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Cases of Relevance for the United Nations Committee Against Torture's Review of Hungary's Fourth Periodic Report

The European Roma Rights Centre ("ERRC") welcomes the opportunity to provide material to the United Nations Committee Against Torture ("CAT") during its 2006 review of Hungary's fourth periodic report to the Committee, and more generally with Hungary's compliance with the Convention.

Hungary's fourth periodic report, dated 16 June 2004, takes note of and summarises the events of the 2003 ad hoc visit by the Council of Europe's Committee for the Prevention of Torture ("CPT"), and elaborates on the Government's conclusions about that visit. The fourth periodic report includes the following passage, concerning visit by the CPT to three police stations in Hungary:

"7. The delegation did not receive any allegations of ill-treatment by custodial staff working in the above-mentioned facilities. Overall, staff-detainee relations appeared to be free of tension and, in each facility visited, positive remarks about some staff members were made by detainees."

The ERRC would note here that, first of all, the CPT returned to Hungary in 2005, a fact of which the fourth periodic report does not take note, probably due to the date of preparation of the fourth periodic report. Of more substantive concern, the ERRC provided detailed information to the CPT concerning cases of ill-treatment of Roma in police custody, and a number of Hungarian non-governmental organisations likewise provided the CPT with information concerning ill-treatment by police.

The ERRC has seen and reviewed the Alternative Report provided by ERRC partner the Hungarian Helsinki Committee to the CAT. The submission provided here aims to complement and supplement the materials provided by the Helsinki Committee.

The ERRC notes the Article 1 Convention definition of torture, including within its ambit where such treatment is inflicted "for any reason based on discrimination of any kind", as well as the related Article 16 definition setting out a definition of proscribed acts which may not rise to the level of "torture" as defined in Article 1.

With reference generally to the problem of racial discrimination influencing or otherwise infecting Hungarian police services, throughout 2005 and early 2006, the ERRC has been involved in an advisory capacity in a project by the Open Society Justice Initiative and the TARKI social research company, aiming to survey the extent of ethnic profiling in Hungary. Preliminary research results have revealed issues including:

- 47% of police officers surveyed believe that there are police officers who target specific groups, especially Roma, for measures such as checking identity documents;
- 79% of surveyed police officers believe that Roma commit more crimes than non-Roma;
- Of one thousand persons surveyed, 29% percent of Roma reported being stopped for checks of their identity documents, as against 23% of non-Roma.

The survey has broadly confirmed existing indications (i) that police practice in Hungary is intensely racialised; (ii) that criminal investigation, already over-dependent on confession as primary evidence, is

extensively beholden to race-based identity check practices;¹ (iii) that there are few effective mechanisms to challenge racial discriminatory police practices, and indeed little or no awareness that criminal investigation practices driven first-and-foremost by racial considerations contravene domestic and/or international law.

The cases presented below do not constitute a comprehensive overview of all issues pertaining to the Committee's mandate under the Convention, or even of all issues related to Roma under the Convention. The sole purpose of this document is to bring to the attention of the Committee several cases in which the ERRC is involved or is aware of, in which issues of impunity for alleged violations of the Convention appears to be involved. As this is not a systematic study, a direct link between the racism issues dominating Hungarian police practices, noted above, and the cases presented below, is not drawn, except where explicitly noted. However, in nearly all of the cases listed, racial discrimination factors have been impossible to exclude entirely, due to the extreme extent of racial prejudice weighing on all or nearly all aspects of policing in Hungary.

Cases monitored by ERRC indicate that when Roma are victims of racially-motivated violence, protection is frequently lacking or ineffective, and remedies are inadequate or not implemented. There are indications that Hungarian authorities do not investigate thoroughly the possibility of racial animus when crimes against Roma have taken place and that they systematically fail to provide effective protection to Roma. On the basis of our monitoring of a number of individual cases during the period, we believe there continue to be serious concerns that Roma suffer discrimination at a number of points in the judicial system. Also, disproportionate measures by law-enforcement officials against Roma often remain unsanctioned or under-sanctioned. Owing to these factors the Romani population has no adequate confidence in the criminal justice system.

