



Hungarian Helsinki Committee

**SUBMISSION  
BY THE HUNGARIAN HELSINKI COMMITTEE  
REGARDING THE EIGHTEENTH TO TWENTY-FIFTH  
PERIODIC REPORTS OF HUNGARY**

TO THE UN COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION AT ITS  
98<sup>TH</sup> SESSION (APRIL-MAY 2019)

The present submission follows the structure of the List of issues prior to submission of the combined eighteenth to twenty-fifth periodic reports of Hungary (CERD/C/HUN/QPR/18-25, 3 July 2017, hereafter: List of Issues) and primarily deals with the issues included therein. In some cases however, it also draws attention to problems not explicitly formulated in the List of Issues but regarded by the Hungarian Helsinki Committee (HHC) as being of particular importance, and also to issues that emerged after the List of Issues had been formulated.

The report was drafted by the HHC. However, we included brief contributions prepared by partner civil society organisations related to issues falling under their mandate. The following civil society organisations provided input (their authorship is indicated under the respective chapters in footnotes):

- Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)
- Regina Alapítvány Miskolc (Regina Foundation Miskolc)
- Rosa Parks Alapítvány (Rosa Parks Foundation)

## **GENERAL INFORMATION ON THE ETHNIC COMPOSITION OF HUNGARY**

Since the Fundamental Law of Hungary and the Nationalities Act came into effect on 1 January 2012, minorities living in Hungary have been officially called as nationalities.<sup>1</sup> The officially recognised nationalities in Hungary are the Bulgarian, Roma, Greek, Croatian, Polish, German, Armenian, Romanian, Rusyn, Serbian, Slovak, Slovene, and Ukrainian.<sup>2</sup> According to the Hungarian census in 2011, the ethnic Hungarians account for the largest ethnicity at 84% of the population, followed by Romani (3%), Germans (1%), Slovaks (0.3%), Romanians (0.3%), and Croats (0.2%), see in the chart below.<sup>3</sup>

	OVERALL HUNGARIAN POPULATION		MEN		WOMEN	
	2001	2011	2001	2011	2001	2011
<b>Population in total</b>	<b>10 198 315</b>	<b>9 937 628</b>	<b>4 850 650</b>	<b>4 718 479</b>	<b>5 347 665</b>	<b>5 219 149</b>
<b>Out of which:</b>						
<b>Hungarian</b>	9 546 374	8 409 049	4 528 028	3 967 620	5 018 346	4 441 429
<b>National Minorities in Hungary</b>	135 452	148 155	62 136	70 136	73 351	78 019
<b>Bulgarian</b>	1 299	2 899	651	1 377	648	1 522
<b>Roma</b>	48 438	54 339	24 191	27 804	24 247	26 535
<b>Greek</b>	1 921	1 872	984	902	937	970
<b>Croatian</b>	14 326	13 716	6 525	6 228	7 801	7 488
<b>Polish</b>	2 580	3 049	882	1 022	1 698	2 027
<b>German</b>	33 774	38 248	14 355	17 633	19 419	20 615
<b>Armenian</b>	249	444	157	246	137	198
<b>Romanian</b>	8 482	13 886	4 086	6 573	4 396	7 313
<b>Rusyn</b>	1 113	999	328	441	785	558
<b>Serbian</b>	3 388	3 708	1 719	1 974	1 669	1 734
<b>Slovak</b>	11 817	9 888	4 946	4 096	6 871	5 792
<b>Slovene</b>	3 180	1 723	1 400	748	1 780	975
<b>Ukrainian</b>	4 885	3 384	1 922	1 092	2 963	2 292

It must be noted however that according to sociological research, the actual numbers are different from those of the census. By way of example, already in 2008, researchers estimated the number of the Roma population of Hungary to be around 620,000,<sup>4</sup> whereas a 2017 study came to the conclusion that in 2010-13, approximately 876,000 Roma people lived in Hungary (although this study was based on external perception and not self-identification).<sup>5</sup>

<sup>1</sup> Under Act CLXXIX of 2011 on the Rights of Nationalities, Article 1 (1), the definition of nationalities is the following, 'all ethnic groups resident in Hungary for at least one century are nationalities, which are in a numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities'.

<sup>2</sup> Ibid., Appendix No. 1.

<sup>3</sup> National Census 2011. 9., Data on Nationalities, Hungarian Central Statistical Office, Budapest, 2014. p 16.

[http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz\\_09\\_2011.pdf](http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_09_2011.pdf).

<sup>4</sup> Hablicsek, L., Gyenei, M. and Kemény, I., *Kísérleti számítások a roma lakosság területi jellemzőinek alakulására és 2021-ig történő előrebecslésére*, 2007. p. 63.

<sup>5</sup> Péntes, J., Tátrai, P. and Pásztor, I. Z., *Changes in the Spatial Distribution of the Roma Population in Hungary During the Last Decades*, Területi Statisztika. 58. p. 1., available at

[https://www.researchgate.net/publication/323415615\\_Changes\\_in\\_the\\_spatial\\_distribution\\_of\\_the\\_roma\\_population\\_in\\_Hungary\\_during\\_the\\_last\\_decades](https://www.researchgate.net/publication/323415615_Changes_in_the_spatial_distribution_of_the_roma_population_in_Hungary_during_the_last_decades)

## INFORMATION ON THE DEFINITION OF RACIAL DISCRIMINATION IN DOMESTIC LAW

### QUESTIONS 2-5 (ARTICLES 1 AND 2)

The Fundamental Law of Hungary states that 'Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status'.<sup>6</sup> According to the Hungarian Civil Code, 'discrimination (...) shall be construed as a violation of personality rights'.<sup>7</sup> The Nationalities Act also sets forward that 'it is forbidden to violate the requirement of equal treatment in any way on account of affiliation with a national minority'.<sup>8</sup>

The Act on Equal Treatment and the Promotion of Equal Opportunities (hereinafter: Equal Treatment Act)<sup>9</sup> transposed the Council Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Equal Treatment Act contains the **general prohibition of discrimination** by providing that 'pursuant to the principle of equal treatment, all natural persons abiding in the area of Hungary and any groups thereof, as well as legal entities and organisations without legal entity, shall be treated with the same respect and deliberation and their special considerations shall be equally respected.' The Equal Treatment lists the types of discrimination falling under the scope of the law: direct discrimination, indirect discrimination, harassment, segregation, victimisation, and any instructions thereto.<sup>10</sup>

Furthermore, the Equal Treatment Act defines both **direct and indirect discrimination**. Direct discrimination shall be constituted by any 'action [including any conduct, omission, requirement, order or practice] as a result of which a person or group based on their real or assumed (...) b) racial origin, c) colour of skin, d) nationality [in the sense of belonging to a national minority], e) national or ethnic origin, f) mother tongue, (...) t) any other situation, characteristics or feature (hereinafter together: characteristics), is treated less favourably than another person or group is, has been or would be treated in a comparable situation'.<sup>11</sup> Indirect discrimination is defined by the Equal Treatment Act as follows: 'A provision not deemed as direct discrimination and ostensibly meeting the requirement of equal treatment is deemed as indirect discrimination if it puts individual persons or groups with characteristics specified in Article 8 in a situation that is significantly disproportionately disadvantageous compared to the situation in which a person or group in a comparable position is, has been or would be'.<sup>12</sup>

The Hungarian Constitutional Court ruled in 1990 that **affirmative action** cannot be considered unconstitutional in cases when the constitutional provisions and societal goals cannot be enforced in any other way.<sup>13</sup> However, the threshold of the application of positive measures was also set out in this decision, stating that affirmative action shall not violate a fundamental right, shall not confer an absolute advantage and neither shall it exclude the consideration of individual aspects.<sup>14</sup> The Fundamental Law lays down the State's explicit obligation to act, as follows, 'by means of separate measures, Hungary shall promote the achievement of the equality of opportunities and social inclusion'.<sup>15</sup>

The Equal Treatment Act allows positive measures under certain circumstances, stating, 'a measure aimed at the elimination of an expressly identified social group's objectively substantiated inequality of opportunities is not considered a breach of the principle of equal treatment if a) it is based on an Act of Parliament, on a government decree based on an Act or on a collective contract, effective for a definite term or until a specific condition is met, and/or b) the election of a party's executive and representative organ and the setting up of a candidate at the elections defined at the Election Procedure Act is executed in line with the party's fundamental rules'. In addition, the Equal Treatment Act follows the Constitutional Court's approach, by the

<sup>6</sup> Fundamental Law, Article XV (2).

<sup>7</sup> Act V of 2013 on the Civil Code, Section 2:43 [Specific personality rights].

<sup>8</sup> Act CLXXIX of 2011 on the Rights of Nationalities, Article 7.

<sup>9</sup> Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

<sup>10</sup> Ibid., Article 7 (1).

<sup>11</sup> Ibid., Article 8.

<sup>12</sup> Ibid., Article 9.

<sup>13</sup> Constitutional Court Decision (ABH) 9/1990. (IV. 25.).

<sup>14</sup> Ibid.

<sup>15</sup> Fundamental Law, Article XV (4).

following provision: 'a measure aimed at evening out a disadvantage shall not violate any basic rights, shall not provide an unconditional advantage, and shall not exclude the consideration of individual circumstances'.<sup>16</sup> The Equal Treatment Act provides the possibility to define the obligation to apply positive measures, meaning that a law, government decree or collective agreement may on its face divert from the requirement of equal treatment for a certain group of employees – in the context of employment or other employment relationship – if it is aimed at eliminating the disadvantages of a particular group of employees.<sup>17</sup>

The HHC welcomes the ongoing legislative alignment to international norms on the elimination of racial discrimination. However, we would like to draw attention to the **significant gap between the normative framework and practice of equal treatment** – especially with regard to the rights of the Roma people in Hungary – discussed in the chapters below. Therefore, in the present report, we assert that even though the legal regulation on equal treatment is mostly sufficient, its application in practice raises a number of concerns.

