

WRITTEN COMMENTS BY

THE HUNGARIAN HELSINKI COMMITTEE

AND

THE ROMA PRESS CENTER

**REGARDING THE JOINT 14TH, 15TH, 16TH AND 17TH PERIODIC
REPORT OF HUNGARY
UNDER ARTICLE 9 OF THE INTERNATIONAL CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION**

**TO THE UNITED NATIONS COMMITTEE ON THE
ELIMINATION OF RACIAL DISCRIMINATION
FOR CONSIDERATION AT ITS 61ST SESSION, AUGUST 2002**

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The **Hungarian Helsinki Committee** (HHC) is a non-governmental human rights organization founded in 1989, a member of the International Helsinki Federation for Human Rights. The Hungarian Helsinki Committee aims to monitor the respect for human rights protected by international human rights instruments, to inform the public about human rights violations and to provide victims of human rights abuse with free legal assistance. The Committee's primary activities are twofold: firstly, it monitors the human rights performance of law enforcement agencies through civilian oversight of detention by the police and prison authorities or border guards and, as an implementing partner of UNHCR, the activities of refugee authorities; secondly, it provides free legal advice and representation to mainly persons whose human rights have been violated, and asylum seekers and refugees. The Committee is involved in a number of projects aimed specifically at the elimination of racial discrimination.

The **Roma Press Center** (RPC) is a non-governmental, non-profit news agency established in 1995 to provide balanced coverage on Roma issues to the mainstream print media in Hungary. The first such Roma wire service in Europe, the goal of the RPC is to increase public awareness of issues and problems of the Romani community and to influence public discourse. Romani and non-Romani journalists work together in a network of correspondents throughout the country, providing daily information on Roma issues and communities. Since its inception, the staff of the Roma Press Center has written well over 1500 news items, 60 percent of which has been published in at least one national daily, as well as about 400 longer, feature articles. As a primary news source for most Hungarian media outlets, the Press Center has had significant impact on improving the representation of Roma in the mainstream print media.

INTRODUCTION

The Hungarian Helsinki Committee and the Roma Press Center respectfully submit these written comments for consideration by the Committee on the Elimination of Racial Discrimination at its 61st session on 16 August 2002.

Our written comments are filed to provide additional information and analysis to supplement the joint 14th, 15th, 16th and 17th Periodic Report of the Government of Hungary¹ (“Government Report”) on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination (“Convention”).

We appreciate the efforts made by the Hungarian governments during the past years to take action against different forms of racial discrimination in Hungary. It must be noted, however, that in spite of the relatively comprehensive Hungarian framework for minority rights protection and the patchwork of anti-discrimination legislation, the Roma – Hungary’s largest “visible” ethnic minority² – experience widespread discrimination. The existing legal and institutional framework cannot combat discrimination against the Roma appropriately. The key areas of such discrimination are official prejudices, segregation in education as well as discrimination in employment, housing and access to private services. These findings are supported by the annual reports by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (“Minorities Ombudsman”) and the everyday experience of various NGOs engaged in human rights activities. Furthermore, respect for the rights of non-Caucasian foreigners also merits severe criticism.

We believe that the Government Report fails to address a number of fields where the existing legal instruments are insufficient. Therefore more efficient action needs to be taken against racial discrimination.

DISCUSSION

ARTICLE 2 OF THE CONVENTION

As regards § 11 of the Government Report (insufficient anti-discrimination legislation): The constitutional provision prescribing the fundamental ban on discrimination (and referred to by the Government report) is amplified by a patchwork of anti-discrimination provisions scattered in statutes governing different fields of social life. Such provisions can be found for example in the Labor Code, the Public Education Act, the Minorities Act, the Health Care Act, etc. However, most of these provisions are not backed by a system of sanctions, therefore remain little more than declarations. Even in labor law where there is a relatively extensive system of anti-discrimination sanctions this framework does not function properly. This is partly due to the fact that there is no widespread awareness of available remedies within the groups most vulnerable to discrimination and partly due to the unwillingness of the competent authorities to act with the necessary firmness against discriminatory acts. (For details see the section dealing with Article 5 of the Convention.) Although it

¹ CERD/C/431/Add.1, 17 May 2002

² The largest ethnic minority group living in Hungary is that of the Roma: estimates based on 1992 and 1993 educational statistics and regarded as reliable by experts put the number of Roma in Hungary at about 460,000 or 4.2% of the population (See: Kertesi, Kézdi: *A cigány népesség Magyarországon /The Gypsy Population in Hungary/*, Socio-typo, Budapest, 1998.) The Roma constitute the most frequent target of discriminative practices and acts from the part of both the public and the private sector.

is true that in its Decision 45/2000 (XII. 8.) the Constitutional Court did not find the present situation unconstitutional, the body also claimed that a “scattered regulation of discrimination may lack provisions pertaining to certain forms of discrimination.”