It is of further concern that, during the period, Romani juveniles in Hungary have reportedly been interrogated without legal representative, in clear violation of Hungarian law. This is a serious problem, among other things in light of the fact that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. Arbitrary police custody constitutes a more serious form of harm to juveniles than to adults, as juveniles are inherently more vulnerable than adults. We would also like to emphasize that as provided in a number of international instruments, juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time.

A summary of some cases in which the ERRC is directly involved, or which the ERRC is monitoring, where significant action has taken place since the previous CAT visit to Hungary, follows:

“Gyöngyös Hospital Case”

Mr S.K.'s mother, a Romani woman, suddenly died on 1 November 2002 in the Bugát Pál Hospital in the town of Gyöngyös. The family subsequently went to the hospital and was mourning loudly the deceased woman. The noise of the approximately 40 family members was apparently not tolerable to the staff of the institute, so the Roma were requested to leave the building. After about an hour, six police officers arrived at the premise after they had received notification from the security guards of the hospital. A fight then reportedly broke out between the family members and the police resulting in physical injuries of some of the family members and of the police officers. The Romani family's complaint against the brutal police intervention was unsuccessful and the investigation was terminated without any punishment for the officers involved, whereas five of the Roma family members have been charged with assaulting official persons and causing bodily harm. In the judgment of the Gyöngyös City Court on 15 February 2006, the five men were sentenced for suspended imprisonment based on group violence against an official person. The lawyer engaged by the ERRC has appealed the decision.

Death of Romani Man in Prison

Mr Attila F., a 29-year-old, apparently healthy Romani man, died in prison in Zalaegerszeg under suspicious circumstances on 27 November 2003. He was taken to prison at around 15:00 and was put into a private cell immediately after his health was examined. Fire from the cell was reported at around

¹ Police checks for identity documents are justified in Hungary by the need to identify and arrest perpetrators. As distinct from stop-and-search, checking identity documents aims not to catch an individual in the act of a crime (although it may), but rather to detain persons suspected of crimes already registered with police.

17:00. According to the opinion of the forensic expert, Mr Attila F. died because of smoke inhalation after a cigarette lighter in his pocket caught fire. The fire spread quickly on the elastic material used as coverage of the private cell (this is used in such cells so that the prisoners do not hurt themselves if they become unruly). The Zala County Police Department did not find causal relationship between the negligence of the prison guards and the fire which caused Attila F.'s death. At the request of the family of the diseased man, the Military Prosecutor of Kaposvár initiated a criminal investigation against the three guards for breaching obligations of their duty. It has to date not been satisfactorily clarified as to why Attila F. was placed in solitary confinement, why he had a cigarette lighter in his pocket even after the guards has searched him, and why the guards on duty failed to provide adequate help once the fire started. The ERRC is currently involved in legal action in the case. The case is currently under review at a first instance court, after a Military Prosecutor established a lack of sufficient evidence.

Romani Man Shot by Police

On 19 February 2003, Debrecen police shot Mr G.B., a 19-year-old Romani youth, in the abdomen in Hajdúhadház in eastern Hungary. According to the Hajdú-Bihar County Police Department, two officers attempted to arrest Mr G.B., but upon entering his home, Mr G.B. allegedly attacked the officers with an axe. According to the police report, one of the officers then shot Mr G.B. in self-defence. Mr G.B. then fled the scene, but was captured soon thereafter and detained. Mr G.B. stood trial and was found guilty for attempted homicide of a state official and the Hajdú-Bihar County Police found that the shooting was legally justified. However, the Budapest-based Roma Press Center (RSK) reported that, according to Mr Attila Lakatos, Mr G.B.'s neighbour, Mr S.B. was handcuffed when he ran out of his home, but had not yet been shot. According to Mr Lakatos, the officers ran out of the house and viciously beat Mr G.B. in the street, and then shot him in the abdomen. The officer also reportedly aimed his gun at Roma from the neighbourhood who had arrived at the scene. Mr G.B.'s attorney stated that he was convinced that the facts of the case had not been properly established and that Mr G.B. was a victim of police abuse.