While the Equal Treatment Authority's mandate is indeed sufficiently wide and the Authority has delivered some very important and progressive decisions (see the case of the 'Numbered Streets' below), there are some critical remarks that must be made.

As stated in the country report, the most severe sanction the Authority can impose is a fine ranging between HUF 50 000 (cca. EUR 155) and HUF 6 million (cca. 18 750), however, the fines the Authority actually imposes in most cases are at the lower end of the scale. In 2016 for instance, the total amount of fines was HUF 4.3 million (EUR 13 440) in 13 cases (an average of HUF 330 800, or EUR 1 035), whereas in 2017, the Authority imposed a fine in 15 cases, and the aggregate amount was HUF 7.9 million (EUR 24 685), which means an average of HUF 526 700 (EUR 1 645).<sup>18</sup> And while there have been positive tendencies in this regard (an increase in the average sum of fines imposed and also the fact that the Authority seems more and more willing to impose fines on state bodies too and not only on private actors as was the case in earlier years), the sanctioning practice can still be described as rather lenient.

Another issue regarding the Equal Treatment Authority is its relatively limited outreach to the public concerning its important cases.

As far as the Commissioner for Fundamental Rights is concerned, attention must be called to the fact that while he and his deputy have indeed been extensively dealing with complaints regarding minorities, with special regard to the Roma minority, he has been practically completely silent about the stigmatisation of migrants, asylum seekers and refugees and the organisations providing them with assistance.

## MEASURES TAKEN TO PREVENT THE SEGREGATION OF GROUPS AND INDIVIDUALS PROTECTED UNDER THE CONVENTION QUESTION 6 (ARTICLE 3)

### SEGREGATING ASYLUM SEEKERS: FROM OPEN RECEPTION CENTRES TO ARBITRARY DETENTION IN THE TRANSIT ZONES

The **new era in asylum policy that began in 2015** also manifested itself in a different approach to the provision of reception conditions. In 2015, the government – finally giving in the demand of Jobbik, another extreme right political party which protested for 'not letting migrants mingle with the civilised population' already in 2013<sup>19</sup> – **closed the Debrecen Reception Centre** (the open centre which had the largest capacity). At the end of **2016, another open reception centre, in Bicske, was also closed**. The Bicske facility used to be the best equipped reception centre and, since it was located close to Budapest, it provided more opportunities for asylum seekers and refugees to start a new life, build new relationships and start their integration. Since 28 March 2017 all asylum seekers – besides unaccompanied minors below 14 – are arbitrarily detained in the transit zones which are detention centres built into the Hungarian-Serbian border

<sup>16</sup> Article 11 of the Equal Treatment Act.

<sup>17</sup> Ibid., Article 23.

<sup>18</sup> See: European network of legal experts in gender equality and non-discrimination: *Country report, non-discrimination, Hungary* (Reporting period 1 January 2017 – 31 December 2017), p. 116. Available at: <https://www.equalitylaw.eu/downloads/4749-hungary-country-report-non-discrimination-2018-pdf-2-60-mb>

<sup>19</sup> <http://www.dehir.hu/debrecen/menekulttabor-faklyas-felvonulassal-tiltakozott-a-jobbik/2013/06/19/attachment/jobbikbelso/>

fence. These transit zones are segregated places of detention because they are kilometres away from any human settlement. The detention of all asylum seekers is based on the 'state of emergency due to mass immigration' – a concept which was introduced by the Government in September 2015 and has been prolonged every six months ever since. Currently the 'state of emergency' has been again prolonged until September 2019. **Since 28 March 2017** this concept has also become an inherently discriminatory and segregating one due to the fact that **'state of emergency' can be prolonged by the government not only if there is a high number of arrivals but also if 'any migration related situation' develops that represents a direct threat to the protection of Hungary's border or that represents a direct threat to public security, public safety or public health of 'any Hungarian municipality'**.<sup>20</sup> By automatically detaining almost all asylum seekers in these detention centres far away from any human settlement, **the government segregates asylum seekers by preventing them to have any contact with the local population** as long as their asylum procedures are pending which in many cases can be more than a year.

#### **SEGREGATION OF ROMA PEOPLE: PROGRAMMES AIMED TO PREVENT SEGREGATION IN HOUSING**

As referred to in the State Report<sup>21</sup> since 2011 significant resources have been allocated to human and infrastructural interventions with the aim of improving the conditions of Roma citizens living in segregated areas. Nevertheless, according to the Civil society monitoring report on the implementation of the national Roma integration strategies published in 2018 (hereafter: Roma monitoring report)<sup>22</sup>, **these programmes have only reached a small section of the population of all segregated areas. According to the segregation map of the country,<sup>23</sup> 2.8% of the total population lives in 1384 segregated areas, lacking basic public utility infrastructure.** As the State Report describes, the EU-funds to be dispensed in the 2014–2020 period of the Human Resources Development Operational Programme are ensuring the promotion of the integration of Roma in 'one in every seven segregated areas',<sup>24</sup> which means that **85% of the segregated areas will not benefit from the allocated desegregation funds. Furthermore, social-policy experts talk about the growing problem of gettoization**, which means that due to the intensifying social inequalities in certain regions there are complete settlements and groups of settlements where geographical, social and ethnic aspects of segregation are combined and work together, extracting areas from the settlement fabric, increasing the marginalization of the poorest. As the Roma monitoring report describes, another mechanism also supports gettoization tendencies: **the leadership of some settlements prevent Roma people from moving in by buying all real estates or putting pressure on local people not to sell to Roma buyers.**<sup>25</sup>

The widespread segregation of Roma pupils in education is described below in the section on Article 5.

#### **LEGISLATIVE, ADMINISTRATIVE AND OTHER MEASURES TAKEN TO PROHIBIT RACIST SPEECH AND BIAS MOTIVATED CRIMES QUESTIONS 7-9 (ARTICLE 4)**

The marginalised status of the Roma population in Hungary has been a systematic problem since the emergence of the state from the communist regime. It has raised numerous issues related to education, employment or bias attitude in the entire population that require systematic solutions. However, since initiatives aimed at the support of the Roma minority are far from popular among the non-Roma inhabitants, governing parties do not tend to put them among the priorities of their political agenda. Moreover, the **biased attitude of the population is currently not only not countered by the government but enhanced by public statements of high-level representatives of the government.** In November 2015, in the framework of the anti-immigration rhetoric, János Lázár, then Minister heading the Prime Minister's Office told the press – while arguing that integration of migrants in the Member States of the EU is impossible – that Hungary has been struggling for many years with the integration of the Roma population

<sup>20</sup> Article 80/A (1) c) ca-cb) of Act LXXX of 2007 on Asylum (hereinafter Asylum Act)

<sup>21</sup> CERD/C/HUN/18-25, §§27-40.

<sup>22</sup> *Civil society monitoring report on implementation of the national Roma integration strategies*, (Budapest: Roma Civil Monitor, 2018)

<sup>23</sup> A segregation map and database of Hungary was created based on the 2011 census data of the Central Statistical Office

<sup>24</sup> CERD/C/HUN/18-25, Article 3., Question no.6./38

<sup>25</sup> Roma monitoring report, p.33.

living in the country for some 600 years. *'How could we integrate anyone who is not one of us?'*<sup>26</sup> Similar negative language (describing the Roma population as a burden on the Hungarian society) can be found also in statements of Prime Minister Orbán. In September 2016, he delivered a speech to ambassadors in Hungary: *'No matter what one thinks, whether one likes the cottage cheese pasta or not, a historical attribute of Hungary is given by the fact that we have to live together with a couple of hundred thousand Roma. This was decided by someone, somewhere. We inherited this situation, it's our situation. This is an attribute. No one can object it. We are the ones who have to live with this. And we do not demand from anyone, especially not from the West, that they should live together with a Roma minority of high numbers.'*<sup>27</sup>

In 2016, publicist Zsolt Bayer, prominent supporter of the government, was awarded with the Hungarian Order of Merit (*Magyar Érdemrend*) of the Knight's Cross, which was handed to him by Minister János Lázár. This triggered significant protest (more than 60 people returned their own award provided to them earlier by the state),<sup>28</sup> as Mr Bayer has a long track-record of hate-inciting articles against the Roma, Jews, migrants and liberals. In a 2013 op-ed for instance, he wrote the following in relation to a murder case the suspects of which were of Roma origin: *'A large segment of the Gypsy population is unfit for cohabitation. They are unfit to live among human beings. This part of the Gypsy population are animals, and they behave like animals. They want to rut with whom and wherever they feel like it. If they come up against resistance, they kill. They defecate whenever and wherever the urge comes upon them. If they feel that they are prevented from doing so, they kill. They want to take whatever they see. If it is not given to them, they kill. This part of the Gypsies are unable to communicate in any human manner. [...]he only thing they understand from is violence. [...] We must not tolerate and understand them, we must take revenge [...]. The animals should not exist. In any way. This is what we must take care of – immediately and through any means!'*<sup>29</sup>

**Proactive, genuine governmental action aimed at the social inclusion of the Roma people is lacking.**

#### **DISSEMINATION OF IDEAS BASED ON RACIAL SUPERIORITY OR HATRED, INCITEMENT TO RACIAL DISCRIMINATION**

In the new Criminal Code, still only the most extreme form of hate speech is outlawed, namely 'incitement against a community', i.e. incitement liable to provoke violent acts.<sup>30</sup> However, **provisions of the old and the new Criminal Code on incitement have been rarely invoked by investigative or judicial authorities.** In the so-called *Tyirityán-case* of 2011, the leader of an extreme rightist group said in front of a large extremist audience – among others – the following: *'We have to reach the point when someone can pull the trigger of the submachine gun, if probably he sees a different skin colour. [...] The war of races rages on, we must get to the level where we again become aggressive, violent, [...] almost animals. [...] Will we have it in us to be brave enough to shoot a rotten, lousy Jew?'*<sup>31</sup> The police however terminated the case, relying on the argument that the above provision demands actual violence as a consequence of incitement. In the case launched because of Zsolt Bayer's above quoted article, the prosecution argued that at least the real danger of violence must be present while hate speech is given. Although in the *Tomcat blogpost-case* of 2009 (where an extremist blogger called on his readers to seek out Roma on street corners and attack them), the prosecution deemed it sufficient if the perpetrator is aware of the possible consequences of the given hate speech, due to the extreme length of the trial in that case, the sanction imposed by the second-instance court in 2013 was only 50 days of community service.

