



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

COMMENTS ON THE THIRD REPORT OF HUNGARY BY THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

26 MARCH 2008

The Hungarian Helsinki Committee is pleased to present its comments on the Third Report on Hungary (CRI (2004) 25) by the European Commission against Racism and Intolerance (ECRI).

Our comments follow the structure of the Third Report on Hungary, with references made to the Third Report's paragraphs.

Criminal law provisions

Re §§ 13-16.

There were two recent attempts to criminalise hate speech.¹ In December 2003, following a series of incidents against Hungary's Jewish and Roma communities, the Parliament amended the Criminal Code with an anti-hate speech legislation under which a person who publicly incites hatred "toward any nation, or national, ethnic, racial or religious group" could face up to three years imprisonment. In addition, someone who publicly insults the dignity of a person because of her national, ethnic, racial or religious affiliation could be found guilty of a misdemeanour and face up to two years imprisonment. The former head of state, President Ferenc Mádl vetoed the legislation and asked that its constitutionality be reviewed by the Constitutional Court. On 25 May 2004, in its Decision 18/2004 the Constitutional Court abolished the amendment of the Penal Code's hate speech provision - a fact that may cause difficulties accommodating future obligations arising from the Council Framework Decision combatting certain forms and expressions of racism and xenophobia by means of criminal law.² The Constitutional Court's decisions concerning hate speech offences have, however, been somewhat inconsistent. Citing "clear and present danger" standards, the above decision regards as unconstitutional the limitation of the freedom of speech that the amended Penal Code provision, whereas in an earlier decision (14/2000) the Court accepted as constitutional a penal provision (Article 269/B of the Penal Code) that rendered the spreading, public use and display of Nazi and Communist symbols punishable. The Supreme Court also follows a relatively restrictive interpretation of the

¹ Bill No T/2785, http://www.mkogy.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=38&p_izon=2785

² CNS/2001/0270. Hungary is among the EU Member States that have had serious political (and as far as the Constitutional Court is concerned, legal) reservations against the Framework Decision. Currently, the concept of harassment was introduced into the Hungarian legal system by the non-criminal legislation of the Equal Treatment Act.

offence of incitement to hatred, according to which incitement shall be taken to occur only if the person committing the incitement calls for effective action directed against the given group, i.e. simply defamatory utterances are not to be qualified as "incitement". For the above reasons, the number of recorded criminal offences relating to hate speech (Article 269 of the Criminal Code) is minuscule.

In June 2003 two NGOs, the Hungarian Helsinki Committee and the Háttér Society for Gays and Lesbians (www.hatter.hu) suggested another approach. The crime of incitement has been for ages among the crimes against public peace and order. Opposing a draft of the Ministry of Justice, the two non-governmental organizations stated that even if defamatory utterances against a community can not provoke "clear and present danger" and will not disturb public peace, they still can violate the human dignity of the members of a community. That means hate speech should be placed among the crimes against human dignity as slander or defamation. The law should protect communities that are defamed because of their members' race, nationality, religion or sexual orientation, but should not protect parties or other political groups.

At the same time, in the course of an ongoing public (governmental and academic) debate concerning a new Civil Code, the Government invited human rights NGOs to discuss possible human rights implications of the proposed legislation. The debate included the question of civil law claims and penalties arising from hate speech litigation. In a sharp contrast to previous Government positions, following a heated political debate around the formation of the Hungarian Guard (Magyar Gárda), a right-wing paramilitary organisation in the summer of 2007, in October 2007 the Parliament amended the Civil Code by penalizing racially motivated hate speech. However, President László Sólyom vetoed the bill and sent it to the Constitutional Court for constitutional review. The Constitutional Court has not yet delivered a decision. If the Constitutional Court were to find the legislation to be in accordance with the Constitution, the new law will allow for civil law sanctions and compensation for broadly defined insults on national, ethnic and racial identity, and claims could also be submitted via an *actio popularis*.

In April 2007, six Socialist MPs introduced a Bill in Parliament that would criminalize hate-speech by using the term 'abuse'. The proposal followed the approach of the NGOs as described above, but it gave a broader authorization to the public prosecutor to investigate even because of gestures e.g. the Nazi way of greeting. The proposal was supported neither by the Government nor by the Alliance of the Free Democrats, the Liberal party that is a member of the governing coalition. However, the bill passed the parliament vote just by the votes of the Socialists. As it was expected, President László Sólyom sent it to the Constitutional Court. Hence, for the time being two bills on hate speech are pending before the Constitutional Court.

Re § 18.

At the end of 2007, investigations continued into numerous offensive, anti-Roma, racist postings made on Holdudvar an internal website of the national police. The website postings were reported to authorities by two police officers. The website was immediately suspended and investigations were launched by the head of the national police and the Ombudsman for minority affairs.

Stop and Search

A research carried out by the Hungarian Helsinki Committee in 2002-2003 into discrimination against Roma in the criminal justice system has proven direct racial profiling by police against Roma communities in Hungary. By scrutinizing court files, the research of the HHC focused among others on how perpetrators were initially detected by authorities. The findings of the survey appeared to be fully in line with similar Anglo-American studies conducted in analyzing discrimination in the criminal justice procedure against visible minorities.

The researchers found that Roma offenders and suspects were significantly more likely to have been identified via police stops and searches, whereas in the case of non-minority suspects, other investigatory methods, and most of all being caught in the act were the dominant causes behind their

capturing. 38 percent of non-Roma, whereas only 21 percent of Roma were caught on the act. The researchers attributed the differences to bias in the system: non-Roma, if not being caught on the act, have much better chances not to be made liable at all, whereas Roma have a much higher chance to being identified once they committed a crime. One good source for the difference, explain the researchers, might be the police stop practices. On average one fifth of the accused of the researched court cases were identified by police stops. There is however a quite significant difference between the Roma and the non-Roma accused in this respect: only 17 percent of non-Roma were identified during stops, the percentage for Roma being 29 percent. These differences between the two groups are especially striking in the case of thefts: one third on Roma accused for thefts are identified during police stops (7 point more than the average, 10 points more than non-Roma). Police stop seems to show particularly high percentages for Roma in large cities, and lowest percentages for small towns. Researchers explain the differences by the fact that in small towns persons involved in criminal activities might be well known to police, so there is less need for profiling, whereas in large cities racial profiling might seem to then police the only efficient method for identifying criminals. The overall differences can be explained by multiple factors, argue the researchers (Lilla Farkas, Gábor Kézdi, Sándor Loss and Zsolt Zádori). One explanation is the elevated control of the Roma minority by the police. Another explaining factor is the illegal police techniques used to gather information from Roma on the occasion of raiding Roma neighborhoods. Another striking result that can actually stand to further support the previous arguments is that the five counties where the Roma population is of highest proportion have showed the best investigation success rate between 1996-2000 in each year. Meanwhile data on committed crimes shows that even though in the counties which have the lowest proportion of Roma population have the highest rates of criminality (30 percent higher than the others) yet the efficiency in the high Roma proportion counties identifying criminals is much better (25 percent higher than the others). Researchers argue: results clearly indicate the higher control of police on Roma as compared to the majority population in Hungary.³

Re §§ 19-20.