Romani Boy in Arbitrary Custody

According to a Roma Press Center (RSK) press release of 9 April 2004, Ózd police detained L.E., a 15-year-old Romani boy from Putnok, on 31 March 2004 and questioned him without the presence of either his parents or legal representation, then held him in custody on suspicion of theft. L.E. was detained on the basis of witness statements. A 13-year-old boy had reportedly accused L.E. of stealing 400 Hungarian forints (approximately 2 Euro), but on 1 April 2004, he retracted his accusation, stating that he had in fact spent the money himself. However, on 21 April 2004, the RSK informed the ERRC that L.E. was being held in pre-trial detention until 27 April 2004, because, according to Borsod-Abaúj-Zemplén County Police spokesperson Mr György Martossy, the "offended child's confession had not yet been filed."

Police Brutality Case

On 21 July 2004, the European Court of Human Rights in Strasbourg found that the Hungarian Government had violated the European Convention on Human Rights in the case of Sandor Balogh v. Hungary. The case concerns abuse in police custody and was filed on 8 April 1999 as part of a joint strategic litigation project undertaken by the Legal Defence Bureau for National and Ethnic Minorities (NEKI) and the European Roma Rights Centre (ERRC). In its ruling, the Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) and no violations of Article 13 (right to an effective remedy), Article 6 (access to court), and Article 14 (prohibition of discrimination). Under Article 41 of the Convention, concerning just satisfaction, the Court awarded Mr. Balogh 4,000 euros for pecuniary damages, 10,000 euros for non-pecuniary damages and 3,000 euros for costs and expenses.

Sandor Balogh is a Hungarian citizen of Romani origin born in 1958. On 9 August 1995 he was taken to Oroshaza police station, where he was interrogated for several hours concerning a number of fuel vouchers which he and others had allegedly stolen. Mr. Balogh claimed that during the questioning one of the police officers repeatedly slapped him across the face and his left ear, while others punched him on the shoulder. Following this ordeal and on his way out of the station, Mr. Balogh was met on the ground floor of the police station by four of his friends, all of whom testified that he had a red and swollen face and that he must have been physically abused.

Having returned to his home in Miskolc, on 11 August 1995, Mr. Balog consulted a local doctor, who

advised him to report to a hospital. On 14 August 1995 an operation was carried out to reconstruct Mr. Balogh's left ear drum which had been seriously damaged as a result of the police abuse.

Criminal proceedings were initiated against the police officers involved and, on 16 November 1995, a medical expert concluded that it could not be determined whether the injury in question had been caused before, during or after Mr. Balogh's interrogation by the police. On 30 November 1995, the criminal proceedings were discontinued. On 24 January 1996 the investigation resumed. Ultimately, however, the investigating authorities found that it could not be excluded beyond all doubt when the injuries in question had actually been sustained.

As of 1 August 1996, the Mr. Balogh's working capacity was confirmed to have diminished by 50% due to bronchial asthma and impaired hearing. He was therefore unable to have his lorry driver's licence renewed or to obtain employment as a driver. Mr. Balogh applied for compensation with the Ministry of Interior but was unsuccessful.

A subsequent medical opinion found that a traumatic perforation of the ear drum is usually caused by a slap on the ear and that Mr. Balogh's account of how his injury occurred was entirely plausible. In response to this new evidence, Mr. Balogh's counsel requested that criminal proceedings be re-opened. However, the Public Prosecutor's Office declined to do so and explained that it was impossible to substantiate Mr. Balogh's allegations.

In its judgement of 21 July 2004, the Court noted that official medical reports found that Mr. Balogh had suffered a traumatic perforation of the left eardrum and that the most common cause of such injuries is a slap on the face. Mr. Balogh's four friends confirmed that he left the police station with a red and swollen face, and concluded that he must have been beaten. The Court noted that Mr. Balogh sought medical help several days following the incident, on 11 August 1995, but was reluctant to attribute any decisive significance to this delay. It also took into account that the Hungarian authorities had carried out a reasonably thorough investigation into Mr. Balogh's allegations and that the prosecutor's task was made difficult in view of the absence of independent eyewitnesses. However, the Court then pointed out that the Hungarian Government was unable to provide any plausible explanation for the cause of the applicant's injuries, and that it was believable that they were inflicted in police custody. Consequently, the Court found a violation of Article 3 of the Convention, but on the same facts held that there was no violation of Articles 13, 6 and 14.