In the *Devecser-case* of 2012, an anti-Roma demonstration was organised after a conflict had taken place between a Roma and a non-Roma family in the town of Devecser. As described by the European Court of Human Rights' judgment in the case of *Király and Dömötör v Hungary*, a case taken to Strasbourg by the HHC, at the demonstration a leader of the extremist Sixty-four Counties Youth Movement (*Hatvannégyszéki Vármegye Ifjúsági Mozgalom*) 'mentioned that Roma criminality was omnipresent in the country and wherever this ethnic group appeared, only destruction, devastation and fear came. In his opinion the Roma population wanted to exterminate Hungarians, which left the latter with the choice of becoming victims or fighting back.'

<sup>26</sup> <http://www.kormany.hu/en/prime-minister-s-office/news/illegal-migration-and-terrorism-go-hand-in-hand>

<sup>27</sup> <https://444.hu/2016/09/14/a-fidesz-azt-uzeni-a-ciganyoknak-hogy-a-migransok-elveszik-a-segelyuket>

<sup>28</sup> <https://444.hu/2016/08/20/sorban-adjak-vissza-az-allami-kitunteteseiket-bayer-zsolt-lovaqkeresztje-utan>

<sup>29</sup> [https://mandiner.hu/cikk/20130105\\_bayer\\_zsolt\\_ki\\_ne\\_legyen](https://mandiner.hu/cikk/20130105_bayer_zsolt_ki_ne_legyen)

<sup>30</sup> Article 322 of Act V of 2013 on the Civil Code

<sup>31</sup> <https://www.helsinki.hu/folytassak-le-a-nyomozast-a-magyar-szigeten-elhangzott-gyuloletbeszed-ugyeben/>

The leader of the Civil Guard Association for a Better Future (*Szebb Jövőért Polgárőr Egyesület*) stated that hundreds of Hungarians were killed annually by the Roma with the approval of the State. In his view there was a destruction of civilians going on in Hungary. He called on the demonstrators to sweep out the 'rubbish' from the country, to revolt and to chase out the treasonous criminal group suppressing Hungarians. He closed his speech by saying that the Hungarians were entitled to use all means to achieve those goals. Leader of the Outlaws' Army (*Betyársereg*), 'spoke about the characteristics of a racial war and an ethnic-based conflict. He said that before such conflict escalated, a message should be sent. He mentioned that the Roma minority was genetically encoded to behave in a criminal way and declared that the only way to deal with the Roma was by applying force to "stamp out this phenomenon that needs to be purged".

Following the speeches, the demonstrators marched down the neighbourhood of Devecser inhabited by the Roma community, chanting 'Roma criminality', 'Roma, you will die', and 'We will burn your house down and you will die inside', 'We will come back when the police are gone', and obscene insults. Those leading the demonstration threw pieces of concrete, stones and plastic bottles into the gardens, encouraged by the crowd following them. One person standing in the yard of one of the Roma houses was hit by a large piece of concrete and was injured.

However, although the **hate speech was in fact followed by violent acts committed against members of the local Roma community**, the Hungarian authorities argued that the speeches in question were morally unacceptable but were **not capable of provoking actions driven by passion, hate or instincts**. The **police also failed to** dissolve the demonstration where the speeches were delivered, and, moreover, they have not **intervened** at all when several participants seriously insulted verbally the Roma being present and then physically attacked them by bias motivation.<sup>32</sup>

The European Court of Human Rights concluded that 'the cumulative effect of those shortcomings in the investigations, especially the lack of a comprehensive law enforcement approach into the events, was that an openly racist demonstration, with sporadic acts of violence [...] remained virtually without legal consequences and the applicants were not provided with the required protection of their right to psychological integrity. They could not benefit of the implementation of a legal framework affording effective protection against an openly anti-Roma demonstration, the aim of which was no less than the organised intimidation of the Roma community, including the applicants, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. The Court is concerned that the general public might have perceived such practice as legitimisation and/or tolerance of such events by the State.'<sup>33</sup>

It seems that the Equal Treatment Authority<sup>34</sup> is ready to decide on racist speech cases not amounting to the level of a criminal offence, filling an important gap in the Hungarian law enforcement concerning racist, homophobic, anti-Semitic, etc. speech. The decisions taken in the cases presented below are important, because they show that **the Equal Treatment Act's provisions<sup>35</sup> on harassment can be efficiently used against racist speech not amounting to the level of a criminal offence**. (According to Article 10 of the Act, harassment is a sexually charged or other conduct violating human dignity related to the relevant person's protected characteristic [i.e. racial or ethnic origin, sexual orientation, disability, age, gender, religion, etc.] with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment.) In addition to the two cases at the Equal Treatment Authority, a third litigation summarized below provide further insight into anti-discrimination cases based on the Equal Treatment Act of Hungary.

- On 19 October **2009**, the HHC's lawyer filed an *actio popularis* claim with the Equal Treatment Authority concerning the **statements of the mayor of Kiskunlacháza**, who in relation to a murder (with regard to which eventually a non-Roma person has been found guilty) spoke at a public demonstration about the settlement's population having had enough of 'Roma aggression' and made other statements giving the impression that in his view the murder had been committed by Roma people. The HHC's lawyer claimed that by doing so, the mayor had committed harassment in relation

<sup>32</sup> For more details on the case, see the Shadow Report submitted by the Working Group Against Hate Crimes

<sup>33</sup> *Király and Dömötör v. Hungary*, Application no. 10851/13, judgment of 17/01/2017, § 80.

<sup>34</sup> [www.egyenlobanasmod.hu](http://www.egyenlobanasmod.hu)

<sup>35</sup> Act CXXV of 2003 on Equal Treatment (hereinafter Equal Treatment Act), available in English at: [http://www.egyenlobanasmod.hu/data/Act\\_CXXV\\_2003%20English.pdf](http://www.egyenlobanasmod.hu/data/Act_CXXV_2003%20English.pdf).

to the region's Roma population. In its decision dated 19 January 2010, the Equal Treatment Authority established that harassment had been committed, forbade the continuation of the violation and ordered that the decision be made public.<sup>36</sup> The Equal Treatment Authority stated that it was clear on the basis of the facts and documents that the mayor knew that there was a tension in the city and that there was in general a strong negative approach against the Roma members of the community. The Equal Treatment Authority claimed that the mayor's statements were able to create fear on behalf of the Roma inhabitants and contribute to a hostile environment against them. The mayor appealed against the decision. Upon a long procedure of appeal, the Metropolitan Administrative Court delivered a final judgment in 2014 which upheld the conclusion of the Equal Treatment Authority about the harassment.<sup>37</sup>

- On 3 September **2009**, one of the TV-channels broadcasted the **racist and homophobic statements made by the mayor of the town Edelény at the session of the local council**. Oszkár Molnár stated that Roma women hit their stomach while being pregnant with rubber hammers and take medicines in order to give birth to children with disabilities, thus, being entitled to higher sums of financial aid paid by the state.<sup>38</sup> In the course of the same session the mayor also said that homosexuals 'will get to know what homosexual marriage means if they happened to be in prison'.<sup>39</sup> The Equal Treatment Authority started an *ex officio* procedure against the mayor, and established that Oszkár Molnár had committed harassment and violated the requirement of equal treatment with regard to Roma women, and pregnant women and mothers living in the villages mentioned by him. The Equal Treatment Authority forbade the continuation of the violation and ordered that the decision be made public on the website of the Equal Treatment Authority and of the city of Edelény.<sup>40</sup> The mayor asked for a judicial review, but the Metropolitan Court refused his claim in its decision brought on 23 March 2010. The case was finally brought before the Supreme Court, which ruled that no harassment occurred, because the actions of the mayor did not fall under the scope of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.<sup>41</sup>
- The Hungarian Civil Liberties Union (HCLU) initiated an *actio popularis* lawsuit based on the Equal Treatment Act against the Heves County Police Department following racially motivated events in the village of **Gyöngyöspata** (Heves County, Hungary) in the spring of **2011**. In its judgment of 8 February 2017, the Supreme Court ruled that the **police's failure to protect the Roma from racist harassment** amounted to harassment under the ETA. In its court application, the HCLU made two major allegations. Firstly, the HCLU alleged the police violated the Equal Treatment Act when they failed to protect Roma citizens from racist harassment perpetrated by extremist groups that organized illegal patrols, marching through the Roma rows of the village for several weeks, intimidating local residents. Secondly, the HCLU claimed that the police violated the right of equal treatment of the local Roma by its ethnic profiling activities after the extremists left, more concretely by carrying out a disproportionate fining practice for petty offences (like lack of bike accessories, littering and spitting) against the local Roma in comparison to the local non-Roma, during a period of 7 months. The claim was supported by an ombudsman's report substantiating the discriminative fining practice as well as testimonials by affected Roma and witnesses. On the HCLU's motion, the police provided the court with documentation of all the fines imposed in the village in the given period against local inhabitants. The data deriving from these documents were ethnically classified by the police according to criteria determined by the HCLU, including the surname and address of those fined. The disaggregated data showed considerable disproportionality to the detriment of the Roma. The data also showed that for certain bagatelle offences the Roma had been singled out for sanctioning by the police. The Supreme Court determined in its final judgment of 8 February 2017 that the police's inaction in the face of the extremists' racially motivated activities was a form of discrimination (harassment). The court ruled the police had failed in their duty to defend and enforce the rights of Roma citizens. The Supreme Court ordered the Heves County Police Department to publish the judgment on its website and inform the Hungarian Bureau of Communication about the

<sup>36</sup> For the decision of the Equal Treatment Authority, see: [http://helsinki.hu/dokumentum/EBH\\_hatarozat.pdf](http://helsinki.hu/dokumentum/EBH_hatarozat.pdf).