In a judgment delivered in October 2006, the court found a non-Roma man guilty of aggravated bodily harm and vandalism: in August 2005 a woman of Roma origin and her relatives went to a petrol station, bought some food, sat down on a bench and started to eat. The defendant arrived at the station, took off his T-shirt, jumped on the bench and shouted: "You stinky Gypsies, you won't eat here!". He kicked the pieces of food on the table about and jumped off. The family fled from the scene. Later the woman's husband had a quarrel with the convicted man, who hit him causing his nose to break. The perpetrator was sentenced to a fine of HUF 100,000 (EUR 400).⁴

In a judgment delivered in March 2006, the court found three police officers guilty of forced interrogation and light bodily harm. In December 2004, the officers tried to force the victim to confess the stealing of some meat by beating him and subjecting him to psychological pressure. In spite of this, the victim insisted that he had not committed the offence, and after his release, filed a report with the prosecution. As a cumulative sanction the Court sentenced the defendants to one-year imprisonment suspended for two years.⁵

In contrast, police officers charged with severe ill-treatment of Roma persons were acquitted in 2006 in two cases on the basis of insufficient evidence, although the court in both cases established that the victims' account of the events were credible. In one of the cases, the court expressly claimed that "the unsuccessful identification of the perpetrators was also a result of the so-called internal investigation carried out by certain senior police officers that lacked objectivity and impartiality, the aim of which was primarily not to find the perpetrators but to discredit the aggrieved party".⁶

³Andras L. Pap, Bori Simonovits, Anna Balog, Lili Vargha: Research Report for Hungary (Results from the research project entitled "A Comparative Study of Stop and Search Practices in Bulgaria, Hungary and Spain" January, 2006.Budapest)

⁴http://neki.hu/index.php?option=com_docman&task=cat_view&gid=34&Itemid=45

⁵http://neki.hu/index.php?option=com_docman&task=cat_view&gid=34&Itemid=45

⁶http://neki.hu/index.php?option=com_docman&task=cat_view&gid=34&Itemid=45

Re §§ 27., 34

The Equal Treatment Authority, established in 2005, deals with discrimination based on any of the characteristics protected under Section 8 of the Equal Treatment Act (ETA),⁷ but its activities are limited to ensuring equal treatment. The Authority is entrusted with all the powers required by the Racial Equality Directive⁸, thus it may intervene in the judicial review of a public administrative decision made by another public administrative body concerning the principle of equal treatment. It may also act as a representative authorised by the party who suffered a violation of law in procedures initiated because of a violation of the principle of equal treatment.

Under Section 14 of the ETA, "the Authority shall

- a) based on a complaint or in cases defined herein, conduct ex officio an investigation to establish whether the principle of equal treatment has been violated, and make a decision on the basis of the investigation; based on a complaint conduct investigation to establish whether the employers obliged did adopt equal opportunity plan.
- b) pursuant to the 'actio popularis' claim, initiate a lawsuit with a view to protecting the rights of persons and groups whose rights have been violated;
- c) review and comment on drafts of legal acts, reports concerning equal treatment;
- d) make proposals concerning governmental decisions and legislation pertaining to equal treatment;
- e) regularly inform the public and the Government about the situation concerning the enforcement of equal treatment;
- f) in the course of performing its duties, co-operate with the social and representational organisations and the relevant state bodies;
- g) continually provide information to those concerned and offer help with acting against the violation of equal treatment;
- h) assist in the preparation of governmental reports to international organisations, especially to the Council of Europe concerning the principle of equal treatment;
- i) assist in the preparation of the reports for the Commission of the European Union concerning the harmonisation of directives on equal treatment;
- j) prepare an annual report to the Government on the activity of the Authority and its experiences obtained in the course of the application of ETA."

The ETA excludes the possibility that the Authority investigate decisions and measures of public power by the Parliament, the President, the Constitutional Court, the State Audit Office, the Ombudspersons, the courts and the public prosecution.

In March and August 2006, the Equal Treatment Authority fined two companies for discriminating against Roma job seekers in their hiring process. In the first case, the fine was HUF 1.3 million; in the second the fine was HUF 700,000. In one of the cases, officials uncovered clear evidence that a Romani man was denied employment solely because of his ethnic background.

An extensive amendment to the ETA came into force on 1 January 2007 pursuant to Act CIV of 2006, which was adopted following criticism by the European Commission. The amendment further specifies the general exempting clause (deeming a formally discriminative distinction lawful) by requiring the application of the test of proportionality and necessity in cases when the distinction concerns a

⁷ Act CXXV of 2003 on equal treatment and the promotion of equal opportunities. Provisions that result in a person or a group being treated less favourably than another person or group in a comparable situation because of his/her gender, racial origin, colour, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, the part-time nature or definite term of the employment relationship or other relationship related to employment, the membership of an organisation representing employees' interests, other status, attribute or characteristic (hereinafter collectively: characteristics), are considered direct discrimination (Section 8).

⁸ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

fundamental right of the individual. Therefore objective reasonability is not applicable any more. Furthermore, in cases concerning discrimination based on racial or ethnic origin, no objective justification may be applied with regard to direct discrimination, while hypothetical comparison has been made possible in cases of both direct and indirect discrimination. A further important development relates to cases of separating different groups based on a protected ground (formally falling under the category of "segregation"): these can only be justified in case there is a clear statutory authorization for such separation (e.g. in the case of minority education) and the test of objective reasonability is no longer applicable in such cases. Also, with regard to the shifted burden of proof, the person claiming to have been discriminated has only to substantiate and not prove the occurrence of the disadvantage and the existence of the protected ground (from which it may be presumed that discrimination has taken place) in order for the burden of proof to be shifted to the respondent.⁹ The amendment thus narrows the scope of exceptions those charged with discrimination can refer to. Changes also include the introduction of hypothetical comparison that can be applied where unequal treatment would be difficult to measure in the given specific case. Also, all companies employing more than fifty people are obliged to establish and implement a so-called "plan for Equal Opportunities". According to the amendment, if these companies do not elaborate and implement such plan, they can be sanctioned and fined by the Equal Treatment Authority. The amendment also clarifies the Authority's procedures and provides a statutory regulation to the Advisory Board that assists the equality body. The amendment to the ETA is a positive step towards creating the Hungarian law's full harmony with the requirements of the Directives, however, the transposition of "reasonable accommodation" is still missing from the Hungarian legal system, and the possibility of objective justification of direct discrimination is still not excluded with regard to age, disability, religion and sexual orientation.

However, an earlier amendment of the ETA was sharply criticized by the Hungarian Helsinki Committee. The Equal Treatment Authority is supervised by the Minister of Social and Labour affairs but it is not a department of the Ministry. It is a separated administrative body that can not be instructed by the Minister. This partial independence was also guaranteed by Section 13 (4) of the bill: the budget of Authority was not a part in the budget of the Ministry but a separate chapter in the state budget. This important element of the law was overruled by an amendment passed in 2005 that placed the Authority's budget within that of the Ministry. This rule that might endanger the independence of the Authority was not changed by the major amendment of the law in 2006.

Refugees and asylum-seekers

Re §§ 39-52.

In 2007 the Parliament passed a new Asylum Act (Act LXXX of 2007) which entered into force on 1 January 2008. The new Asylum Act was partly adopted in the interest of transposing the relevant directives of the European Union in the field of asylum.

One of the most important changes brought about by the new Asylum Act is that subsidiary protection became an integrated part of the law: people called "protected" or "sheltered" by the law enjoy practically the same rights as Convention refugees. It is also a step forward that the law introduces increased guarantees for asylum-seekers with special needs because of age, gender or because they were victims of torture or sexual violence.

As also recommended by ECRI (§§ 48-49) detained asylum-seekers, after the 15-day long admissibility procedure, if they were accepted for the procedure in merit, shall be released from detention.

Contrary to these positive changes the new law still maintained the legacy of the previous regulation. Unlike in old member states of the European Union asylum-seekers have to stay in the reception center during the entire period of the asylum procedure. As the procedure in merit started they can

⁹ See European Anti-Discrimination Law Review Issue No.5, July 2007, p 79.

leave the center but by leaving they will lose all support. Asylum-seekers get accommodation, nutrition, health-care and some pocket money at the center, but these benefits can not be substituted by financial help. Asylum-seekers are not allowed to work for an entire year after the asylum-procedure started. The administrative phase of the asylum procedure generally lasts 3-5 months. All these rules (permanent stay at the center, no work out of the center) separate asylum-seekers from the host society.