Romani Youth Dies in Unclear Circumstances During Police Pursuit

Nineteen-year-old Mr Jakab Richárd, a Romani male, died while being chased by three police officers in the central Hungarian town of Kecskemét early on the evening of July 25, 2004. On the day of the incident, the officers reportedly spotted Mr Richárd, for whom an outstanding arrest warrant existed, outside a grocery store in Kecskemét and a chase ensued. One of the officers caught Mr Richárd and pinned him to the ground, face-down, pressing down on his back with his knee. Mr Richárd died on the ground. Upon hearing of Mr Richárd's death, several family members gathered at the scene, surrounding his body and refusing to allow police to remove him.

Mr Jakab's body was eventually taken away for examination. According to a preliminary expert report Mr Jakab sustained injuries to his windpipe, had sand in his throat and two decilitres of serous liquid had amassed on his brain. Ms Anita Hajnal, witness to the coroner's examination for the authorities, was quoted in a Roma Press Center (RSK) report of 10 August as having stated that, "[...] his face, neck and head were read while his mouth was totally blackened. I saw bruises above his left eye and surface injuries on his right leg. There was also one bruise on the middle of his back which was obviously caused by the policeman who kneeled on his back". Ms Hajnal had also reportedly witnessed the struggle between Mr Richárd and the officer. Mr István Farkas, another witness to the death, testified to the RSK that the morning after Mr Richárd's death the site had been ploughed under. Several of Mr Jakab's family members had received racist hate letters from an anonymous author, postmarked from Miskolc. The letters reportedly stated, "Roma should not be breeding, but should be deported from Hungary". The investigation was terminated against the police officer as authorities reportedly did not regard the issue as engaging criminal liability.

Romani Juveniles in Police Custody

On 31 January 2005 a 20-year-old man, Mr Ferenc V., showed paper sheets on which the words "Die stinking Gypsies" was written and a swastika was drawn, in front of the primary school located in

Piliscsaba. One Romani student then engaged in a physical fight with Ferenc V., who armed himself with a "viper" (an illegal weapon in Hungary consisting of a long stick with a metal ball at the end). Some other students also joined in the fight. After the incident, the Romani students were taken to the police station for interrogation and they are accused with disturbing the peace. Criminal procedures in the case began at the beginning of 2006, after the investigation was closed. The Romani children concerned are the accused in the case, while Mr Ferenc V. is reportedly only a witness, despite the objection of ERRC lawyers during the investigation period.

Racially Motivated Attack

According to a 23 January 2003 report by the Budapest-based Roma Press Center (RSK), on the evening of January 18, six non-Romani men, who were reportedly intoxicated and on their way home from a local disco, attacked a group of Romani families in their homes as they slept in the central Hungarian town of Ósi. During the attack, the arm of Mr Mátyás Kovács, an elderly Romani man, was broken and Ms Irén Kocsánci, a Romani woman, suffered injuries to her skull after being hit on the head with an iron bar. The attackers also reportedly broke windows in the Romani homes with sticks, axes and bricks and damaged vehicles owned by the Roma during the attack. The attack was reportedly an act of vengeance for the alleged theft of approximately 500,000 Hungarian forints worth of copper wire from one of the attackers, who believed the perpetrator to be Romani.

The RSK quoted the Chief of the Várpalota Police Department as having stated that police took the six suspects into police custody in Várpalota, from where they were transferred to the Székesfehérvár Police Station. On January 21, 2004, the six men, charged in accordance with Article 271 of the Hungarian Criminal Code (collective breach of the peace), were released from police custody by order of the Veszprém City Court.

The Budapest-based Romani organisation Foundation for Romani Civil Rights, which provided legal representation for the victims, informed the ERRC that it reached an agreement with the Ósi local government whereby the local government has begun to repair the doors and windows of the Romani homes broken during the attack. In addition, a local civil guard group is to begin patrolling the area to ensure the safety of the residents.