<sup>37</sup> For the judgment of the Metropolitan Court, see: [https://www.helsinki.hu/wp-content/uploads/kiskunlachaza\\_ciganoyozo-polgarmester.pdf](https://www.helsinki.hu/wp-content/uploads/kiskunlachaza_ciganoyozo-polgarmester.pdf)

<sup>38</sup> [http://www.youtube.com/watch?v=x5fv\\_PMLD1c](http://www.youtube.com/watch?v=x5fv_PMLD1c)

<sup>39</sup> <http://www.youtube.com/watch?v=fozP2Wd6-wY>

<sup>40</sup> For the decision of the Equal Treatment Authority, see: <http://www.egyenlobanasmod.hu/data/1475-2009.pdf>.

<sup>41</sup> See e.g.: [hvg.hu/itthon/20110519\\_molnar\\_oszkar\\_elmarasztalo\\_hatarozat](http://hvg.hu/itthon/20110519_molnar_oszkar_elmarasztalo_hatarozat)



judgment's availability. It also banned similar rights violations in the future. The Supreme Court emphasized in the oral reasoning that the Gyöngyöspata incidents were the second most serious racially motivated events in Hungary since 1989 (the most serious were the racist serial murders of 2008-2009), and the police clearly had the positive obligation to take measures against racist harassment which they failed to do. The inaction of the police amounted to harassment under the Equal Treatment Act. This ruling of the Supreme Court of Hungary is a considerable success.<sup>42</sup>

The current government's stance on hate speech against Roma people is reflected in symbolic gestures. For instance, in addition to the case of columnist Zsolt Bayer (mentioned above), other state awards have raised similar public concerns, such as the awards given to Kornél Döbrensei (known for anti-semitic statements, e.g. 'Jews did not appear as a group of amiable patriots')<sup>43</sup> or János Petrás (a singer-songwriter known for radical right-wing statements, e.g. 'Those people, who are not human beings for us, but rather some shoddy whatever. They are proud of this. Gay and proud [...] I don't know how it is possible to become such mongrels, but once this race must extinct!').<sup>44</sup>

A significant gap in the public discourse is given by the fact that the **2008-2009 serial murder** committed against Roma people by a group of extremist offenders from Debrecen has never been widely discussed. The **catharsis based on an open and balanced dialogue is missing**. This gap was identified by the participants of a **commemorative scientific conference** organized by the Együtt Debrecenért Egyesület (Together for Debrecen Association), a civil society organization of the very town of Debrecen and one of the Research Institutes of the University of Debrecen. The event took place in **February 2019**. The local unit of the **Fidelitas (the governing party's youth wing) demonstrated against the speakers of the event and published a photo including introductory notes with a defamatory overtone**. The document was titled 'The Soros mercenaries' "non-political" conference', and included representatives of the media, the academia and one of HHC's staff members were presenting at the conference. The local Fidelitas group however only attacked the participants of the conference and never commemorated the victims of the serial killings.



### DISSEMINATION OF XENOPHOBIC IDEAS, ANTI-MIGRANT CAMPAIGNS

Xenophobic, anti-migrant, anti-refugee statements, campaigns and actions merit a separate mention under Article 4. Although these effect fewer people directly in Hungary due to the composition of its population, it is largely created and fuelled by the Hungarian government. **Xenophobic, anti-migrant and anti-refugee state sponsored campaigns started in early 2015** when the government placed billboards with slogans such as *'if you come to Hungary, you cannot take away Hungarian's jobs!'*<sup>45</sup>, immediately followed by a questionnaire (a so-called

**Tisztelt Magyar Polgár!**

Mi, magyarok 2015-ben úgy határoztunk, hogy minden fontos kérdésről megbeszéljük egymással, mielőtt döntéseket hozunk. Ezért rendszeresen nemzeti konzultációkat tartunk kiemelt és ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

Mielőtt megbeszélhetjük, meg kell határozni az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

A megvalósuló kérdésekről rendszeresen tartunk kiemelt és ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

Mielőtt megbeszélhetjük, meg kell határozni az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

Döntést kell hozni arról, hogy az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

Tudományt szeretünk, legyen velünk kapcsolatba, mondja el nekünk is, hogy mit gondol a fentebb leírtakról, célja is, és küldje vissza a kérdőívet. Számunk a véleményeire.

**Orbán Viktor**

**NEMZETI KONZULTÁCIÓ**  
a bevándorlásról és a terrorizmusról

**Töltsd ki a kérdőívet!**

- 1] Széleskörűen elterjedt a hír, hogy a Soros-terroreszták beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 2] Az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 3] A Soros-terroreszták beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 4] Tudja-e Ön, hogy a Soros-terroreszták beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 5] Széleskörűen elterjedt a hír, hogy a Soros-terroreszták beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 6] Tudja-e Ön, hogy a Soros-terroreszták beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 7] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 8] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 9] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 10] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 11] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.
- 12] Tegyen-e Ön a magyar kormányt, hogy beavatkoztak az ország-igazgató témákról, mindkettőtől óriási sikerrel, a megvalósuló kérdésekről pedig.

<sup>42</sup> Contribution authored by the **Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)**  
<sup>43</sup> <https://444.hu/2019/03/12/a-kormany-baberkoszorut-nyujtott-at-az-ironak-aki-szerint-a-zsidotorvenyek-a-zsidok-erdekeit-szolgaltak>  
<sup>44</sup> [https://hvg.hu/velemeny.nyuzsoq/20130322.Csak\\_kihal\\_ez\\_a\\_faj\\_kituntetes](https://hvg.hu/velemeny.nyuzsoq/20130322.Csak_kihal_ez_a_faj_kituntetes)  
<sup>45</sup> More on this campaign in English <https://uk.reuters.com/article/uk-hungary-immigration/hungarians-come-home-group-mocks-hungarys-anti-immigrant-drive-idUKKBN00R1ZD20150612>

'National Consultation') sent to all households that, among others, linked migration to terrorism.<sup>46</sup> Since then, the Hungarian government's state sponsored campaigns maintained the same tone. It is impossible to list all stages of the ongoing campaign, below are a few examples only, in chronological order:

*Autumn 2016:* a referendum on the rejection of a 'compulsory settlement quota', with the following question: 'Do you want the European Union to be able to mandate the obligatory resettlement of non-Hungarian citizens into Hungary even without the approval of the National Assembly?' accompanied by posters linking migration with terrorism<sup>47</sup>. According to publicly available calculations, **the Hungarian government spent about 14 billion HUF, approximately 44 million EUR on xenophobic campaigns between the beginning of 2015 and the referendum on 2 October 2016.**<sup>48</sup> The image on the left was one mutation



of the billboards placed by the government in the lead-up to the referendum, and it reads: 'Did you know? Since the beginning of the immigration crisis (sic!) more than 300 died in terror attacks in Europe'.

*Spring 2017:* another 'national consultation' is sent to all households, linking terrorism with asylum seekers.<sup>49</sup>

*Autumn 2017:* another 'national consultation' on what the government dubbed the 'Soros plan', referring to the Hungarian-American philanthropist

George Soros. The leaflets, sent again to all households, painted migrants as individuals posing financial risks to ethnic Hungarians (question 4), or as posing a risk to European languages and culture (question 6).<sup>50</sup>

Parallel to the **billboard campaigns, radio and TV ads, leading figures of the governing party and the Hungarian government itself, including the prime minister himself, fuelled xenophobic sentiments.** One of the clearest example of this is the Prime Minister's only reaction to the incident in Ócsény, a small settlement in the south of Hungary.

