 Sections 1–25 of this Act shall be considered as a cardinal Act by virtue of Article L), paragraph (3) of the Fundamental Law.

7. Legal amendments

Section 28 (1) Section 96(2) of Act IV of 1952 on marriage, family and guardianship shall be superseded by the following provision:

“(2) The person

a) with whom the child has been placed by the guardianship office with temporary effect [Section 91(2)],

b) with whom the child has been placed by the court [Section 72/A(1)],

c) who has adopted the child in his or her family with the consent of the guardianship authority

shall be appointed to serve as the guardian or adoptive guardian of the child.”

(2) Section 96 of Act IV of 1952 on marriage, family and guardianship shall be extended to include the following subsection (3):

“(3) The guardianship authority shall appoint the person defined by subsections (2)a)–c) to serve as adoptive guardian, unless the child has been placed with foster parents, in a children’s home or in any other boarding institution with temporary effect.”

Section 29 In Act XXXI of 1997 on child protection and guardianship administration,

- a) the word “guardian” in Sections 20/B(2) and 71(3) and in the closing parts of Section 80(1) shall be replaced by the words “adoptive guardian”,
- b) the words “as guardian” in Section 71(2) shall be replaced by the words “as adoptive guardian”,
- c) the words “as his or her guardian” in Sections 75b) and 75/Ab) shall be replaced by the words “as his or her adoptive guardian”.

Sgd. Dr. Pál Schmitt
President of the Republic

Sgd. László Kövér
Speaker of the House