On 11 February 2004, the ERRC and the Foundation for Romani Civil Rights sent a letter to General Prosecutor Dr Péter Polt of the Hungarian General Prosecutor's Office, expressing concern at the inadequacy of the charges brought against the six perpetrators given the severity of the attack and asking that the perpetrators be charged with crimes commensurate with their actions. On 5 March 2004, the ERRC and the Foundation for Romani Civil Rights received a response that the General Prosecutor's Office was following the investigation, which was ongoing. Lawyers for the Foundation for Romani Civil Rights believe that no further action has ever been taken by Hungarian authorities in connection with the case.

Romani Men Offered Reduced Compensation by Hungarian Court after Being Judged "Primitive"

In November 2003, the Szeged City Court awarded two Romani brothers acquitted of murder charges a reduced compensation in the amount of 1.2 million Hungarian forints each (approximately 4,650 Euro) after classifying them as "primitive", according to a Radio Free Europe/Radio Liberty (RFE/RL) report of November 12, 2003. The RFE/RL reported that the brothers, who had spent fifteen months in detention as a result of the charges against them, had asked for 2 million Hungarian forints each (approximately 7,750 Euro) in damages. The Court's ruling was reportedly based on a medical assessment which found the two men to be "more primitive than average" and had, therefore, suffered less as a consequence. On 18 December 2003, the Csongrád County Court decided that the Szeged Court had erred in granting the Romani men reduced compensation on the grounds that they were "primitive", but upheld the Court's decision to award only 1.2 million Hungarian forints each in compensation, according to the RFE/RL of December 19. The reasoning of the Szeged Court was found to be humiliating and was reportedly changed from "primitive" to "simple".

Acquittal after Six Years of Detention

On 4 March 1999, a man was robbed and murdered in the village of Ujszentmargita, Hungary. Before the incident the victim had a few drinks in a bar together with Ferenc Burka and his father, both Roma. The next day they were arrested and an investigation started against them. Two witness testimonies were considered enough evidence for an indictment decision: one from the bartender and another from

a villager who saw the two Roma men walking in the direction of the victim's house. The prosecutor's investigation was based only on circumstantial evidence. On 11 April 2000, the prosecutor issued an indictment decision against them and they were sentenced to 15 and 13 years of imprisonment. They were kept in detention for 6 years. After a long procedure, the Szeged Appellate Court ordered a retrial again and on 20 July 2005, the court found them not guilty and ordered them released. The decision was upheld on appeal at the Debrecen Appellate Court on 25 April 2006.

Finally, the ERRC would raise the following:

The ERRC is currently involved in international litigation -- following the exhaustion of domestic remedies -- of a Romani woman whom we believe to have been coercively sterilized by Hungarian doctors in 2001. We have also been involved, during the period, in preliminary matters concerning the treatment of Roma by medical practitioners, including in state hospitals. We are aware that these matters fall on the margins of the Committee's mandate. We nevertheless provide below a summary of the coercive sterilization case in which we are involved, and we will pass to the Committee copies of a recent ERRC publication on issues arising in connection with Roma in state health care facilities. We hope the Committee will see fit to venture into these matters of concern.

S. v. Hungary

On 2 January 2001, Ms S., a Hungarian Romani woman was sterilised by doctors at Fehergyarmat hospital. While on the operating table she was asked to sign forms giving her consent to this and other operations, without a full explanation about sterilisation. No information was provided to her as to the nature of the intervention, or what the consequences of being sterilised would be. Nor did doctors tell her what the risks involved in the operation were. The right to be fully informed before an operation is a cornerstone of modern medical practice and is anchored at the core of international human rights law. Nevertheless, despite suing the hospital in Hungarian Courts, she has yet to obtain justice. After the operation, when she learnt that she had been sterilised, Ms. S. said, "We wanted a big family. I wanted to give birth again. But I simply cannot." ERRC and NEKI have brought the case to the United Nations Committee on the Elimination of Discrimination against Women, where it is currently pending decision.