



Hungarian Helsinki Committee

HUNGARIAN HELSINKI COMMITTEE

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Hungarian Helsinki Committee **UPR – Comments on the National Report**

The national report submitted by Hungary to the UN Human Rights Council (hereafter referred to as "National Report") includes a range of factually incorrect or unsubstantiated statements. Furthermore, in certain cases additional information is required for the accurate assessment of the situation as a result of the new Constitution of Hungary adopted after the submission of the National Report. The most problematic statements of the National Report are listed below.

Normative and institutional framework

A. Constitution

- **§4** of the National Report states that the number of MPs taking part in the ad-hoc committee with a mandate to prepare the concept paper of the new Constitution had reflected the composition of the Parliament. However, it should be stressed that **the governing parties had the clear legal basis to appoint MPs to the ad-hoc committee on an equal basis** (one half could have been nominated by the ruling parties, and one by the opposition), but they chose not to do so. Furthermore, the first step of constitution-making process was to eliminate that Article of the old Constitution which required a 4/5 majority of MPs to adopt the procedural rules for preparing a new Constitution. Under these circumstances **opposition parties decided not to take part in the work of the ad-hoc committee and two out of three opposition parties decided not to take part in the parliamentary debate either**, because the elimination of the 4/5 rule and the decision not to have an ad-hoc committee based on parity resulted in a situation in which the opposition was deprived of the possibility to have a substantive impact on the drafting process.
- **§5** states that the concept paper and its elements "were subject of a thorough debate". However, it should be added that in March 2011 the concept paper prepared by the ad-hoc parliamentary committee was officially put aside and **the draft Constitution was not prepared on the basis of the concept paper**. The draft **text was published only one month before the new Constitution was adopted**. Consequently, the debate over the concept paper may be deemed senseless. It should be added furthermore that the "full month session" parliamentary debate referred to in §5 meant **a net term of 9 session days**.

B. Parliamentary Commissioner for Civil Rights

- Parliamentary commissioners responsible for the protection of the rights of national and ethnic minorities, the rights of future generations and data protection referred to in **§12** will be abolished by **the new Constitution, which envisages only one Ombudsperson**, thus decreasing the level of protection in relation to minority rights, data protection and environmental issues.

C. Equal Treatment Authority

Even though **§13** states that the "*de iure* and *de facto* independence" of the Equal Treatment Authority is ensured, the reality is that **the appointment of the Authority's President** – whose status is of crucial importance with regard to the Authority's effective independence – **may be withdrawn by the Prime Minister at any time without any justification**. This danger is clearly illustrated by the fact that not long after the new Government was formed in 2010, the first President of the Authority (appointed in 2005) was dismissed without justification, although no professional criticism was formulated with regard to her activities. This practice was criticized by UN Human Rights Committee in its concluding observations on Hungary's 5th country report under the ICCPR: "The Committee is [...] concerned at the lack of security of tenure of the Office of the President of the Equal Treatment Authority following Government Decree No. 362/2004 (XII.26), which gives power to the Prime



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Minister to relieve the President of his duties without justification. (art. 2).” The HRC recommended that “the State party should take all necessary steps to ensure the security of tenure of the Office of the President of the Equal Treatment Authority in order to guarantee its independence.”¹

Achievements and challenges in the protection and promotion of human rights

A. Equality and non-discrimination

- The statement that “hidden segregation is gradually reducing from 2008” (see **§16**) cannot be supported by statistical data.
- The provisions setting out the right of persons with disabilities to integrated employment, or, in the lack thereof, to sheltered employment (see **§20**) are **not enforceable in practice**.
- As far as the statements of the National Report on hate crime are concerned (see **§32**), it should be stressed that the use of the relevant criminal provisions leaves much to be desired in practice. **Authorities seem to be reluctant to qualify potential hate crimes as such** and go for the qualification that is easier to substantiate (e.g. qualifying the case as a simple “bodily harm” instead of hate crime): from 2005 till 2009, in altogether 24 cases were charges pressed on the basis of Article 74/B of the Criminal Code. At the same time, in recent cases **authorities qualified attacks committed by members of the Roma community** – threatened by the chain of attacks and the marches of the Hungarian Guard – **as racially motivated crimes in a highly controversial manner**. Furthermore, there is still **no system** set up **for monitoring hate crimes, even though** several international organizations have pointed out the lack of it.

B. Right to liberty and security of the person; administration of justice and the rule of law

- **§61** sets out that the detention of juveniles “should be in conformity with their age”, but fails to elaborate on the severe criticism voiced by the Ombudsman (i.e. parliamentary commissioner) concerning the **detention conditions of juveniles**, including **unacceptable physical conditions and the lack of cultural and sports activities**. The National Report also fails to address amendments leading to a situation in which **juvenile offenders committing petty theft** (in a value less than EUR 70) **almost inevitably end up in confinement for up to 45 days**, which constitutes a clear violation of the Convention on the Rights of the Child according to which detention shall be a last resort.
- In **§62** it is stated that complaints against solitary confinement, reprimand and reduction in the amount available for personal needs are assessed by the court as a last resort, even though this is only true in case of the solitary confinement of detainees, whereas no judicial review is available with respect to other disciplinary sanctions.
- In contradiction with **§63** of the National Report, as a result of legislative amendments adopted in 2010 **the minimal living space for detainees** – indicated also by §63 – **should be ensured only “if it is possible”**. Thus, the Government responds to the problem of overcrowding by amending the respective law instead of decreasing the number of detainees. The National Report also states in **§64** that the system of criminal sanctions shall be revised in order to significantly increase the use of alternative and other non-custodial sanctions. Unfortunately, this statement is not in line with the current **restrictive tendencies in the Government’s criminal policy**.
- **§66** of the National Report states incorrectly that reports on detention conditions have not criticized the professional work of the personnel in detention facilities: e.g. in its 2010 report on Hungary the CPT has

¹ See: <http://www2.ohchr.org/english/bodies/hrc/hrcs100.htm>



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referred to allegations of physical ill-treatment by prison officers. (See also the Ombudsperson's criticism above.)

- While **§69** indicates that a law enforcement protocol for handling racist and/or racism-motivated crimes is in the process of being devised, NGOs active in the field have not been involved in or even informed about the process in spite of their explicit written request sent to the Ministry of Interior and other competent organs to be included in it in some form.