Therefore, several experts (including the Minorities Ombudsman) and NGOs have been emphasizing the necessity of adopting a comprehensive general anti-discrimination act; developing an adequate system of sanctions which is suitable for the prevention of discriminatory acts and the effective punishment of the offenders. They have also been pressing for the setting up of an effective institutional system to guarantee the implementation of the anti-discrimination act and the above sanctions. For a long time the former Government seemed resistant to the idea of adopting a comprehensive anti-discrimination act, but finally, in March 2001 agreed to establish a so-called “Codification Committee” to look into the issue. During the more than twelve months of its operation the body achieved no result whatsoever before its activity came to a halt due to the change of government. The new government’s program contains the promise of the adoption of a comprehensive anti-discrimination law.³ We would highly welcome such a step.

As regards § 14 of the Government Report (reservations concerning the European Charter for Regional and Minority Languages): As it is outlined in the Government Report Hungarian reservations to the European Charter for Regional and Minority Languages restrict its application to only six languages, excluding the two spoken by Roma,⁴ explaining that “the vast majority speak Hungarian as their native language, while it is difficult to geographically define those areas where the two Gypsy languages are used.”⁵ Critics however believe that the Charter would *inter alia* provide an instrument to tackle educational discrimination affecting Roma children.⁶

As regards §§ 15 and 17 of the Government Report (potential discrimination in criminal proceedings): In order to see whether anti-Roma biases influence the outcome of criminal procedures, in early 2001 the Hungarian Helsinki Committee launched the project “Equality before the Law in the Criminal Justice System – for Roma and Non-Roma Suspects”. Based on the examination of 146 cases of petty theft, theft and robbery (involving altogether 69 Roma and 77 non-Roma suspects), the project’s pilot phase seemed to support the opinion that a certain degree of discrimination may be traced in the criminal procedure. Preliminary findings of the research showed that the average length of pre-trial detention was longer in the case of Roma suspects than in that of non-Romas (385 as opposed to 232 days) and that the average length of effective (i.e. not suspended) prison sentences imposed by courts also tended to be longer when Romas were involved (504 as opposed to 319 days).⁷

³ <http://www.kormany.hu/program/III/C/>

⁴ An estimated 80% of Hungarian Roma speak Hungarian; of the remainder, 13% speak various Romani languages and 7% speak Beash (similar to Romanian). See in: Measures Taken by the State to Promote the Social Integration of Roma Living in Hungary. Budapest, 2000, Ministry of Foreign Affairs, pp. 21-22.

⁵ Report of the Republic of Hungary on the Implementation of the Provisions of the European Charter for Regional or Minority Languages of the Council of Europe, February 1999. The reasoning is further outlined: “The Republic of Hungary only undertakes commitments defined in Part III of the Charter regarding the languages of those minorities who live in sufficient concentrations in well defined regions of the country (*Romanians, Slovenians*), or who although scattered in several regions or counties have, because of their numbers, a developed structure for native language education and cultural life (*Croatians, Germans, Serbians, Slovaks*).”

⁶ Gábor Bernáth, Elza Lakatos: ‘A romák nyelve nincs védve’ (‘The language of the Roma is not protected’), *Népszabadság* 13 November 2000.

⁷ Due to the small number of cases surveyed, these figures must be handled with caution. Based on the conclusions of the pilot phase, the Hungarian Helsinki Committee refined the research methods and has launched the second phase of the project, during which an additional 1,000 cases will be examined. This will provide a better basis upon which to formulate well-founded conclusions concerning discrimination in the criminal procedure.

Another finding of the project – explicitly contradicting the assertions of the Government Report – was that criminal files do indeed contain hints relating to the ethnic origin of the Roma suspects. This was so with regard to 62.1% of the Roma suspects involved in the research. This rate is very high and we must take it into consideration that preliminary information concerning the case may prove to be decisive in the procedure. If the proceeding authorities obtain information about the ethnic affiliation of the suspect, this may influence their decision even before they personally meet the suspect. The most often recurring hints were the following: “Roma”, “Gypsy”, “Roma men”, “Roma women”, “a Gypsy family”, “a Gypsy woman with long hair”, “a young Gypsy”, “of Gypsy origin”, “extremely dark skin”, “looks like a Roma”, “belonging to the Roma nationality”.