Integration of immigrants

Re §§ 53-56

Hungarian authorities do not have any effective policy to integrate refugees, protected persons and any other group of non-citizens. Since the first law on asylum (Act CXXXIX of 1997) became effective in early 1998, Hungarian asylum policy has been based on the presumption that migrants in Hungary are in fact intending to get to Northwestern Europe. The authorities stated that they tried to stop the secondary movement of asylum-seekers but as a matter of fact they did not mind if migrants left the country. Since 1998 approximately 45,000 asylum-seekers have been registered in Hungary. Some groups as ethnic Albanians from Kosovo returned home in a voluntary manner, some persons were deported home but the overwhelming majority had left the country illegally for Austria or for Italy via Slovenia. More than 50 percent of the asylum-seekers left the country before an interview in merit, that is in a few weeks after they were registered; in their cases the procedure was terminated. This secondary movement was at most slowed down but never stopped by the one-year long detention of thousands of asylum-seekers. The lack of integration policy was demonstrated by the fate of the ethnic Hungarians from Serbia. After many years of temporary protection they could not return home where they lost their properties but did not want to leave to the West. The existing rules hindered their integration although their mother-tongue was Hungarian. Still, it lasted five years before the authorities decided to grant them stay permits "by grace".

Nowadays the number of refugees in Hungary is not higher than 700. Those who were protected as "persons authorized to stay" left the country almost all as they had very little chance to get a work permit and they had to live in the shabby community shelters.

It is usually mentioned that integration is difficult because the population is hostile against aliens, especially against those from the developing countries. It was widely publicized that according to the opinion poll of the prestigious TARKI institute 27 percent of the adult population would not allow any refugees in the country, while 67 percent will select among refugees and migrants. But it is important to note that this feeling was strengthened by the statements of politicians and officials. As the war in former Yugoslavia started the refugees were received with strong expressions of solidarity although in the summer 1991 more people – almost 50,000 - arrived in a month than from 1998 in ten years. It was the Interior Minister that time who said "Hungary is full" and "Foreigners make always trouble". This happened seventeen years ago.

But recently, mid-March 2008 the mayor of Debrecen, one of the most respected politicians of the parliamentary opposition, called for the transfer of the country's largest refugee reception center from the city's outskirts, arguing that asylum-seekers cause a public menace and a threat to public safety. Migration authorities rarely mention refugees or asylum-seekers but generally refer to "illegal migrants".

The Hungarian Helsinki Committee recommends that ECRI urge the Hungarian authorities to formulate an efficient integration policy will be considered as a sign of xenophobia and racism.

National and Ethnic Minorities

Re §§ 57-61.

In June 2005 the Hungarian Parliament passed a comprehensive amendment to Act LXXVII of 1993 on National and Ethnic Minorities. The legislation aimed both the institutional reorganization of minority-protection mechanisms and in an attempt to combat "ethno-corruption"¹⁰, it introduced a registration procedure for those who decide to take advantage of the various privileges and additional rights set forth by the minority law. In order to ensure that only members of the given minority can vote and be elected to minority self-government, the law redefines the meaning of Article 68 (4) of the Hungarian Constitution which stipulates that national and ethnic minorities have the right to establish minority self-governments. The Act thus departs from the pre-existing dedication to the free choice of identity and by eliminating the explicit provision allowing for the recognition of multiple identities, sets forth legal requirements for minority political participation. According to the new legislation, both the right to vote for and to run as candidates at the minority elections requires registration.¹¹ At the same time, however, the new legislation left the long-prevailing problem of the parliamentary representation of minorities unresolved.

In July 2006 the first registrations have been compiled: 199,789 citizens registered in 1,448 municipalities. (In the first minority self government elections 1,774,299, in the second elections 2,657,722 people voted for minority candidates, even though in the 2001 census only 318,391 people – 3.12 percent of the population – declared that they belonged to one of the minority groups.) The largest number of those registered belong to the Roma minority (approx. 106,000), followed by the German (approx. 45,000), the Slovak and the Croatian minorities (15,000 and 11,000). The first minority elections under the amended Minorities Act were held on 1 October 2006. 63.81 per cent of the registered voters took part in the elections: with the Slovenes (75.37 percent), the Germans (72 percent) and the Croats (70.49 percent) being the most, and the Bulgarians (47.49 percent) the least active ones. Out of those registered for the Roma minority government elections, 59.86 percent actually voted.¹²

However, hundreds of complaints were submitted to the Parliamentary Commissioner of national and ethnic minorities about officials of local governments who hindered the establishment of a Roma minority self-government. In Tahi, a village 40 kilometers north of Budapest the Roma community (about hundred people) wanted to set up a minority self government and they submitted the necessary number of signatures to the office of the mayor. In the next days the head of the office invited some of the signatories, mainly "half Roma" or non-Roma whose spouse was Roma and asked them why they signed this paper as they were not Roma. Under this pressure some people withdraw their signatures and the local Roma could not set up their own minority self-government.

In January 2006 the Constitutional Court upheld¹³ the National Electoral Committee's decision of approval for an initiative which sought the recognition of the Jewry as a national minority. Petitioners, however, were unable to collect the required 1000 signatures by the deadline required by the law. The 1993 Minorities Act lists 13 recognised groups and requires a popular initiative signed by 1000 citizens to be submitted to the Parliament in order to register a new minority. Leaders of the

¹⁰ The terms "ethno-business" „ethno-corruption" or „ethnic cheating" refer to the misuse of remedial measures for private gains unintended by the legislator, it is the biggest default of the Hungarian minority electoral system. It means that every Hungarian citizen (including members of the majority) have the right to vote in minority self-government elections. Since minority self-governments receive financial aid and have access to certain political decisions, some were created and are indeed functioning without any cultural or other minority-related mission.

¹¹ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2005.

¹² Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2006.

¹³ Hungary/Alkotmánybíróság/Resolution No. 2/2006, 30.01.2006, <http://www.iif.hu/netacgi/ahawkereuj.pl?s1=2&s2=2006&s3=&s4=&s5=&s6=&s7=&op7=and&s8=&op8=and&s9=&op9=and&s10=&op10=and&s11=Dr&op11=and&l=20&SECT5=AHAWKERE&d=AHAW&p=0&u=%2Fnetacgi%2Fahaw%2Fahawkere.htm&r=0&f=S>

campaign for national minority status pointed out that only 15,000 of Hungary's 120,000 estimated Jews identified themselves as practitioners of the Jewish religion.¹⁴

Hungary provides legislation that entitles national and ethnic minorities to study and receive instruction in their mother tongue. There are bilingual schools in Hungary where those belonging to a recognised national minority can study parts of the curriculum in their mother tongue (e. g. German, Serbian, Croatian, Romanian). Whereas minorities mentioned above usually do not have considerable difficulties in finding bilingual teachers, the number of teachers who speak Romanes (or Beash, a form of Romanian spoken in some Roma communities) or who are prepared to teach in Romanes or using bilingual techniques is negligible. Although some provision to study Romanes as a subject does exist, for example in the Gandhi Secondary School and the Kalyi Jag School, there are no special bilingual schools for Roma, and there are no schools in Hungary where the entire curriculum is taught exclusively in Romanes.¹⁵

Discrimination and segregation in health care

Re § 64.

The life expectancy of Roma people is 10 years less than the average, at the same time the natality rate is higher. Available data also shows higher rates of illness and mortality among Roma people than in majority of population. Infant mortality rates are twice as high among the Roma than among the non-Roma people.¹⁶ These facts are due to poverty, a high incidence of health problems, and the lack of direct and immediate access to the services of a local general practitioner.