In 2017 the owner of a small guest house offered a free stay in his facility for a weekend to two refugee families with children, recently given international protection by the Hungarian authorities. Once this was found out by the Hungarian media and journalists arrived in town to ask the locals about their opinion, tensions began to grow. The escalation, that included death threats against the owner of the guest house, culminated in an attack on his vehicle.<sup>51</sup> As a result of these, the owner of the guest house revoked his offer, the mayor of the town stepped down. **The prime minister was asked to comment on the situation ahead of a European Council meeting: 'I fully understand them and it is very right that they have expressed their opinion so resolutely, so loudly and clearly.'**<sup>52</sup>

#### **EXTREMIST ORGANIZATIONS PROMOTING DISCRIMINATION**

**No considerable attention is paid by the state authorities to the activities of extremist organized groups** (e.g. Betyársereg: Outlaws' Army, 64 Vármegye Mozgalom: 64 Counties Youth Movement, MOM: Hungarian Self-Defence Movement), including the dissemination of racist ideas, recruitment, organizing public events or patrolling.<sup>53</sup> For instance, **in the first half of 2015 the Outlaws' Army took part in seven**

<sup>46</sup> The official translation of the questionnaire from the Government's website is available at [http://www.kormany.hu/download/9/a3/50000/Nemzetikonzultacio\\_mmkornel.docx](http://www.kormany.hu/download/9/a3/50000/Nemzetikonzultacio_mmkornel.docx)

<sup>47</sup> See one such billboard with an English translation: [https://bbj.hu/politics/hungarian-govt-attacks-migrants-in-new-campaign\\_119453](https://bbj.hu/politics/hungarian-govt-attacks-migrants-in-new-campaign_119453)

<sup>48</sup> [https://index.hu/belfold/2016/10/05/tobb\\_milliard\\_kellett\\_a\\_migransellenes\\_harchoz\\_mint\\_a\\_kormany\\_allitotta/](https://index.hu/belfold/2016/10/05/tobb_milliard_kellett_a_migransellenes_harchoz_mint_a_kormany_allitotta/)

<sup>49</sup> An English translation is available here <https://budapestbeacon.com/lets-stop-brussels-new-national-consultation/>

<sup>50</sup> An English translation of the questions is available here <https://budapestbeacon.com/soros-plan-national-consultation-questions/>

<sup>51</sup> An English summary of the case is available here <https://www.reuters.com/article/us-europe-migrants-hungary-village/hungarian-villagers-in-backlash-against-holiday-for-migrants-idUSKBN1CB1Q8>

<sup>52</sup> Ibid, video available at: <https://www.youtube.com/watch?v=IVZ90df7Y0>

<sup>53</sup> Political Capital, *Szélsőjobbmonitor, 2018. május* [Radical Right monitor, May 2018], available at

[http://www.politicalcapital.hu/konyvtar.php?article\\_read=1&article\\_id=2266](http://www.politicalcapital.hu/konyvtar.php?article_read=1&article_id=2266), Political Capital, *Szélsőjobbmonitor, 2018. november*, available at [http://www.politicalcapital.hu/konyvtar.php?article\\_read=1&article\\_id=2354](http://www.politicalcapital.hu/konyvtar.php?article_read=1&article_id=2354), Political Capital, *Szélsőjobbmonitor, 2017. szeptember*, available at [http://www.politicalcapital.hu/konyvtar.php?article\\_read=1&article\\_id=2203](http://www.politicalcapital.hu/konyvtar.php?article_read=1&article_id=2203), Ildikó Barna and Bulcsú Hunyadi,

*Report on Xenophobia, Discrimination, Religious Hatred and Aggressive Nationalism in Hungary in 2015*, available at

**deployments across Hungary, all targeting the Roma.**<sup>54</sup> The action, which generated the most significant reaction, was a deployment in Szúcs, a village in Northern Hungary. According to the Hungarian Civil Liberties Union, 30 members of the Outlaws' Army went to the village upon the request of a local landowner who accused one resident of stealing wood from his forest. An investigative report revealed that the Outlaws' Army was involved in a conflict between two local families. In addition to living in the settlement for three months and showing general presence, they also **regularly patrolled the village, took photos of Roma inhabitants, and threatened and insulted them. Police failed to take any action**, claiming that the presence of the Army cannot be proven. The victims reported, that sometimes when they called the police, the officer told them 'call us back when there is blood'.<sup>55</sup>

In 2016, the state authorities took a harsh stance against one particular right-wing extremist organisation, the Hungarian National Front (Magyar Nemzeti Arcvonal, MNA). This neo-Nazi group had existed since 1989. Its leader, István Gyórkös shot a police officer during a failed attempt by the police to search his house. Within two months after the incident, MNA was dismantled by the Hungarian authorities, and some of the group's members were detained.<sup>56</sup> As reported by independent experts, other far-right organisations or right-wing extremist paramilitary organisations were not particularly addressed by the government. **While the authorities monitor the activities of the groups and police are present at the public events of these organisations, neither the government nor the intelligence services apply harsh measures or rhetoric against these organisations.**<sup>57</sup>

#### **LEGISLATIVE, JUDICIAL, ADMINISTRATIVE AND OTHER MEASURES AGAINST BIAS MOTIVATED CRIMES**

*The Hungarian Helsinki Committee is a member organization to the Working Group Against Hate Crimes, a coalition of Hungarian NGOs and independent academic experts. The Working Group prepared a separate shadow report on the systematic problems with the practice of state authorities related to bias motivated crimes. The HHC contributed to the preparation of the shadow report of the Working Group.*

Therefore, in the present report mentions only the outcome of a relevant empirical research which underpins the allegations included in the Working Group's shadow report. The systematic problems related to the lack of efficient prosecution of hate crimes were outlined in the academic paper authored by Petra Bárd. The **empirical research was conducted in the framework of the National Institute of Criminology**. Criminal case files collected from the period of 2009-2013 provided the primary source of research, and the author focused on Borsod-Abaúj-Zemplén, a county of 654.000 inhabitants<sup>58</sup> highly populated by Roma. The research **found that hate crimes are systematically under-classified** (authorities tend to disregard bias motive), the **hate crime provision is applied more frequently for the sake of the protection of the majority than the minority groups, more severe punishment is applied in the cases of offenders belonging to minority groups** (the only one case where the defendant was sentenced to imprisonment instead of parole or a fee was a case where Roma defendants used violence against members of an extremist group, the New Hungarian Guards in Sajóbabony<sup>59</sup>).<sup>60</sup> The number of cases examined by the research was

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[http://politicalcapital.hu/pc-admin/source/documents/Report%20on%20xenophobia\\_Hungary\\_2015\\_Final.pdf](http://politicalcapital.hu/pc-admin/source/documents/Report%20on%20xenophobia_Hungary_2015_Final.pdf). See the list of articles tagged under 'gypsy criminality' on the radical right news site at <https://kuruc.info/t/35/>. See also an English report on the inside of the Hungarian far right available at <https://www.aljazeera.com/programmes/radicalised-youth/2018/10/prejudice-pride-hungary-181029060026570.html>

<sup>54</sup> The Army of Outlaws organised 'well-being improvement visits' in 2016 upon the invitation of their 'comrades' (lit. 'brothers-in-nation') who claimed to have been 'harassed' by the Roma. While MÖM executes these actions in smaller groups, usually consisting of only a few people, the Outlaws tend to appear in a locality in a bigger group of a few dozen members. In September, for instance, approximately 60–80 Outlaws visited Tótkomlós, a town in south-east Hungary to intimidate the local Roma.

<http://szentkoronaradio.com/blog/2016/09/30/betyarsereg-a-letezo-magyar-sorskozosseg-beszamol-a-totkomlosi-latogatasunkrol/>

<sup>55</sup> Ildikó Barna and Bulcsú Hunyadi, *Report on Xenophobia, Discrimination, Religious Hatred and Aggressive Nationalism in Hungary in 2015*, pp. 39-40., available at [http://politicalcapital.hu/pc-admin/source/documents/Report%20on%20xenophobia\\_Hungary\\_2015\\_Final.pdf](http://politicalcapital.hu/pc-admin/source/documents/Report%20on%20xenophobia_Hungary_2015_Final.pdf)

<sup>56</sup> <https://index.hu/belfold/2016/11/16/az-arcvonalosoknak-ezzel-befellegzett/>

<sup>57</sup> Ildikó Barna and Bulcsú Hunyadi, *Report on Xenophobia, Discrimination, Religious Hatred and Aggressive Nationalism in Hungary in 2016*, p 50., available at [http://www.politicalcapital.hu/pc-admin/source/documents/Report%20on%20Xenophobia\\_Hungary\\_2016.pdf](http://www.politicalcapital.hu/pc-admin/source/documents/Report%20on%20Xenophobia_Hungary_2016.pdf)

<sup>58</sup> [http://www.baz.hu/content/2017november/1711\\_05\\_ksh\\_2017.pdf](http://www.baz.hu/content/2017november/1711_05_ksh_2017.pdf)

<sup>59</sup> In May 2013, the first instance court ruled that the nine Roma accused committed a hate crime, and the perpetrators were sentenced to imprisonments between 2.5 and 4 years. The decision was appealed against, and the second instance court decided to raise the sentences imposed on almost all defendants in its decision issued on 30 September 2013.

<https://tasz.hu/cikkek/a-kuria-szerint-is-rasszizmus-vezerelte-a-gardistakra-tamado-sajobabonyi-romakat>

low (from county Borsod-Abaúj-Zemplén 9 case files were available out of the total of 17 registered cases from the period of 2009-2013) also due to the significant latency. The extremely low number of cases registered as hate crimes demonstrates that the **provision on 'violence against a member of a community' does not fulfil its function, namely the enhanced protection of the minority groups** (including the Roma community) against bias motivated violent attacks. One of the major reasons is the lack of trust in the authorities.

## MEASURES TAKEN TO ENSURE FULL ENJOYMENT OF THE RIGHTS ENUNCIATED UNDER ARTICLE 5 OF THE CONVENTION

### QUESTION 10 (ARTICLE 5)

#### **PROVISION OF ADEQUATE HOUSING TO MINORITY GROUPS; DISCRIMINATION IN HOUSING WITH SPECIAL VIEW TO FORCED EVICTIONS AND PREVENTION OF HOMELESSNESS**

*(1) Roma minority:*

**Miskolc**, the third largest city, is the centre of North-eastern Hungary which is one of the most disadvantaged regions. Miskolc has approximately 170.000 inhabitants. Based on the census data of 2011 and complementary estimations, around **13.500 persons live in 13 different segregated settlements, slums in the city. 80 to 90 percent of the persons living in these segregated slums are of Roma origin.** The long-term unemployment rate among the population of the slums is very high; the dwellings are of extremely poor quality.