ARTICLE 4 OF THE CONVENTION

As regards § 35 of the Government Report (problems concerning hate-speech): There is an increasing tendency of Hungarian public figures to openly use hate speech, most often targeted against the Roma minority,⁸ “illegal” migrants or often with a coded but well understandable anti-Semitic content – a phenomenon paralleled and enhanced by the ineffective system of sanctions.

Due to the relatively restrictive interpretation of the offense 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”), the number of recorded criminal offenses relating to hate speech (§ 269 of the Criminal Code) is minuscule, with charges pressed in 7 cases out of the 29 brought in three years⁹ There were four convictions in 1998 and 13 in 1999.¹⁰ There were some highly publicized cases in which the authorities refused to launch a criminal procedure, although they themselves acknowledged that the expressions used in public are degrading and humiliating with respect to a certain group of society.

When the vice-president of the Hungarian Truth and Life Party (MIÉP) described the purchase of the country’s most popular football team by a businessman associated with liberal and Jewish circles as a “transaction directed against the nation” and the Association of Hungarian Jewish Communities filed a report with the Public Prosecutor’s Office, the office claimed that although the aggrieved statements are “very degrading and debarring towards the Jewry, they are not inciting to effective exclusion realized in the form of concrete actions.”¹¹

In connection with this case even the Chief Public Prosecutor formulated the opinion that the legal provisions and the decisions of the Constitutional Court allow too wide a space for extremist

⁸ Former Prime Minister Viktor Orbán for instance offered a flagrant example of how spending on Roma can be presented so as to contribute to stereotypes and increase general anti-Roma sentiments, in a January 2001 radio broadcast of his weekly Wednesday interview. Referring to a Roma housing scheme he stated that “the real issue was whether we could find a way to ensure that these flats will not end up in so sad a state as those previously constructed, [where] Roma families moved in and [...] within less than a year, the flats had completely fallen apart, the hardwood floors were ripped up, and the doors and windows destroyed. In other words, people felt that the state had provided support from their taxes to those in need in vain...”

⁹ Figures for 1998, 1999 and 2000 from the Public Prosecutor’s Office.

¹⁰ Statistical Department of the Ministry of Justice, 2000. The reason that these figures do not align with those of pressed charges is the long processing time of these cases.

¹¹ See: ‘Kirekesztő beszéd: marad a szabályozás’ (Hate speech: no changes in the regulations) *Népszabadság*, 29 January 2002. p. 1.

statements. Therefore in January 2002 he turned to the Minister of Justice and initiated discussions about how the legal loopholes could be eliminated. The Minorities Ombudsman also raised the necessity of restricting the offense of incitement to hatred. The Minister of Justice claimed that the preparatory works of the amendment had been completed, however, no modification would take place during that parliamentary term.¹²

It is a positive sign that the new government's program claims: "We will examine what effective means may resorted to in the fight against hate speech."¹³

ARTICLE 5 OF THE CONVENTION

As regards § 44 of the Government Report (incitement and discriminative acts in the media):

The ban on discrimination and incitement against hatred included in Act I of 1996 on the Media and referred to by the Government Report has not so far been implemented with adequate consistency. The National Radio and Television Board vested with the right to sanction broadcasters violating this provision failed for a long time to take firm action against "Pannon Rádió", a radio station notorious for its chauvinistic, anti-Semitic, homophobic and anti-Roma language and affiliated with the extreme rightist Hungarian Life and Truth Party (MIÉP). Similar reluctance was characteristic of the Board with regard to "Vasárnapi Újság" (Sunday Magazine), a regular program in the Hungarian public service radio, which promotes racist and chauvinistic ideas.¹⁴

As regards § 46 of the Government Report (mandatory defense for foreigners): Although it is true that defense is mandatory if the defendant does not speak Hungarian (and he does not have a retained lawyer), interpretation is provided only at procedural acts; this means that if the appointed defense counsel wishes to consult the client (which is of course a precondition of effective defense), he must bear the expenses of interpretation. As a result of the amendment of the provisions regulating the fees and expenses of appointed defense counsels, from 1 January 2003 appointed defense counsels may request the reimbursement of all their expenses arising in the course of the procedure,¹⁵ however, the court settles this issue simultaneously with its final decision. Due to the average length of criminal cases in Hungary this may mean that the appointed counsel will not be reimbursed for the advanced costs of interpretation for years, which of course severely hinders the practical implementation of the regulations referred to by the Government Report.

A related problem is that according to the practice no appointed counsel participates in the court hearing deciding about the foreigner's alien policing custody, although according to the law¹⁶ the procedure shall be conducted in accordance with the Code of Criminal Procedure (which prescribes mandatory defense if the defendant is detained and/or does not speak Hungarian) and the outcome of the hearing may be a 12-month long deprivation of liberty.