Throughout 2003, the European Roma Rights Center (ERRC) conducted field research aimed at documenting practices of discrimination against Romani women within the health care sector in Hungary. The research showed cases of discrimination by establishing "Gypsy rooms", (segregated maternity wards), negligent treatment of Romani women by medical professionals, verbal abuse, and also some cases in which Romani women were provided with health care services by medical professionals whose level of qualification was apparently lower than required by the condition of the patient.¹⁷

A survey made in 2004 suggests that 25 percent of Roma faced direct discrimination in hospitals and other health care institutions and 44,5 percent reported direct discrimination by general practitioners.¹⁸

The Act CLIV of 1997 on Health care provides a mediator who can represent the interests of the patients, and also oblige the health services to equal treatment.

There are no special reports made by authorities, hospitals concerning the state of health of Roma people, information are only available in the studies of the relevant organisations.

Hungary is member of the program „Decade of Roma Inclusion”, which can encourage authorities to solve the problems present in the access to health care. The plans are collected in a Parliamentary Decree no. 68/2007. (VI. 28.). The Government is required to elaborate the aims of the Parliament (ameliorate the state of health, ensuring equal access to health care, facilitating inclusion of Roma

¹⁴Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2006.

¹⁵Research Paper by the Hungarian Helsinki Committee. 2007.

¹⁶ http://www.soros.org/initiatives/health/focus/roma/articles_publications/publications/leftout_20070420/leftout_20070423.pdf

¹⁷ "Gypsy Rooms" and Other Discriminatory Treatment Against Romani Women in Hungarian Hospitals, by Rita Izsák, <http://www.errc.org/cikk.php?cikk=2063&archiv=1>

¹⁸ Delphoi Consulting: Cigányok Magyarországon, szociális-gazdasági helyzet, egészségi állapot, szociális és egészségügyi szolgáltatásokhoz való hozzáférés, Budapest, 2004

into health insurance systems etc.) and has to prepare a progress report of its realisation in 2011 and 2015.

Employers' attitude

Re § 68.

According to results of TÁRKI's 2006 research, 'Roma' (testers introducing themselves with typical Roma names) were more likely to be turned down when applying for a job via phone than 'non-Roma' (testers introducing themselves with a name not linked to the Roma community). While 11 per cent of 'non Roma' testers were turned down, in case of 'Roma' this ratio was 20 per cent. Differences are larger when gender comes to the picture, 30 per cent of 'Roma' men were turned down, while 20 per cent of non Roma men, 10 per cent of "Roma" women and 2 per cent of "non-Roma" women. According to the other research, while 27 per cent of "non-Roma" applicants received feedback on their CVs submitted for different jobs (e.g. secretary, assistant, waiter) in case of "Roma" the same ratio was lower, 23 per cent. In case of CVs with photo, the difference was larger (25 versus 19 per cent).

Housing

Re §§ 70-75.

Almost half of Roma people in Hungary (44,7%) live segregated in settlements, ghettos, approximately 600-700 Roma settlements are existing in Hungary. These settlements have usually high inhabitant density, and are composed of flats with bad conditions and lack of proper amenities, infrastructure, domestic water or electricity.

The difficulties of the plaintives according to the reports of the Parliamentary Commissioner for National and Ethnic Minority Rights can be issued to their housing conditions, such as the unheated, mouldy room and kitchen flats.

Hungary already has among the lowest public housing stocks in Europe, and as a result of diminishing resources, local authorities have, since the early 1990s, been progressively sold off the appartments. At the same time, Hungarian lawmakers have knocked out previously existing protections against forced evictions; since 2000, the notary – an assistant to the mayor – may order eviction, against which no appeals are suspensive. Previously only a court could do so. Police must implement notary-ordered evictions within eight days. Although there is a requirement to re-house evicted furniture, there is no requirement to re-house evicted persons.

The authorities, local-governments may prevent or relieve the difficulties by allocating special aids (social, temporary), or by providing work opportunities.

It can be found out of the Parliamentary Comissioner for Natoinal and Ethnic Minority Rights' reports that Roma people with inappropriate work and income conditions are incapable to establish reasonable housing circomstances by themselves.

In these cases the plaintives objected the negligent and discriminative attitude of local-governments by refusing their petitions with the motion that there were no free local-government-owned apartment. The petitioned local-governments have acknowlegded that the Roma plaintives had the right to obtain subsidized flats, because of their financial, earnings position, and number of children in the family, but they could not accomplish the demands because they did not have any flats to use for this aim.

Local governments are required by national law to provide housing support to those in need, but only „to the best of their ability“. The Ombudsman for National and Ethnic Minorities has called for the

initiation of administrative procedures in several cases in which Roma were denied housing support allegedly due to lack of funds, while later in the same fiscal period, non-Roma were provided housing support. These cases were resolved by administrative courts in favour of the Romani plaintiffs on the grounds that the first applicants were arbitrarily denied funding, but not on racial discrimination grounds.

The other problem appears among those people who are tenants or owners of apartments, but they have to face with eviction or auction because they could not settle up their debt of public utilities or accrued rents. Roma people are systematically evicted from their homes without providing adequate alternative housing.

According to the Act II of 1993 on Social administration and social services the local government may provide aid to these people. The local governments are required to elaborate the conditions of debt management service and housing subsidy in decree. Regrettably the financial sources of the local governments are not able to solve the problem in this way.

The dilapidated houses, flats may also threaten the life, health or safety of the habitants. Decree no. 40/1997. (XII. 21.) of the Minister of Environmental Protection and Regional Development declares that the Building authority is obliged to renovate or –where it is needed- demolish these houses with providing temporary housing, at the habitants expenses, or when it is not possible on advanced charge. The financment of these actions can be covered by tenders of the European Union.

Following a 22 February 2005 decision by the Hungarian Constitutional Court which struck down as unconstitutional provisions of a local government decree regulating social housing, the Parliamentary Commissioner for Civil Rights and the Parliamentary Commissioner for National and Ethnic Minority Rights officially requested the Minister of Interior on 2 May 2007 to order the county-level administrative offices to examine the local self-government regulations on social housing, with the aim to ensure that criteria for allocating social housing are constitutional.

In 2005 the Ministry of Youth, Family Affairs and Equal Opportunities launched a program for the social and housing integration of people living in Roma settlements. Local governments by presenting a plan of local solution of segregation and integration can compete in the tender financed by the Ministry.

In 2005, 680 million HUF, in 2007, 400 million HUF were appropriated, the sum of the support per settlement was between 55 and 90 million HUF, with the condition that the plans had to be realised in one year.

The program makes an attempt to moderate progressively the Roma situation which helps not only to change the housing conditions, but to achieve full social integration.

There are clear indications that practices of forced evictions and concomitant homelessness are disproportionately affecting Hungary's Romani community. Indeed, it was Hungary's Parliamentary Commissioner on National and Ethnic Minority Rights who recommended reviewing local rules on the provision of social housing in the wake of the Constitutional Court rulings, primarily because their impact is disproportionately experienced by Roma.

Since December 2003, as a result of Hungary's European Union obligations, Hungary has had a comprehensive law banning discrimination (the Equal Treatment Act) including in the area of housing. As such, one can now bring challenge before a court of law or before Hungary's recently established anti-discrimination authority to an act of discrimination – including racial discrimination -- in the field of housing. Thus, if one is able to demonstrate that a refusal to provide housing, or some other decision in relation to housing, was influenced by arbitrary matters of race, it should be struck down by a court or other authority. This is clearly an advance, particularly for persons excluded from housing for arbitrary reasons such as race. This importantly remedies a massive lacuna in Hungarian

law – the failure until recently to provide a useable and effective ban on discrimination, among other things to shelter pariah groups such as Roma. However, it goes nowhere toward resolving major components of the underlying problem, namely the near complete evisceration in recent years of a previously existing housing rights framework.¹⁹

Re § 78.