Over the past few years, **since 2011 the municipality of Miskolc has been openly hostile towards its Roma inhabitants.** Instead of finding ways to solve the problem of extreme poverty and unemployment, the local government is taking discriminatory measures. Amongst others, the **Miskolc Municipality Police (MMP) has been frequently conducting raid-like inspections in the segregated neighbourhoods** of the city. Furthermore, the municipality took unlawful measures against the Roma population, such as **eradicating one of the segregated neighbourhoods called 'Numbered Streets' without providing further alternative housing for the inhabitants.** All these discriminative practices have been accompanied by the **prejudiced, stereotyping public communication of the mayor, the municipality and the local media.**

Human rights NGOs first filed a joint complaint to the Commissioner for Fundamental Rights in 2014. The Ombudsperson's comprehensive investigation ascertained that the **joint inspections violated the principle of equal treatment as more than 90% of them took place in segregated neighbourhoods where residents live in poverty and are predominantly of Roma origin.** In the report, the Ombudsman also warned about the dire living conditions of the inhabitants of the segregated settlements and the consequences of these living conditions. At the same time the Ombudsperson stressed that the evictions in the Numbered Streets (one of the segregations of Miskolc) are not suitable measures to eliminate the segregated settlements in Miskolc.

The Equal Treatment Authority also conducted an inquiry into the Municipality's policies regarding the eradication of the Numbered Streets. The Court on appeal confirmed the Authority's decision according to which the Municipality discriminated against the poor Roma people living in this segregation by not providing any alternative housing for them and by exposing them to homelessness or further segregation. An important element of the Authority's decision was that it obliged the municipality to put an end to the discriminative situation by developing an action plan (by 31 December 2015) detailing on where within Miskolc, how and from what sources it can provide the tenants of the Numbered Streets with adequate housing. The Authority also called on the municipality to stop its ongoing discriminative practice until the action plan is prepared. Furthermore, the Authority obliged the municipality to prepare (by 30 September 2015) another action plan

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<sup>60</sup>Bárd Petra, A gyűlölet-bűncselekmények büntetőjogi üldözésének jogszabályi és társadalmi feltételrendszere, in *Kriminológiai Közlemények*, 75 (2015), pp. 144-154.

on how it will provide those with adequate housing who have already become homeless or face a direct threat thereof because of the discriminative practices. These measures were also upheld by the court.<sup>61</sup>

According to the Hungarian Civil Liberties Union and the Legal Defence Bureau for National and Ethnic Minorities, the joint inspections, the eradication of the Numbered Streets and other local measures together with the propaganda of the municipality raising prejudice against minorities were violating the right to equal treatment of the Roma in Miskolc. In a civil lawsuit launched against the municipality and the MMP, the legal defenders were asking the court to state that a violation of law has occurred and to impose a penalty of 10 million HUF. The first instance Court agreed with the legal defenders in its judgment of 12 December 2018 and found the respondents responsible in the human rights violations. The judgment is not final.<sup>62</sup>

It must however be mentioned **that the legal successes have not prevented the municipality of continuing to drive the poor Roma out of the town of Miskolc.** In June 2016, the municipality adopted a Local Equal Opportunities Program, which contains a part on 'solving the housing problems related to the elimination of the segregated neighbourhood of the Numbered Streets'. 'However, as it was pointed out by several NGO's and experts active in the field, the only tangible content-element of the plan was the creation of a Social Housing Society (to be operated by the Hungarian Charity Service of the Order of Malta) vested with the task of managing altogether 30 social housing units with the purpose of placing the families remaining without housing.'<sup>63</sup>

While according to activists, 30 units are evidently insufficient to provide housing for all the concerned and potentially concerned residents of the Numbered Streets, it seems that not even those units will eventually be put into practice, as 'a high ranking municipal official told the press that they would demolish all the apartments of the neighbourhood, including those 30, which the charity service of the Order of Malta was supposed to take over with the purpose of providing housing to families in need. [...] Many of the families that were forced to leave the Numbered Streets had to move to the outskirts of the town (further away from educational and healthcare infrastructure) into equally segregated, but often even more substandard neighbourhoods.'<sup>64</sup>

A local Roma activist confirmed that **very few persons had been actually provided with accommodation by the municipality, his estimation was that no more than 10% of all the people concerned by the tearing down of the neighbourhood were eventually provided with alternative accommodation.** The majority of the concerned population have left Miskolc, some of them live in villages around the town, but many have left the country altogether, seeking employment in Germany, Austria or France. The interviewed activist said that for these reasons, he and other activists had lost track of most of the people who had been made homeless by the municipality's actions.

The fact that the municipality is determined to go through with its plan of driving the Roma out of Miskolc is that after the December 2018 judgment finding the municipality to be in breach of fundamental human rights norms, and the mayor of the town (member of the ruling party Fidesz) declared publicly that he had absolutely no intention of changing his policies. Among others, he said the following: 'I have some bad news for HCLU and NEKI<sup>65</sup>: [...] they will not be able to tell us, residents of Miskolc, where and with what intensity we should take action to guarantee our own security. As we have done until now, we will continue to decide it for ourselves, even if HCLU and NEKI stand on their heads. They may object to this, they may bring lawsuits, we will pay the fines if we must, like we have done in the past, but it is not HCLU and especially not NEKI who can tell us what we must do in Miskolc to protect public safety.'<sup>66</sup>

## *(2) Migrants, beneficiaries of international protection:*

Since 1 June 2016, the Hungarian state has completely withdrawn from integration services provided to beneficiaries of international protection. The period of stay in open reception centres following recognition as

<sup>61</sup> <https://www.equalitylaw.eu/downloads/4846-hungary-first-instance-court-decision-on-the-harassing-practices-of-the-municipality-of-miskolc-pdf-127-kb>

<sup>62</sup> Contribution authored by the *Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)*

<sup>63</sup> <https://www.equalitylaw.eu/downloads/4749-hungary-country-report-non-discrimination-2018-pdf-2-60-mb>  
<https://www.equalitylaw.eu/downloads/4749-hungary-country-report-non-discrimination-2018-pdf-2-60-mb>, p. 80.

<sup>64</sup> Ibid.

<sup>65</sup> Nemzeti és Etnikai Kisebbségi Jogvédő Iroda [Legal Defense Bureau for National and Ethnic Minorities], [www.neki.hu](http://www.neki.hu)

<sup>66</sup> <https://borsodihir.hu/helyben-jaro/2018/12/miskolc-polgarmestere-elkuldte-a-joqvedoket-a-fenebe>

a beneficiary of international protection has been reduced from 60 days to 30 days. **Between June 2016 and January 2018 only civil society and religious charity organisations provided the much-needed services aimed at helping the integration process**, such as assistance in housing, finding employment, learning the Hungarian language or family reunification. The main source of funding for these services was provided by the national actions of the Asylum, Migration and Integration Fund (AMIF) of the European Union. **However, in January 2018 the government withdrew the call for proposals for the next funding cycle.** As a consequence, the provision of these useful and much needed integration services have stopped in June 2018, the end of the current funding cycle. This severely impacted NGOs providing housing support to beneficiaries of international protection and even further deteriorated the chances of refugees to access the already extremely difficult housing market.

As a consequence, **refugees and beneficiaries of subsidiary protection** are now obliged to move out from the reception centre where they are accommodated already a month after the grant of their status, and **will not receive any targeted support for their integration** (financial benefits, housing allowance, language course, etc.). **These provisions may immediately force the few who actually receive international protection in Hungary to homelessness and destitution**, thus fundamentally questioning the effectiveness of the protection status granted.<sup>67</sup>

### **DISCRIMINATION IN ACCESS TO HEALTH CARE**

#### *(1) Roma minority:*

The Regina Foundation Miskolc (Regina Alapítvány Miskolc, a local civil society organization working with Roma women) found the following problems related to medical assistance provided to Roma women (of the Borsod county in Eastern Northern Hungary) while giving birth. **While the non-Roma women are provided adequate assistance, information and support in the preparation period and afterwards while giving birth, the same assistance is not provided to the members of the local Roma community.** Based on the Foundation's experiences, indirect discrimination exists against Roma women, since they are not informed about their rights (e.g. the right to be accompanied by an adult relative while giving birth, which right is enshrined in domestic law). Roma women are discriminated against in the Miskolc county hospital in three additional ways.

Although a system of separation is not declared officially, in fact, **Roma and non-Roma women after giving birth are placed in different rooms.** This system is in place due to the pressure coming from the majority non-Roma population: non-Roma women prefer not to be placed in the same rooms claiming that they need a calm environment and it cannot be ensured due to the differences between Roma and non-Roma culture and attitude. The hospital does not take any effort to address this problem neither by information, sensitization or preparation for the change of the system in order to terminate segregation.

Another problematic practice was that **when a Roma woman requested a relative to accompany her, the relative was charged for the operating room attire.** The European Roma Rights Centre sued the Miskolc county hospital in 2017 based on the allegation of direct and indirect discrimination. The Miskolc Tribunal found direct discrimination based on pregnancy and maternity and indirect discrimination based on Roma ethnicity and social status. The judgment was upheld on appeal by the Debrecen Court of Appeal in 2019. The hospital was fined and obliged to cease the unlawful practice.