As regards §§ 51 and 54 of the Government Report (the right to the use of the mother tongue in the criminal procedure): The provisions guaranteeing the right to the use of one's mother tongue in the different phases of the criminal procedure (the enforcement of the sentence included)

¹² Ibid. p. 4.

¹³ <http://www.kormany.hu/program/III/C/>

¹⁴ See: Péter Molnár: 'Gyűlöletbeszéd Magyarországon' (Hate speech in Hungary) *Élet és Irodalom*, 2001/43, 26 October 2001.

¹⁵ See §§ 1, 3 and 4 of Decree 8/2002 of the Ministry of Justice on the Fees and Expenses of Appointed Defense Counsels and Protector Attorneys.

¹⁶ § 51 (3) of Act XXXIX of 2001 on the Entry and Stay of Foreigners.

are not fully implemented in practice. For instance, no English translation of the Code of Criminal Procedure is available. According to the experiences of the Hungarian Helsinki Committee's Prison Monitoring Program (conducted between April 2000 and January 2001) in most penitentiary institutions foreign inmates are not able to acquire the relevant legal statutes and house rules in their mother tongue.

As regards Section V of the Government Report:¹⁷ We noted with surprise that Section V of the Government Report fails as a whole to address substantial rights enshrined under Article 5 of the Convention, the implementation of which raises the gravest problems in Hungary. A summary is therefore provided of the most burning issues below – most of these are related to the Roma minority living in Hungary, however, some problems also concern members of other minority groups, including foreign nationals.

Official prejudice: The Roma are particularly likely to be the victims of police abuse. Research into prevailing police attitudes reveals a high level of stereotyping of this group: a 1997 survey of 1,530 police officers,¹⁸ initiated and financed by the Ministry of Interior found that 54% believed criminality to be a key element of Roma identity, all but 4% terming it genetic. Criminal offences connected to disrespect for private property was considered characteristic of the Roma by 88%. Revealing in terms of the high incidence of police brutality is the 74% of interviewees who believe the population expects the police to be hard on the Roma. Accordingly, accounts of police brutality towards Roma are frequently quoted in human rights reports. The 1999 report of the European Commission Against Racism and Intolerance (ECRI) on Hungary notes, “ECRI wishes to express its deep concern at the continuation of police discrimination and ill-treatment of members of the Roma/Gypsy community in particular”.¹⁹

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted two visits to Hungary – in November 1994 and in December 1999. In 1994 the CPT concluded that “[t]he delegation did hear numerous allegations of physical ill-treatment inflicted by the police on detained persons, both at the time of arrest and during subsequent interrogations. [...] The majority of the allegations of physical ill-treatment heard were remarkably consistent as regards the precise form of ill-treatment involved.” The delegation found that, in a number of cases, the allegations made were supported by medical evidence”.²⁰ In the 1999 CPT Report practically repeated the observations quoted above, adding, “foreign nationals, juveniles and Roma seemed to be particularly at risk of such ill-treatment.”²¹ Victims are often unable to obtain adequate remedies. According to NGO estimations, the proportion of complaints lodged and charges pressed is especially unfavorable in the case of Roma, as approximately only 5 percent of complaints lodged by Roma lead to convictions.²² The conclusion that a disproportionate number of

¹⁷ In this section we rely to a great extent to: Minority Protection in Hungary In: *Monitoring the EU Accession Process: Minority Protection*. Published by OSI/EU Accession Monitoring Program, Budapest, 2001 (Hereinafter: EUMAP Report). pp. 211–263. For the full text of the report, see <http://www.eumap.org/reports/content/10>

¹⁸ György Csepeli, Antal Örkény, Mária Székelyi, ‘Szertelen módszerek’, In: *Szöveggyűjtemény a kisebbségi ügyek rendőrségi kezelésének tanulmányozásához* (Chrestomatia for the examination of how the police handle cases involving minorities) ed. Dr. Klára Csányi, OSI-COLPI, Budapest, 1997, pp. 130–173.