In 2007, the Parliament elected Mr Ernő Kállai, a lawyer of Roma origin, as Parliamentary Commissioner for the Rights of National and Ethnic Minorities. It is worth noting, however, that the problem of the parliamentary representation of national and ethnic minorities that has been on the political agenda since 1993 has not yet been solved.

Antisemitism

Re § 79.

While 2007 was not without incidents raising the suspicion of racially motivated violence against the Roma, the year has been characterised also by the gaining ground of antisemitic discourse connected to the anti-government riots and demonstrations in the course of which the division between democratic right-wing groups and extremists was somewhat blurred thus triggering a more open manifestation of so far hidden antisemitic sentiments. This development elicited increasingly committed anti-racist action from governmental organs as well as left-wing civil organizations.

This is reflected by the survey results of the Anti-Defamation League concerning respondents' opinion on generalising statements traditionally linked to antisemitism. (In the course of the research 500 telephone interviews were conducted. Respondents had to choose if they find the respective statements „probably true” or „probably false”. Data are weighted by age and gender). According to the data, 50 per cent of Hungarian respondents think it is „probably true” that Jews are more loyal to Israel than Hungary. The Hungarian data in this question comply with the international average (approx. 50 per cent.) The majority of respondents think that it is probably true that Jews have too much power in the business world (60 per cent), and in the international financial markets (61 per cent), these numbers are significantly higher than the international average (35 and 36 per cent). 58 per cent of respondents thought that Jews still talk too much about what happened to them in the Holocaust, again, a significantly higher ratio than the international average (44 per cent). Compared to a similar survey conducted in 2005, the ratio of those who find the above statements „probably true” increased.²⁰

In September and October 2006, some participants in the antigovernment protests displayed images linked to the World War II-era, right-wing Hungarian Arrow Cross party. Some demonstrators erected a "wall of shame," which displayed a list of Jewish personalities thought to be responsible for the government crisis.²¹ Along this line, on 23 October 2006, when driven by the mounted police towards Budapest's central synagogue, some of the anti-government protesters started chanting antisemitic slogans, and throwing beer bottles at the synagogue's gate.²²

The series of antisemitic incidents continued even after the surge of violence came to a halt. Flags with the Árpád Stripes (a medieval flag that (became associated with) was used as arm-badge by the Nazi-aligned Arrow Cross party in power for a brief period during World War II) replaced the national

¹⁹ http://www.coe.int/t/dg3/romatravellers/Documentation/discrimination/RomaESC_en.asp
Implications for the Development of ESC Rights

²⁰ http://www.adl.org/anti_semitism/European_Attitudes_Survey_July_2007.pdf

²¹ Section „Societal Abuses and Discrimination” In: Country Reports on Human Rights Practice, Released by the Bureau of Democracy, Human Rights, and Labor, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78816.htm>

²² <http://www.antiszemitizmus.hu/antiszzsinagoga.htm>

flag in Budakeszi (a town beyond the municipal boundaries of Budapest) in a public event on 27-29 July 2007, followed by protest from intellectuals, politicians and citizens.²³ In the same locality, following a heated media discussion, a history teacher and deputy director of a catholic school were suspended after having posted photographs on the Internet wearing a Nazi SS uniform. Meanwhile, extremists attacked Gay Pride Parade participants and called for the extermination of "Fags and Jews".²⁴

In August 2007, Jobbik, a far-right party announced the formation of the paramilitary 'Hungarian Guard' (Magyar Gárda). Accompanied by counter-demonstrations, 56 men in uniforms swore 'to defend Hungary' after having received blessings from clerics of the three major Christian denominations. At the event, a former Defence Minister as well as a current opposition-Fidesz MP was present. The black uniform of the Guard reminds of the SS uniform, while the Árpád-striped arm band is a clear reference to the wear of the Arrow Cross Party (Hungarian Nazi formation during World War II).²⁵ The formation of the 'Guard' led to heated political debate, the government parties accusing the opposition of tacitly supporting the initiative, and the opposition parties claiming that the formation of the guard was triggered by government politics that "destroys the nation".

In October 2007, another 517 persons became member of the Guard. The ceremony took place at one of Budapest's most highlighted touristy places (Heroe's Square, Hősök tere) and was attended by more than 3000 sympathizers. The Guard openly uses racist language and declared as one of its main goals to fight against what they call the "criminality of Roma". In December, they organised a march in a village not far away from Budapest to "deter Roma delinquents" from committing crimes and to protect locals from "Roma criminals". The Guard promises to organise further marches and demonstrations in other places, as well. The most recent of these events happened in January, 2008, when the Guard demonstrated in central Budapest. When a well-known writer linked to leftist political parties appeared on the scene, the crowd started to defame him and shouted antisemitic and anti-Roma slogans. The writer had to be defended by the police.

The Prosecutor General called on the Gárda to abandon certain activities that do not tie up with the goals registered in court after an examination of its statutes. The formation of the Hungarian Guard by the far-right party Jobbik drew outrage from the government and Jewish community, who accused it of deliberately using fascist uniforms and insignia. The Prime Minister asked the Prosecutor's office to monitor the group's activities. Several municipalities – including Budapest – declared the Gárda 'persona non grata'. During the hearing before and inside of the building of the Metropolitan Court in March 2008 in the case of the Gárda's dissolution, members of the Guard prevented members of the National Gypsy Minority Self-Government to enter the building or the court-room and mocked some journalist as "agents of Tel-Aviv". Several papers criticized the Court as it was not able to protect its order and dignity but Judge László Gatter, president of the Metropolitan Court rejected the critical remarks and denied that the hearing was disturbed.

Re §§ 81-83

The UN Committee against Torture in its February 2007 Conclusions and Recommendations stated that "it is deeply concerned at reports of a disproportionately high number of the Roma in prisons and ill-treatment of and discrimination against the Roma by law enforcement officials, especially the police."²⁶

²³ <http://www.nol.hu/cikk/458985/>

²⁴ <http://www.origo.hu/itthon/20070707-tojassal-dobaltak-es-megtamadtak-a-melegfelvonulas-resztvevoit.html>

²⁵ <http://www.nol.hu/cikk/458920/>; [http://www.hirextra.hu/hirek/article.php?menu_id=2&article_id=17267](http://www.hirextra.hu/hirek/article.php?menu_id=2&article_id=17267;);
[http://inforadio.hu/hir/belfold/hir-144649](http://inforadio.hu/hir/belfold/hir-144649;); http://www.budapesttimes.hu/index.php?option=com_content&task=view&id=358&Itemid=27

²⁶ Conclusions and Recommendations of the Committee against Torture, § 19. CAT/(C/HUN/CO/4 dated 6 February 2007

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/bb9cec39af4f478dc125728000562b4d/\\$FILE/G0740345.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/bb9cec39af4f478dc125728000562b4d/$FILE/G0740345.pdf)

In 2003 the Hungarian Helsinki Committee carried out a survey among remand prisoners. 491 persons answered the question if they were ill-treated by the police or the prison guard during the procedure. 83 of them (16.9 percent) claimed to have been ill-treated. 121 persons (24.3 percent) of those who responded to the questions identified themselves as Roma. 26 persons of the 119 Roma who answered the question about ill-treatment stated they were ill-treated (21.85 percent) while "only" 56 persons of the 370 non-Roma detainees complained about ill-treatment (15.14 percent). The proportion is even higher among foreigners. 13 of the 43 foreign respondents claimed to have been ill-treated (30.25 percent).²⁷

Similar conclusions on the relations between the police and the Roma are presented by the annual human rights report of the US State Department, which also calls attention to a series of antisemitic incidents, mainly vandalism against synagogues and cemeteries, display of images linked to Nazi times and openly antisemitic articles in rightist weekly papers and on far-right websites.²⁸

The yearbook of the National Security Office²⁹ calls attention to the fact that facilitated by the violent anti-government demonstrations of the fall of 2006, new structures emerged among the Hungarian extremists, the goals of their activities changed, and the intensity of the violence of their actions increased. As opposed to the traditional arrangement characterised by one leader and internally oriented activities, the new trend seems to be that leadership is shared by more people and that extremist groups more and more overtly admit as the objective the elimination of the democratic political system, for the realisation of which they do not refrain from violent actions (such as the "siege" of the Hungarian Public Television's headquarters).