The third problem that the local Roma women have to face is the **harassment suffered while giving birth.** In 2016, a Roma woman turned to the Equal Treatment Authority based on the following facts. While she was giving birth in the Miskolc hospital, she cried out with pain and the midwife yelled at her *'if you shout once more I will push the pillow into your face'*. The gynaecologist warned her that if she kept shouting, he would call for a psychiatrist and might have her child taken into child care, in which case she would not receive a family allowance, and *'you, Gypsies, only give birth for the money, anyways'*. When receiving the complaint from the Equal Treatment Authority, the hospital's management ordered an internal investigation: they forwarded the complaint to the concerned doctor, who produced a detailed letter refuting the complaint (claiming that no offensive statements were made at the delivery), which letter was signed by all the

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<sup>67</sup> An English summary of the changes is available here: [https://www.helsinki.hu/wp-content/uploads/Under-destruction\\_2016.pdf](https://www.helsinki.hu/wp-content/uploads/Under-destruction_2016.pdf)

witnesses who were present at the incident on behalf of the hospital (the gynaecologist, a resident, two midwives and a cleaner). The hospital management submitted this letter as their defence along with a brief statement. In the course of the Authority's investigation, the hospital's witnesses were heard in relation to not only the complained incident, but also with regard to the circumstances of the internal investigation. Their statements showed that the internal investigation was *de facto* led by the physician who was alleged to make the injurious statement. The Equal Treatment Authority concluded that there had been harassment based on affiliation with a national minority and colour. Although the five hospital workers denied the complaint in full, the Authority accepted that impugned statement had been made. It based this conclusion on the following: (i) the complainant tried for two months to file a complaint with different authorities (e.g. the police and the prosecution), before upon the Roma minority self-government's advice it turned to the Authority, so she was persistently trying to seek remedy for the violation; (ii) she presented the complaint in a very consistent and realistic manner; (iii) she was fully able to differentiate between the hospital workers regarding their role in the incident, distinguishing between those who were supportive towards her and those who violated her rights. Harassment was established, as the impugned statement was definitely capable of creating a humiliating environment for the complainant whose dignity was violated. The Authority ordered that its decision be published on the hospital's website for 60 days and imposed a fine of HUF 500,000 (approx. EUR 1,550) on the hospital. The hospital did not request a judicial review of the decision, therefore it is final.<sup>68</sup>

According to the experiences gained by the Regina Foundation through interviews with the local Roma women, the above case was not an isolated incident.<sup>69</sup>

#### *(2) Migrants, beneficiaries of international protection:*

As of 1 June 2016 the automatic eligibility period for basic health care services following the recognition of an international protection status was reduced from 1 year to 6 months.<sup>70</sup>

In the transit zones the **lack of interpretation provided for interaction with nurses, doctors, psychologists and social workers** makes access to these needed services difficult, especially for vulnerable asylum seekers among them women and LGBTI people.<sup>71</sup> Furthermore, every time asylum seekers need to visit a doctor in the transit zones, **they are escorted from their containers to the doctor's room by police or armed security guards**. If asylum seekers need to be taken out from the transit zones to the local hospitals most of the times they are also escorted by police which makes them feel criminals without having committed any crime.<sup>72</sup>

HHC's latest comparative report published in February 2019 about the detention of asylum seekers also found that some asylum seekers complained that **the paramedic and the doctors in the transit zone force them to take pills which make them feel dizzy, weak and sleepy**. Medication prevents them from participating in meaningful activities e.g. workshops and playing soccer. Four interviewed detainees complained that they did not receive proper medication; the only medication they generally got were painkillers.<sup>73</sup>

## **DISCRIMINATION IN ACCESS TO EDUCATION**

### *(1) Roma minority:*

School segregation of Roma children shows no signs of abating, and **approximately 45% of Roma children attend schools or classes in Hungary where all or the majority of their classmates are also Roma**. In 2014, 381 primary and secondary schools have been officially reported to have 50% or more Roma among their students.<sup>74</sup> The **level of segregation has increased according to a recent study of**

<sup>68</sup> [http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/03eac3ef1bb0b0e3cfa1\\_76a8a660b20b/349\\_2016.pdf](http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/03eac3ef1bb0b0e3cfa1_76a8a660b20b/349_2016.pdf)

<sup>69</sup> Contribution authored by the **Regina Alapítvány Miskolc (Regina Foundation Miskolc)**

<sup>70</sup> See in detail at [https://www.helsinki.hu/wp-content/uploads/Under-destruction\\_2016.pdf](https://www.helsinki.hu/wp-content/uploads/Under-destruction_2016.pdf)

<sup>71</sup> Hungarian Helsinki Committee, *Safety-net torn apart: Gender-based vulnerabilities in the Hungarian asylum system*, 2018. Available at [https://www.helsinki.hu/wp-content/uploads/SAFETY\\_NET.pdf](https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf)

<sup>72</sup> Hungarian Helsinki Committee, *Crossing a Red Line: How EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry – case studies on Bulgaria, Greece, Hungary, and Italy*, 2019. Available at [https://www.helsinki.hu/wp-content/uploads/crossing\\_a\\_red\\_line.pdf](https://www.helsinki.hu/wp-content/uploads/crossing_a_red_line.pdf)

<sup>73</sup> Ibid.

<sup>74</sup> Bernard Rorke, Segregation in Hungary: the long road to infringement. *ERRC Blog*, 30 May 2016. Available at: <http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>

**the Hungarian Academy of Sciences**, in 2016 the segregation index has increased by 10 points, to 38.6.<sup>75</sup> According to the Roma inclusion index of 2015, *'while literacy is not a problem and preschool inclusion has been significantly improved, the situation of Roma in education in all areas is worsening. Gaps are increasing and percentages of Roma not completing different levels of education are very high. At the same time school segregation is increasing and the only available data for special education indicate overrepresentation of Roma.'*<sup>76</sup> **The gap between Roma and non-Roma in primary education has significantly increased, meanwhile the situation of Roma has dramatically worsened, 19% fewer Roma than others accomplish primary school education.**<sup>77</sup> The educational gap has only reduced in pre-school education. A country report of the European Commission of 2018 states that disadvantaged students have very low chances of entering the higher educational tracks, and early school leaving has increased in Hungary between 2014 and 2017 to 12.5%.<sup>78</sup> Experts argue that this is the result of the reducing the compulsory schools age from 18 to 16. The report also stresses that *'the separation of disadvantaged pupils, including Roma, has accelerated in the last decade. Increasing residential separation and the effect of parental choice on local school enrolment policies within the highly differentiated school system have resulted in the education system becoming ever more segregated on ethnic grounds. Despite the state taking over the management of all public schools from municipalities in 2013 with the aim of levelling inequalities, most Roma children still attend schools where all or most children are Roma.'*<sup>79</sup>

**The lack of reliable data on Roma children in education remains the main barrier for measuring and combating segregation. Special measures adopted by the Government to foster education opportunities of Roma are mostly mainstream measures (targeted to multiply disadvantaged), their impact on Roma cannot be properly measured.** The socially disadvantaged and the multiply disadvantaged status have been used as a proxy for Roma. As explained below however, this proxy – due to a legislative change in 2013 - no longer covers the majority of Roma, rather a fraction of, and as a consequence the impact of these measures cannot be measured in a reliably manner on Roma. In 2013 the definition of multiply disadvantaged children in the Child Protection Act<sup>80</sup> was modified, and were added further conditions to the former eligibility criteria. CSOs warned that *'it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the category of disadvantaged'*.<sup>81</sup> A dramatic decrease in the number of multiply disadvantaged children can be observed in the recent years, meanwhile child poverty has been increasing extensively in Hungary.<sup>82</sup>

On 26 May 2016, the European Commission launched an **infringement procedure against Hungary over the segregation of Roma children in schools and in special education**. Despite the ECtHR ruling in *Horváth and Kiss v. Hungary* in 2013<sup>83</sup> Romani children are continued to be channelled to special schools in Hungary. The Hungarian government has failed to date to implement the Court's judgment.<sup>84</sup>

<sup>75</sup> A közoktatás indikátor rendszere 2017 [Indicator system of public education 2017], MTA Közgazdaság- és Regionális Tudományi Kutatóközpont Közgazdaság-tudományi Intézet, p. 147. available at (in Hungarian) [http://www.mtaki.hu/wp-content/uploads/2018/02/A\\_kozoktatasi\\_indikatorrendszer\\_2017.pdf](http://www.mtaki.hu/wp-content/uploads/2018/02/A_kozoktatasi_indikatorrendszer_2017.pdf). Segregation index is the degree to which 'disadvantaged' and 'especially disadvantaged' children are separated from their non-disadvantaged peers in the course of their education, where the index is 0 if there is no segregation and 100 if they are completely separated from each other.

<sup>76</sup> Roma inclusion index, Decades of Roma Inclusion Secretariat Foundation, p. 15, , available at:

<https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

<sup>77</sup> Roma inclusion index 2015, Decade of Roma Inclusion Secretariat Foundation, p. 45. available at:

<https://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>

<sup>78</sup> Education and training monitor 2018 Hungary, European Commission, 2018, p. 6. available at:

[https://ec.europa.eu/education/sites/education/files/document-library-docs/et-monitor-report-2018-hungary\\_en.pdf](https://ec.europa.eu/education/sites/education/files/document-library-docs/et-monitor-report-2018-hungary_en.pdf)

<sup>79</sup> Ibid., p. 6.

<sup>80</sup> Article 67/A of Act XXXI of 1997 on Child Protection.