¹⁹ § 17 of the European Commission Against Racism and Intolerance (ECRI), Second Report on Hungary, adopted on 18 June 1999 (hereinafter: ECRI Report). www.ecri.coe.int/en/08/01/15/Hungary.pdf

²⁰ § 17 of the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 14 November 1994. <http://www.cpt.coe.int/reports/inf1996-05en.htm>

²¹ § 14 of the Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 16 December 1999. <http://www.cpt.coe.int/reports/inf2001-02en.htm>

²² Legal Defence Bureau for National and Ethnic Minorities (NEKI), *White Booklet: cases of the NEKI*, 1999

cases brought by Roma are either 'terminated' after investigation or do not lead to convictions is supported by the findings of Human Rights Watch: "Of the fifteen cases opened [by Roma] against police officers in Hajdúhadház [a town notorious for the violence of the police force against the extensive Roma population] in recent years, all remain either unresolved or ended in acquittals."²³

Another related problem is the inefficiency of the authorities in investigating racially motivated crimes. Out of the five widely publicized attacks against Roma victims in 2001, four have ended with the police's failure to identify the perpetrators. Only in one case did the investigation produce results, however even in this one, the charges pressed against the four men who threw a Molotov cocktail into the house of a Roma family fail to take the racial motivation into consideration: the perpetrators are charged with the causing of a public danger.²⁴

Segregation in schools: "[T]he percentage of the Roma population in elementary schools corresponds to their percentage in the population (around 5%), but decreases at secondary school level to less than 1% and at university level to around 0.1%", according to ECRI.²⁵ This is definitely related to the fact that the segregation of Roma is deeply seeded in the Hungarian educational system – a statement supported by the investigations carried out by the Minorities Ombudsman in 1997 and 1998. The investigations revealed three common forms of segregation: 'auxiliary schools' established for children with mental disabilities,²⁶ often predominantly attended by Roma students; segregated 'Gypsy schools'; and segregated classes within 'mixed' schools, usually of a lower standard in terms of teaching materials and quality.

Recent research by the Institute for Educational Research provides convincing evidence that the degree of school segregation has increased significantly during the past decade.²⁷ The 2000 research followed developments in 192 elementary schools where Roma comprised more than 100 pupils, or at least 25% of the total, in the school year 1992/93. While numbers of pupils attending the surveyed schools have fallen overall, the absolute number of Roma attendees has increased. Countrywide, 44% of Roma pupils now study in schools where they constitute more than 100 students or 25% of the student body, while only 6.3% of non-Roma children attend such schools. An increasing number of Roma pupils now form a majority in many of the schools they attend: whereas 7.1% of Roma pupils studied in such schools in 1992, today the figure is 18.1%.

A clear factor in this increased distancing of majority and minority is non-Roma parents taking their children out of 'Gypsy schools'. Of the 192 schools examined in the survey, in the case of 28 there was clear indication that although the given school was the only one in the settlement, most non-Roma children living in the settlement were sent to schools located in different settlements.²⁸ The development of Gypsy schools is related to segregation in housing – the schools reflect local ethnic divisions. Nevertheless, distribution tends to be skewed even where a choice of schools exists in urban centers such as Budapest. In one Budapest school, the proportion of Roma pupils increased

²³ Human Rights Watch World Report 2000, p. 272. Half of the town's police force were under investigation for abusive conduct at the time

²⁴ See: Romákat ért támadások: újabb nyomozásmegszüntetés (Attacks against the Roma: another termination of investigations), 14 February 2002, www.romapage.hu

²⁵ § 33 of the ECRI Report,

²⁶ According to a recent study supported by OSI 65% of first year pupils relegated into auxiliary schools in fact meet the requirements of "normal" school education. Most of these pupils are of Roma origin. According to research results every fifth Roma pupil is sent to auxiliary schools, in spite of the fact that most of them are not mentally disabled. See: *A kiségitőbe kerülő roma gyerekek nagy része normál iskolákba való* (Most of the Roma children sent to auxiliary schools are fit for normal education). 4 December 2001, www.romapage.hu

²⁷ Gábor Havas: 'Kitörési pont: az iskola' (A point for breaking out: the school), *Beszélő*, November 2000., pp. 50–65.

²⁸ *Ibid.*, p.59.

from 40% to 100% between 1989 and 1999.²⁹ To prevent this ‘emigration’ of non-Roma children, some schools set up a class system making the segregation of Roma pupils possible. Special faculty classes offering extracurricular education (e.g. language teaching, advanced mathematics, etc) are usually reserved for non-Roma children, while the majority of pupils in ‘catch up classes’ for disadvantaged students are of Roma origin.