According to the yearbook, the intensity of the violence and the open denial of the existing constitutional order astonished both Hungarian society and the National Security Office, which has to face new challenges stemming from the developments. The yearbook also mentions that the extremist formations are increasingly intertwined with groups of football hooligans.

Further developments are that the media coverage of the events made the presence of such groups more emphatic and that the complexity, organised nature and speed of internet use by extremists have significantly increased.

The Hungarian Parliament has recently elected an ombudsperson with Roma origin as Ombudsman for Minorities and an ethnic Roma governments spokesperson has been appointed.

In the 2004 European Parliamentary Elections the voters elected 24 Hungarian MEPs representing 4 political parties. Among them there are two politicians of Roma origin, Ms Lívia Járóka is member of the Groups of the European People's Party and European Democrats, Ms Viktória Mohácsi is a member of the Groups of the Alliance of Liberals and European Democrats. The presence of politicians of Roma origin in the political publicity may have positive long-term effects regarding the attitude of non-Roma Hungarians. It is also worth noting that the two politicians represent groups, which may be the target of multiple discrimination.

According to a surveys carried out by TÁRKI, a social research center (www.tarki.hu) in February 2007, 29% of the respondents refused refugees from any country (in 2006 this number was 24). 68 % of Hungarians would not accept the „pireziens” into the Hungarian society, which is a fictive ethnic group developed by the research company.

According to the European Roma Rights Center (ERRC) some media outlets in the country promoted

²⁷András Kádár: Presumption of Guilt. Hungarian Helsinki Committee, Budapest, 2004. P. 56. and pp. 65-66.

²⁸Section „Societal Abuses and Discrimination” In: Country Reports on Human Rights Practice, US State Department, Bureau of Democracy, Human Rights and Labor, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78816.htm>

²⁹ <http://www.nbh.hu/evk2006/06-0045.htm#1>

anti-Roma hatred and violence following the 17 October 2006 beating to death of Lajos Szögi by a mob in the village of Olaszliszka. Two days earlier Mr. Szögi had hit an 11-year-old Romani girl with his vehicle in a road incident. The ERRC condemned the mob violence and expressed concern over how major broadcast and print media reported the incident. For example, an opinion article in Magyar Nemzet advised drivers to drive away without stopping should they run over a Romani child.

Media

Re §§ 84-85.

The role of the media is significant in combating discrimination and racism. Hungarians watch television 3.5 hours daily, which is highly above the European average, thus negative reports may exacerbate prejudices in public opinion.

The media is highly criticized by Roma organizations as not giving voice to the Roma population and serving the prejudices of the general public. As the 2007 report of the Minorities Ombudsman states if Roma people show up at all in the media, they are indigent, poor, but "undeserving poor" who are unemployed, confronting the official state power. Positive examples are rare, mainly presenting Roma musicians and other artists.

The public television is obliged to broadcast³⁰ minority programs, however those are not of common interest because of their low quality as stated in the Green Book³¹, a survey published by the Ministry of Social and Labour Affairs on the image of Roma in the media.

A somewhat positive tendency can be noted as both commercial and public media seeks to employ journalists of Roma origin.

The Roma Scholarship Program, funded by the Ministry of Youth, Family, Social Affairs and Equal Opportunities (since summer 2006 the Ministry of Social Affairs and Labour), is being implemented jointly by the Ministry, the Hungarian State Television (MTV), and the Partners Hungary Foundation. The main aim of the program is twofold: on the one hand to educate and provide work to talented Roma young people; and on the other to present a more authentic Roma image to the majority as a result of integrating Roma journalist, camera-men and editors into the Hungarian media. Furthermore, the communication leader of the British Embassy offered a short training possibility for participants at BBC, London. Since March 2006, five Roma trainees have started to work at MTV.³²

The major commercial TV channel has also launched a program aiming to employ Roma journalists, only interns were hired after a 6-months program.

Since 2001 the Roma Media School of "Fekete Doboz" Foundation also gives the possibility to talented Roma young people to learn and work in the media. The films and documentaries of the students have been honored with many awards, two times also with Tolerance-prize.

Rádió C, a Roma Radio was established in 2001 and has become a reliable 24-hour source of information and entertainment to Budapest's Roma community. At first, Rádió C was quite radical and provocative, full of slogans condemning the prejudices and clichés that Gypsies were subject to. Nowadays the political message has become less strong, and an initial lack of organization has been replaced by the professionalism of a young team of Roma radio workers facing daily financial challenges.

³⁰Act I of 1996 on the media

³¹http://www.romaweb.hu/doc/kormanyzat/2007/zoldkonyv_romakmediaabrazolasa.pdf

³²Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2006

The extreme nationalist, anti-Roma and antisemitic kuruc.info, a website visited regularly by 15-20,000 people, was closed down in Hungary due to its content, however the site continues to exist at <http://kuruc.info>, located on a U.S. server. The Prime Minister called upon the Minister of Justice to take the necessary measures to defend the constitutional values and civil rights in Hungary.

Conduct of law enforcement officials

Incidents and crimes against Roma

Re § 86.

In 2007, the media covered one major anti-Roma incident. According to the accounts, in June 2007, six Roma persons were taken to a police station in Heves county in relation to a brawling incident. The six Roma detainees claim that although they provided the police officers with their ID's upon request, they were taken to the ground and taken into custody. In the corridor of the Police Station they were forced to stand on their knees for hours and to keep saying that they are "lousy Roma parasites". They claim to have been taken to the bathroom where they were allegedly handcuffed to a water pipe and beaten severely. Their legal counsel provided by the Roma Civil Right Foundation filed a report against the police officers with the competent prosecutorial investigation office.³³

The Legal Defence Bureau for National and Ethnic Minorities (NEKI), registered no cases of anti-Roma violence in 2007.³⁴ The "White Booklet 2006" (published in 2007 on the organisation's activities in 2006) contains relevant cases.

Improving relations between the police and the Roma community

The STEPSS (Strategies for Effective Police Stop and Search) Program funded under the EU AGIS programme and coordinated by the Open Society Justice Initiative was launched in January 2007 and is implemented in a cooperation of the National Police Headquarters, the Police College and the Hungarian Helsinki Committee (the project is also implemented in Spain and Bulgaria). The project is aimed at identifying strategies to improve police relations with minority communities through supporting more accountable and effective use of police powers to stop and check identity and search individuals. The partners have developed a tool to monitor the use of police identity checks and stop and search powers to determine whether they affect minority communities in a disproportionate manner, and to support analysis of their effectiveness in terms of crime detection and investigation. Project activities include an audit of current policies, practices and training; a study tour of several sites in England; development of new guidelines, training and a monitoring tool; and active monitoring of police measures for a period of six months (involving Roma civilian monitors). Project results will be analysed and presented in comparative perspective at a European regional seminar with existing regional policing networks.

The amendment of the Act on Police set up an Independent Police Complaints Commission (Act XC of 2007 Sections 6/A-6/C) composed of five civilian lawyers selected by the parties of the Parliament. The commission is authorized to examine complaints concerning violations of constitutional rights by persons against police officers and police authorities. The new body just started its activity but one can hope it will be effective in detecting abuse of power by the police.

³³ <http://index.hu/politika/bulvar/hvsrm0629/>

³⁴ Information provided verbally by NEKI staff

Discrimination against Roma in the fields of education

Re §§ 95-101.

Researches and surveys have been reporting on five main forms of segregation of Roma students in the fields of education. Intra-school segregation by organizing special (remedial) classes, intra-school segregation between normal classes, intra-class segregation by organizing level-groups, inter-school segregation between normal schools, inter-school segregation by special schools.³⁵ Undoubtedly, the most serious forms of segregation is the latter one. the existence of special schools mainly attended by Roma pupils. Today there are approximately 50,000 students declared to be mentally handicapped in Hungary. The rate of mentally handicapped children amongst the age group of 14 and younger is 5.5 per cent, while this rate in Western and Northern European states is around 2 per cent. The rate of Roma children in this group was 42 per cent in 1993 and it is likely to have increased in the last 15 years. This categorization is connected not as much with intellectual capabilities, but rather with underprivileged status and problems of socialization.

In a summer camp, for example, in Felsőtárkány at lake Balaton, organized for mentally retarded children, independent experts had been examining their mental abilities. The group of experts found that 17 of the 60 campers were totally of sound mind.³⁶

In most special schools there are no teachers with special training, furthermore, there is some evidence that Roma schools may attract teachers who are underqualified, as in Hungary, where in every third school with over 80 per cent Roma enrolment, unqualified teachers are employed.³⁷ Another worrying phenomenon is the lack of proper infrastructure in these schools. Evidence on the deplorable material conditions of most schools with a high percentage of Roma pupils comes from reports, mostly from human rights organisations, which have collected data through direct observation, and most report similar conditions: a lack of running water, and indoor toilets, no computers, science facilities or libraries, fewer teaching aids, no books, and so on. According to a special report published in 2007, in 40 per cent of schools there were differences between the equipment of segregated and majority classrooms. In over a third of schools majority-Roma classes had fewer teaching aids, whereas in under a third of these schools the furniture was in a worse state in majority Roma classes.³⁸

From these accounts it is clear that the existence of segregation in the form of special schools is still a huge problem the government has to tackle. One of the latest developments in this field is the amendment of the Act on Public Education which provides for new methods in assessing whether a child should attend a special school or not. The concept of "specific educational needs" was introduced in 2004, preparing the ground for the revision, from the point of view of underprivileged students, of the current system whereby a student can be declared retarded. (Art. 30)

Remedial classes, segregation

Re §§ 102-105.

As far as intra-school segregation is concerned, the Ministry of Education estimates that at least 25 per cent of Roma children attend majority-Roma classes. This stems partly from the geographic concentration of Roma in mostly-poor neighbourhoods and villages but it is also exaggerated by other factors. It is a well-known fact in the Central and Eastern European region that those Roma children in majority "non-Roma schools who show behavioural problems or fall behind in their studies are routinely dumped into programs for the learning or mentally disabled."³⁹ This practise is indicated by the following figures. Whereas in Hungary only 2 per cent of non-Roma students are identified as

³⁵ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2004.

³⁶ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2005.
Equal access to quality education for Roma. OSI. 2007.

³⁷ Equal access to quality education for Roma. OSI. 2007.

³⁸ Equal access to quality education for Roma. OSI. 2007.

mentally disabled, just below the EU average, 20 per cent of Roma children are slapped with this label. Most are transferred to special classes, often at majority Roma schools.⁴⁰ Another worrying aspect of this practice is that segregated classes in mainstream schools, just as they do in special classes, follow a special curriculum. Lower expectations, however, also contribute to lower achievement. In the years 2006-2007 it was found that in 17 per cent of the schools teachers required lower than the average performance from Roma students.⁴¹ As a result, Roma pupils consistently under-perform in school outcomes compared to their majority peers, repeat grades more often, and drop out more frequently, all of which results in a population that lacks in literacy skills. In Hungary, for example, research showed that the repetition rate for Roma was fivefold higher and the rate of missing classes eightfold higher – 7.8 per cent and 1.5 per cent respectively – than the rates in question for the Hungarian majority peers.

An important programme of the Ministry of Education to fight against intra-school segregation is called "From the last form". Goals of this programme are the re-examination of abilities of students who were declared inadequate (this work started at the end of the year 2003), initiation of a temporary normative support which can help to take care of and to put back students to normal classes; and enhance the working conditions of Transfer Committees.⁴² This project tries to stop a half-century old education practice and create a new basis for solving those students' situation that have problems of learning competencies. As the first step of this programme, about 10 per cent of re-examined 2000 students were declared to be able to go back to normal classes from special ones. Although some parents did not want to allow their children to return to normal classes, finally there were just two or three exceptions. Parents' worrying is understandable, because they had had bad experiences with schools. They are afraid of their children becoming targets both of fellow pupils and teachers. This reintegration programme would go hand in hand with a teacher-training programme to grant the success of reintegration.⁴³

Another project worth mentioning is the National Network for Educational Integration initiated by the Ministry of Education in 2003. The schools participating in the project undertake task of eliminating separate special (i. e. Roma) classes by setting up integrated classes. According to a report published at the end of the year 2007 the schoolwork of pupils studying in integrated classes following an integrated curriculum are slightly better than those studying in traditional schools. It has also been suggested that the relation between Roma and non-Roma students in integrated classes are generally better than in traditional schools. Since the launch of the program 482 schools have been participating in the project.⁴⁴ Despite promising practices and figures there are also reports on worrying cases in the fields of integrated education. As an example, while schools stop segregation, organize heterogeneous classes and claim financial support for the purpose of setting up integrated classes and integrated curriculum, in reality they establish two level-groups within classes with different programmes. This kind of covered segregation cannot be tracked down by administrative tools.⁴⁵

Another interesting (or cynical) practice is shown by a big town in Hungary in 2004. The local government of this town claimed support for integration and accepted their conditions: to stop segregation between the schools of the town. There were two schools in a part of the town, one with a very high rate of Roma children, and another without any. The "Gypsy school" was in the neighbourhood of a Roma settlement. The local government administratively fused these two schools but let the segregation continue. In addition, the director of the former non-Roma school became the director of the fused school, who was against the integration; while the other former director, who

³⁹ UNDP RSC (2003), *Avoiding the Dependency Trap – The Roma in Central and Eastern Europe, A Regional Human Development Report*

⁴⁰ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2005.

⁴¹ Equal access to quality education for Roma. OSI. 2007.

⁴² These Committees can decide to put students to special classes or schools

⁴³ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2004.

⁴⁴ www.okm.gov.hu Visited on 8th February, 2008.

⁴⁵ SpecRep 2004. p. 23.

managed a step-by-step programme in the "Gypsy school" was fired. When the Ministry of Education learned about this situation, it cut its support and now is trying to press the local government into the direction of a real integration. From cases like these it seems that the educational government needs to be careful to keep its initiatives in the right track.⁴⁶

*Mainstream schools with only Roma children – de facto segregation
Re §§ 104-107.*

Undoubtedly, the worst form of segregation is the existence of separate schools for Roma and non-Roma students. This practice is deeply rooted in the widespread social and ethnic segregation of Roma in certain settlements particularly in north-eastern Hungary, on the other hand the Parliament and local authorities had not taken sufficient measures to prevent the cumulation of segregation, and schools had not been active in this field, either. In 2005, however, a significant new measure was taken, namely the modification of the Public Education Act.⁴⁷ The Amendment, which limits total freedom of educational choice, came into effect in 2007. Reason for the amendment was that the current practice of educational choice, according to which parents are free to choose which school they want their child to attend, while schools are free to choose which child to admit after they enrolled all applicants from their own schooling district, results in selectivity, inequality and fast-growing ethnic segregation in education.