In a recent case the local government of Jászladány (Jász-Nagykun-Szolnok County) decided to allow a foundation to use almost half of the settlement’s school building for operating a private school, where pupils have to pay substantial tuition fees. In the opinion of the settlement’s Roma minority self-government the real purpose of the measure is the segregation of Roma and non-Roma children. This is supported by the fact that most non-Roma children have been enrolled for the next academic year in the “private school”. According to the Minorities Ombudsman the local government (a member of which resigned in protest against the obviously discriminative goal) violated the relevant provision when it failed to take the minority self-government’s opinion into account.³⁰

In another case, based on the opinion of the Minorities Ombudsman, the local government of Verpelét obliged the settlement’s elementary school to put an end to the segregation of the first year pupils studying in the institution. With regard to the separation of students in the fifth form (allegedly based on the results of an achievement test) the body was reluctant to comply with the Ombudsman’s recommendations and made the changing of the discriminatory situation dependent on an expert’s opinion.³¹

There is evidence that segregation is in part institutionalized by the misuse of funding for special measures for Roma education. State funding is available to local governments on an ‘ethnic quota’ basis to establish special ‘catch-up’ classes for the Roma: schools have the possibility to establish so-called “Roma minority educational programs” aiming at the strengthening of the children’s Roma identity. The program – which must contain two elements: information on Roma people and culture on the one hand and a catch up element on the other – is approved by the school’s maintainer (i.e. the local government in most cases), and the consent of the local minority self-government shall also be acquired. The program’s regulation allows for the setting up of separate classes for children participating in the program. No pupil may participate in such programs without the approval of the parents. The school receives a support of HUF 27,500 (Euro 105) per year after each child. This amount is transferred to the local government maintaining the school and has to be – at least in theory – spent on providing the personal and material conditions of this special form of education.³²

In his 2000 report the Ombudsman summarized his main experiences concerning Roma minority educational programs: a) in most cases only the catch-up element is realized and the obligation to provide the pupils with knowledge on Roma culture is completely neglected; b) in some cases parallel to the organization of Roma minority education, other subject (such as foreign languages and computer science) disappear from the agenda of the Roma pupils; c) the proportion of not properly qualified teachers is higher in this form of education than in ordinary primary school education; d) in several cases it is not the parents who initiate the organization of such education: they are sometimes not even asked for their approval but in most cases they are not informed appropriately about what

²⁹ Ibid., p.58.

³⁰ See: *Indul a “fehér iskola” Jászladányon* (The “white school” of Jászladány is setting off), 3 May 2002, www.romapage.hu

³¹ See: *Kaltenbach: jogellenes a verpeléti roma diákok elkülönítése* (Kaltenbach: the segregation of the Roma pupils in Verpelét is unlawful), 11 April 2002, www.romapage.hu.

³² For further details see: *Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről, 2000. január 1. – december 31* (Report on the Activities of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January – 31 December 2000), (hereinafter *Ombudsman Report 2000*) Office of the Parliamentary Commissioners, Budapest, 2001, pp. 47-52

this form of education comprises.³³ The Ombudsman's conclusion is the following: "We would not like to fall into the error of exaggerating generalization but we must say that in several cases the local governments – in cooperation with the schools – only organize Roma minority education to obtain the supplementary normative support and exploit this form of education to segregate the Roma pupils in an – apparently – lawful manner."³⁴

Seeing the dysfunctional operation of the system, the Ministry of Education ordered a comprehensive investigation into 'catch up' programs: the maintainers were supposed to examine whether the programs function efficiently and in accordance with the original program and then send their reports to the Ministry. The correctness of the maintainers' reports was to be then assessed by the National Educational Center for Assessment and Examinations (OKÉV – a background institution of the Ministry) and by the competent Public Administrative Offices.³⁵ According to our information, this monitoring mechanism failed to produce any result and gradually died away.

Discrimination in employment: By 1994 employment among Roma men stood at 26.2% compared to 63.4% among non-Roma, whereas the respective figures for women were 16.9% and 63.1%.³⁶ This compares with 1971 when, as a result of the Communist commitment to full employment, male Roma employment figures were barely distinguishable from those of non-Roma, at 85.2% and 87.7% respectively.³⁷ From the mid-eighties, however, Roma began to drop out of the labor market, a process, which accelerated after the political transition, due partly to external economic factors, such as privatization and an agricultural crisis, but also to flagrant discriminatory practices, as reported by Roma themselves.

This is so in spite of the relatively extensive system of anti-discrimination sanctions in labor law. This demonstrates that this system is not free from deficiencies and that the competent authorities are often reluctant to implement the applicable sanctions. A good example is offered by the procedure of labor inspectorate authorities (cf. § 39 of the Government Report), which are vested with the task of making sure that employers abide by the employment-related laws. If not, inspectorates are entitled to impose a fine on the employer.³⁸ As a rule, the labor authority launches its investigations *ex officio*. However, under the relevant provisions,³⁹ cases involving discrimination are among the few instances in which the inspectorates may only act on the basis of a motion submitted by the victim of the violation. This practically paralyses the use of the above sanction, since most concerned individuals are not aware of the possible legal remedies (most of them come from a social group in which, owing to the relatively low level of education, information about the available legal possibilities is not widely known) and – owing to the difficulty of getting employed – are too afraid to stand up for their rights vis-à-vis the employers. The Minorities Ombudsman came to the same conclusion in his 1998 investigation into discrimination in the field of employment,⁴⁰ and recommended that the Ministry

³³ Ibid., p. 49.