The new regulation aims to end the extreme selectivity of schools resulting in increasing social differences and social and ethnic segregation, setting rules for priorities in the admission procedure. Schools now have to admit children living in their schooling district first, children of socially disadvantaged background applying from other districts second, and at the stake of their remaining capacity can they choose children of non-disadvantaged background by lottery. The regulation also changes schooling districts in order to provide a more even distribution of different social strata among schools.⁴⁸

The final judgement in a leading case in the field of de facto segregation was delivered in 2006. The local authority of the northern Hungarian town of Miskolc consolidated its schools by administratively merging seven schools into three in the city in a way, that violated regulations on the provision of equal opportunities set in the Equal Treatment Act, and rules on de-segregation set in the above mentioned amendment of the Act on Public Education. The city, in administrative terms, realised desegregation: the school-complex educated Roma and non-Roma students as well, but in practice children with different ethnic background attended separate buildings of the administratively "same" school. The Chance for Children Foundation (CFCF) sued the local government of Miskolc and provided evidence that Roma children receive significantly lower quality education than their non-Roma peers. In October 2005, the Borsod-Abaúj-Zemplén County High Court rejected the claim of CFCF arguing, that although it is "common knowledge" that in some schools of Miskolc the overwhelming majority of pupils are of Roma origin, while in other schools there are only a few, or no Roma, the situation is result of historic factors and the spatial distribution of children. CFCF appealed against the ruling, and the Debrecen Court of Appeal changed the 2005 decision of the Miskolc High Court, verifying the responsibility of the local government of Miskolc in school segregation. The court case is ground breaking in Hungarian legal history, being the first one based on the new ET Act. CFCF has sued two other municipalities as well (Hajdúhadház and Kesznyéten) for their practice of segregating children in school. However, despite the judgement of the Debrecen Court finding the violation of the right to equal treatment based on ethnic origin, so far no changes have been made in the referred Miskolc schools, recent semesters began in the same – segregating – organisational structure.

⁴⁶ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2004.

⁴⁷ Hungary/ Act No. CXLVII. of 2005, amending Act. No. LXXIX. of 1993.

⁴⁸ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2004.

Roma children as private pupils
Re §§ 108-109.

There has been a significant change in the situation of Roma pupils forced into private pupil status. According to the new law there are provisions for obtaining the status of "private student". If a child is registered as a private student, the local Child Care Service has to give an opinion concerning the possible effects of the transfer on the child. The purpose of the legislation is to prevent even the most severely underprivileged student from dropping out, in an uncontrolled manner, of public education.

Roma children in kindergarten
Re §§ 110-113.

A key point in the education of Roma children is their access to nursery-school. According to the amended Public Education Act the admission of underprivileged children to nursery schools is compulsory.⁴⁹ The term underprivileged status itself is now defined in law; no such definition was offered by previous legislation (Art. 121). According to the article, a student is underprivileged if the family obtains regular social help from local government and neither parents' education is higher than elementary school. The obligation of kindergartens provides for the commencement of nursery-school education at the age of three for children living in places where these services are difficult to provide, because small villages where a significant proportion of the Roma population live, are unable to maintain a nursery school. (Art. 65.)

Another aspect of a successful nursery-school education is the fight against segregated kindergartens. Within the National Network for Integrated Education a project is being implemented for the support of integrated kindergartens. In 2007, the Network started a project for the support of 9500 underprivileged children at integrated nursery-schools.⁵⁰

Roma students in secondary schools and colleges
Re §§ 114-116.

A TÁRKI survey published in 2005 demonstrates that inadequate and low level of education is one of the most important factors of the disadvantaged social situation of the Roma. Data provide evidence that similarly to other countries in the region also in Hungary the overwhelming majority (over 80 per cent) of Roma have no more than primary school education. The educational gap between Roma and non-Roma living in the same neighbourhood signal future disadvantages of Roma: in most of the countries the ratio of Roma with a maximum primary education is triple of the non-Roma population.⁵¹ At the same time new government policies have been introduced in the field of guaranteeing equal opportunities for disadvantaged groups. This includes the amendment of 2003 to the Act on Public Education⁵² that introduced a ban on segregation in schooling, applied anti-discrimination legislation in education, and raised the age of compulsory education to the age of 18 which benefits disadvantaged pupils.

After the joining to the European Union some new programmes have been launched within the framework of the National Development Programme, such as the supporting of extracurricular activities for making underprivileged students successful at school. This programme is completely new in the system of Hungarian education. Civil, minority organisations can organise special programs for Roma children to help them tackle their learning problems. This programme tries to build on Roma minority NGOs, which have experiences in this field, so good practices from outside the formal

⁴⁹ Art. 65.

⁵⁰ www.okm.gov.hu accessed on 8th February 200

⁵¹ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2006.

⁵² Hungary/Act No. LXI. of 2003, amending Act. No. LXXIX. of 1993.

education system started to be applied by the department of education. This extracurricular model is well-known in the EU 15 states, but in this part of the continent this is unprecedented. The Amrita Association, for example, is a self-help student circle, which operates a community and educational centre for Roma students in the South-West part of Hungary. Members of the organisation are mostly Roma and non-Roma underprivileged students of different secondary schools and universities, but there are some students from primary schools as well. Some students are from Romania studying in Hungary. The Association regularly organises community programmes, summer-camps and cultural programmes for children. These free-time programmes are the best occasions for students from different age groups to meet each other. Secondary school students can share their experiences with their younger fellows, which is the best way of orientation. Besides these programmes there are study circles every day in the centre, where students can ask help from teachers of different subjects. Becoming a secondary school student in a big city for children coming from underprivileged families, mostly from small villages, is not simply a school problem, but can also cause a serious cultural shock, mental and identity problems. In these matters an organised age group can help the most, besides experts such as psychologists and teachers. Amrita has some hundred members, several students could go to secondary schools with its help, and could continue their studies in higher education.⁵³

From 2005, positive discrimination ("affirmative action") has been introduced in higher education: a further 20 per cent of the total number of accepted students starting a major, double major or any program at an institution of higher education will be admitted to allow for underprivileged applicants to enter first-degree courses provided that the underprivileged applicant scores 80 per cent or a minimum of 72 points of the admission threshold. The eligible candidates for this facilitated admission are those underprivileged students who received state care for the duration of their secondary education, and who were given child-protection benefit for the same period, or whose parental guardians left school before or immediately after completing the eighth grade.⁵⁴

Combatting prejudice and discrimination in schools
Re §§ 117-119.

There were at least two important publications recently that hopefully will contribute to pull down the walls of prejudice and discrimination among children and their parents from the majority population. The "Virtual House of Roma Culture" is a DVD that is a new teaching material for 5-8th class students of primary schools introducing the history, culture and every-day life of Hungarian Roma. It presents a virtual modern museum of Roma/Gypsy culture. The DVD is suitable to present the richness of Roma/Gypsy culture and provides a new – more realistic and stereotype-free – perspective of Roma in Hungary. The "Szaffi textbook" and teachers' guide approaches education of Roma/Gypsy ethnography with a new perspective and new methods. It introduces history, culture and everyday life of various Roma/Gypsy communities, and presents the diversity of the population regarded as Roma. Methods support in-class activity, cooperation and autonomous work. The guide includes a number of audiovisual pieces that makes the package more attractive to students.⁵⁵

Haver Informal Jewish Educational Public Benefit Foundation wish to reach out to young people in the spirit of the name they chose. The Foundation believes that by organizing and conducting open discussions and lectures they can successfully fight prejudice and misconceptions about Jews and Judaism and promote tolerance. Through its projects visiting schools all around the country the Haver Foundations aims at introducing the life of today's Jewish community and its history to students (between age 10 and 18) in order to fight the most common misconceptions and prejudice about Jews and Judaism and to promote tolerance.

* * *

⁵³ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2004.

⁵⁴ Research Paper by the Hungarian Academy of Sciences, Institute for Legal Studies. 2006.

⁵⁵ Research Paper by the Hungarian Academy of Science, Institute for Legal Studies. 2006