³⁴ Ibid, p. 50

³⁵ Interview with Mária Herceg, OKÉV (22 May 2001)

³⁶ Havas, István Kemény, Gábor Kertesi: *Beszámoló a Magyar Tudományos Akadémia Szociológiai Intézete által 1993/94-ben végzett reprezentatív cigánykutatásról*. (Report on the representative Roma research conducted by the Institute of Sociology of the Hungarian Academy of Sciences in 1993-94), MTA Szociológiai Intézet, 1994

³⁷ Gábor Havas, István Kemény: *Beszámoló a Magyar Tudományos Akadémia Szociológiai Intézete által 1971-ben végzett reprezentatív cigánykutatásról*. (Report on the representative Roma research conducted by the Institute of Sociology of the Hungarian Academy of Sciences in 1971), MTA Szociológiai Intézet, 1972

³⁸ Under § 3 of Act LXXV of 1996 on the Supervision of Labor Affairs (hereinafter: Labor Supervision Act)

³⁹ § 3 (2) of the Labor Supervision Act

⁴⁰ *Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről, 1998. január 1. – december 31.* (Report on the Activities of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January – 31 December 1998) (hereinafter: *Ombudsman Report 1998*), Office of the Parliamentary Commissioners, 1999, Budapest, pp. 210-230

of Social and Family Affairs prepare a legislative amendment enabling the labor authorities to proceed against employers applying discriminative practices upon notification from entities other than the ones actually concerned by the discrimination. Although in theory the Ministry accepted the recommendation, no such proposal for amendment has been put forth yet, which remains a severe obstacle to effective anti-discrimination protection.⁴¹

Discrimination among employees (including potential employees) also constitutes a petty offense (as it is also outlined in the Government Report) and further sanctions may also be applied against discriminating employers.⁴² However, this apparently extensive system of sanctions does not function properly in practice. Partly due to the reasons enumerated above (lack of awareness among the victims, fear to act against the employer, lack of willingness on the part of the authorities) the number of discrimination cases brought before the competent authorities (including court cases, petty offense procedures and labor supervision procedures) remains very small.⁴³

Housing and the problems of evictions: A wave of evictions was triggered by anti-squatting amendments introduced in May 2000, which give notaries the power to order eviction from council housing within eight days notwithstanding the outcome of legal processes that may be underway.⁴⁴ The law has come under ferocious criticism from human rights organizations, which argue that it is unconstitutional and jeopardizes fundamental rights.⁴⁵ It is already apparent that Roma are bearing the brunt of application of this law, which thus appears to function in an indirectly discriminatory manner. A judge in Pest County has noted that the proportion of Roma defendants in eviction suits has grown significantly in 2000.⁴⁶ This coincides with estimates of the Roma Civil Rights Foundation (RPA) of a steady increase in evictions, from 2-3 per month in 1999 to 3-4 per week in 2000.⁴⁷ NGOs charge that local governments are anxious to repossess and sell council properties, following the recent lifting of a sales-ban on council flats. They warn that families with children will have to be cared for under the Child Protection Act, which will create a further financial burden on social administration.⁴⁸

On the recommendation of the Parliamentary Commissioner of Human Rights the local councils suspended the evictions for the winter of 2001-2002, however, the spring of 2002 saw a new wave of

⁴¹ *Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről, 1999. január 1. – december 31.* (Report on the Activities of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January – 31 December 1999) (hereinafter: *Ombudsman Report 1999*), Office of the Parliamentary Commissioners, 2000, Budapest, p. 150.

⁴² Under § 93 of Government Decree 218/1999 on Petty Offenses, the employer who a) refuses to employ a person owing to his/her gender, age, nationality, race, origin, religion, political opinion, affiliation with organizations representing employees or activities performed in connection therewith, or any other circumstance not related to the employment relationship, b) exercises negative discrimination among the employees owing to circumstances listed under point a), shall be punished with a fine up to HUF 100,000 (USD 350).

⁴³ *Ombudsman Report 1998*, p. 225. See also: ECRI Report, p. 14: “[...] the Parliamentary Commissioner for National and Ethnic Minorities notes that, to the best of his knowledge, over the period 1997 and 1998 no cases were brought concerning ethnic or racial discrimination in employment. In fact, it does not appear that any cases have as yet been brought on such grounds.” Although this information is not accurate, the number is indeed very small.

⁴⁴ *Act No LXI of 2000.*

⁴⁵ See *Constitutional Court submission from constitutional lawyer Gábor Halmai.* See also László Bihary: ‘Szociális biztonsági őrök (Social security guards)’, *Fundamentum*.2000/3, p. 59. Rights are ensured by, for example, *Act XXXI of 1997 on the Protection of Children* (Child Protection Act) and *Act III of 1993 on Social Administration* (Social Protection Act).

⁴⁶ Interview with judge J.K., spring of 2001

⁴⁷ Interview with János Bársony, member of the Roma Civil Rights Foundation, spring 2001

⁴⁸ Interview with János Bársony.

evictions. In May 2002 the eviction of 18 Roma families from a house located in the 7th district of Budapest (headed – ironically – by a Socialist member of the Parliament’s Human Rights Committee) drew public attention because public figures (including an MP from SZDSZ, the smaller party of the coalition) protested against the measure and tried to prevent the police from implementing the measure. According to the Mayor of Budapest, the local council acted in an unlawful manner, because it failed to fulfill its obligation concerning the placement of those families where there are children. The local council has rented out the evicted building to a temporary open-air café.⁴⁹

Discrimination in access to other goods and services: Reports about denial of service have been present since before the political transition of 1989, but only in recent years has the number of cases brought before courts and filed with the Consumers Inspection increased. Although in 1999 there was an apparent breakthrough in litigation and official reaction to the denial of service in bars and discotheques, and NGOs achieved success in some highly publicized cases,⁵⁰ denial of access to goods and services remains present in Hungary and has been recorded in several settlements of Borsod-Abaúj-Zemplén and Békés County including Szikszó, Bogács and Békéscsaba, the administrative center of the county.⁵¹

⁴⁹ See: Kilakoltatás a Király utcában: Demzky szerint jogsértően járt el Erzsébetváros (Eviction in Király street: in Demzky’s opinion the 7th district acted in an unlawful manner), 28 May 2002, www.romapage.hu

⁵⁰ E.g. the Góman case: on 19 September 1995 Gyula Góman took his wife to the hairdresser’s and waited for her in a nearby pub. He ordered a coffee and a coke and asked for change of 100 HUF (€ 0.4) for the game machines. The waitress refused to serve him. He appealed to the owner, who replied: “no Gypsy is allowed to eat, drink or enjoy himself in my pub.” Mr. Góman initiated both criminal and civil proceedings against the owner. The court of second instance approved the decision of the court of first instance authorising the plaintiff to publish, at the defendant’s expense, a declaration containing the defendant’s apology in the biggest Hungarian daily newspaper and obliging the defendant to pay Gyula Góman damages of 150,000 HUF (€ 584). In the criminal case in its judgment of January 1997 the court decided that the owner had committed the misdemeanour of slander and put him on probation for one year. The court of second instance upheld the decision.

⁵¹ White Booklet 1999.

PROPOSED QUESTIONS TO THE GOVERNMENT OF HUNGARY

In the light of the concerns formulated in the present submission, we respectfully propose that the Committee request the Government of Hungary to provide specific information on the following issues.

1. What measures are being taken by the Government of Hungary to speed up the process of passing a comprehensive anti-discrimination act and setting up an efficient institutional framework guaranteeing the implementation thereof?
2. What amendments does the Government of Hungary plan to introduce in criminal and civil law to ensure appropriate protection from hate speech? How does the Government of Hungary plan to facilitate the more effective application of the existing instruments?
3. How does the Government of Hungary plan to solve the problem of interpretation beyond procedural acts in the case of mandatory defense of foreigners? Does the Government of Hungary plan to provide foreigners detained under the Act on Aliens with appointed counsels, and how?
4. In light of the 1999 CPT conclusions, what action is being taken by Government of Hungary to increase the effectiveness of intra- and extra-organizational safeguards against ill-treatment by law-enforcement agencies, with special regard to abuses against members of minority groups?
5. What action Government of Hungary is taking against the increasing segregation within the Hungarian school system and the widespread misuse of funds appropriated for special Roma education?
6. What action is being taken by the Government of Hungary in the private sector to decrease discrimination against Roma in the labor market and to promote equal access to employment?
7. What immediate action is being taken by the Government of Hungary in response to the wave of evictions, which in numerous cases violate legislation on protecting children and family unity?