<sup>81</sup> Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary 2013, p. 50., available at: [http://autonomia.hu/wp-content/uploads/2016/04/civil-society-monitoring-report\\_en.pdf](http://autonomia.hu/wp-content/uploads/2016/04/civil-society-monitoring-report_en.pdf)

<sup>82</sup> According to the assessment of the Chances for Children Association (GYERE) between 2007 and 2013 income inequalities grew significantly and increase of poverty within the total population was 14 percent, and 20% among children respectively. GYERE Civil Report (2013) p. 48. Available at [http://www.gyere.net/downloads/2013\\_civil\\_jelentes.pdf](http://www.gyere.net/downloads/2013_civil_jelentes.pdf)

<sup>83</sup> A brief English summary of the case, as well as the original application, the Government's observations, the judgment, the Rule 9 Communication of the Committee of Ministers of the Council of Europe about supervising the execution of judgment is available here <http://www.errc.org/cikk.php?cikk=4200>

<sup>84</sup> See *Horvath and Kiss v Hungary*, Execution of Judgments, Last exam of the Committee of Ministers, December 2017, available at <http://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-10905%22%5D%7D>

Contribution authored by **Adél Kegye, Rosa Parks Alapítvány (Rosa Parks Foundation)**



While one of the main arguments for centralising the administration of education was that this way the state can effectively step up against inequalities, a series of court cases shows that **the Hungarian state has failed to live up to its promise, and has largely abandoned the problem of segregation**. By way of example, in an April 2018 judgment, **the Budapest Regional Court found that the Ministry responsible for education had violated the requirement of equal treatment in relation to Roma pupils in 28 elementary schools** (10 in Budapest, 18 in different other Hungarian cities/towns) **by having failed to take action against school-level segregation starting from the 2003/2004 school year**. In 2009, the Chance for Children Foundation (CFCF) initiated an *actio popularis* lawsuit against the – then – Ministry of Education and Culture, as the entity ultimately responsible for the management of the Hungarian system of education. The CFCF asked the Court to conclude that by not taking effective action – directly and/or through the administrative bodies responsible for the operation of educational institutions – against segregation of Roma children in education, the ministry failed to fulfil its obligations stemming from the Equal Treatment Act and the Act on National Public Education, and thus violated the segregated Roma pupils’ right to equal treatment. In its petition, the CFCF referred to a 2005 research (by sociologists Ilona Liskó and Gábor Havas) commissioned by the predecessor of the Ministry, which concluded that already in 2005, there were altogether 44 schools where the proportion of Roma pupils exceeded 50 (in some schools 80) per cent, and this number was on the rise. Segregation was accompanied by substandard sub par physical conditions and a lower quality of educational services.

The court concluded that the Ministry must have been sufficiently aware of the situation and it must also have been aware of the fact that the situation was not improving, and if it was not aware of that fact, it would mean that its monitoring mechanisms/guidelines were deficient, which would also fall to its onus. Therefore, the Ministry – as the entity ultimately responsible for the lawful operation of the Hungarian educational system – is certainly accountable for the fact that the statutory requirement of non-segregation is not met.<sup>85</sup>

The court ordered a number of measures to be taken, including the gradual closing down of 13 segregated schools, the distribution of the pupils who would attend these schools, the development of desegregation plans, and the amendment of the educational monitoring methodology. However, upon appeal, the court of second instance – although agreed that the Ministry was responsible for the segregation through its omission – discarded most of these measures in its judgment of February 2019, and only upheld the obligation to prepare desegregation plans and the public interest fine (of cca. EUR 158,000) that was imposed by the first instance court on the Ministry.

Another case that exemplifies the ambiguous attitude of the Hungarian government to the issue of segregation is the lawsuit launched by the CFCF against a denominational school that reopened a school in the middle of a segregated Roma neighbourhood that had been previously closed down with the purpose of putting an end to the segregation of the Roma children going there. In April 2013, Zoltán Balog, who was at the time the Minister responsible for educational matters actually attended the court hearing as a witness arguing that the court should allow the denominational school to continue even if practically only Roma children attend it. He is reported to have said in his capacity as witness that in his view it was possible to assist the children in catching up in segregated educational institutions if the children are taught by good teachers with good methods in a loving environment.<sup>86</sup>

## *(2) Migrants, beneficiaries of international protection:*

When the transit zone first entered operation there was no formal education provided (between October 2015 and September 2017), other than very irregular activities organised for very young children by social workers. Education is now provided during the school year (between September and June) by remedial teachers who are trained only to teach children with disabilities, and thus lack experience working with a standard curriculum. They provide activities between 9-12 am for 3x45 minutes. They follow a curriculum specifically designed for the transit zones. They teach Hungarian, Maths (sometimes), developmental games, arts and crafts. **However, the lack of a particular curriculum and provision of a recognised school certificate means that this cannot be considered proper school education.** Asylum seekers

<sup>85</sup> <https://www.equalitylaw.eu/downloads/4641-hungary-education-ministry-found-to-be-in-breach-of-its-non-discrimination-obligations-for-failing-to-take-effective-action-against-segregation-in-28-elementary-schools-pdf-164-kb>

<sup>86</sup> [https://index.hu/belfold/2013/04/26/balog\\_a\\_szeretettel\\_i\\_szegregacioban\\_bizik/](https://index.hu/belfold/2013/04/26/balog_a_szeretettel_i_szegregacioban_bizik/)

complained that some teachers did not speak English, only Hungarian, which made the educational activities meaningless.<sup>87</sup>

This leads to the fact that **children who are detained in the transit zones** (either with their parents or as unaccompanied minors between the ages of 14 and 18) **are discriminated regarding their access to education** compared to those asylum seeking children who are not detained in the transit zones (either because they are staying in Hungary on grounds of a residence permit or because they are unaccompanied minors between 0-14 and hence placed in an open children's home).

Not only asylum seekers face discrimination regarding their access to education, but **also those are affected who have already been granted international protection**. Since the government withdrew the call for proposals for the next funding cycle of the AMIF of the European Union, the provision of useful and much needed educational services have also stopped in June 2018. This seriously negatively impacted NGOs providing educational activities to beneficiaries of international protection (e.g. MigHelp and Artemisszió Foundation).

### **DISCRIMINATION OF CHILDREN IN PARTICULAR WITH REGARD TO REMOVAL OF THEM FROM THEIR FAMILIES**

According to Article 5 of the Convention, as well as the UN Convention on the Rights of the Child and the Hungarian child protection and guardianship laws, the Hungarian state has to take measures to ensure non-discrimination against children belonging to minority groups, in particular with regard to the removal of children from their home environment and the State child care system. (State report f. Point page 21.) 'Removal of the child exclusively from a financial point of view with his family is clearly a violation of the law' - as it is confirmed by the Hungarian Government in its report. The child may not be taken away from his/her family on the grounds of insufficient material, financial conditions, and that instead, the family should be assisted to take 'good enough' care of their children so as to eliminate the factors endangering the child.

In contradiction to the Government's allegations the **Hungarian child protection system is strongly discriminative**.<sup>88</sup> In the last few years researchers have examined this question in different Hungarian counties. These studies revealed that roughly **70-80 % of the children in foster care (altogether 23 thousand children) are Roma** (in 2007 this proportion was 60%, in 2010 66%). The last survey showed 80%<sup>89</sup>, while the proportion of the Roma population within the Hungarian society amounts to 7-9 %.

Although it is hardly measurable, qualitative surveys show that the competences and attitudes of local institutions and their personnel obviously have a determining role in discriminative practices. Researches reveal prejudiced beliefs on the part of the child protection authorities' personnel that characterise the social perception of concerned families and children. *'As a result of these conditions, the aim of objectivity and unity may be hindered and impaired, paradoxically putting welfare and protection of children at the service of discrimination and social exclusion, instead of being instrumental in promoting equal opportunities and enhancing social inclusion.*<sup>90</sup>

Although it is forbidden to remove a child from his or her family on the ground of the family's social situation, it is proven that **30 % of the children are in foster care because of the family's poverty**. The ombudsperson examined the situation of the children in foster care in 2017. The inquiry showed that every

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<sup>87</sup> Hungarian Helsinki Committee, *Crossing a Red Line: How EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry – case studies on Bulgaria, Greece, Hungary, and Italy*, 2019. Available at [https://www.helsinki.hu/wp-content/uploads/crossing\\_a\\_red\\_line.pdf](https://www.helsinki.hu/wp-content/uploads/crossing_a_red_line.pdf)

<sup>88</sup> Mária Herczog and Mária Neményi, *Romani Children and the Hungarian Child Protection System* by Maria Herczog and Maria Neményi in *Roma Rights Quarterly*, 2007 (4), available at [http://childhub.org/sites/default/files/library/attachments/551\\_581\\_EN\\_original.pdf](http://childhub.org/sites/default/files/library/attachments/551_581_EN_original.pdf)

<sup>89</sup> European Roma Rights Centre, *Dis-interest of the child: Romani Children in the Hungarian Child Protection System*, (Budapest, 2007), available at [http://www.errc.org/uploads/upload\\_en/file/02/8F/m0000028F.pdf](http://www.errc.org/uploads/upload_en/file/02/8F/m0000028F.pdf). See also Életfogytiglan: Roma gyermekek a magyar gyermekvédelmi rendszerben (2011), available at [http://www.errc.org/uploads/upload\\_en/file/eletfogytiglan-20-june-2011.pdf](http://www.errc.org/uploads/upload_en/file/eletfogytiglan-20-june-2011.pdf), and Darvas, Farkas, Kende and Vígh, *Roma gyermekek a szakellátásban. Gyermekjólét és gyermekvédelem Nógrád megyében*, in *Esély* 2016 (4)

<sup>90</sup> Mária Herczog and Mária Neményi, *Romani Children and the Hungarian Child Protection System* by Maria Herczog and Maria Neményi in *Roma Rights Quarterly*, 2007 (4), available at [http://childhub.org/sites/default/files/library/attachments/551\\_581\\_EN\\_original.pdf](http://childhub.org/sites/default/files/library/attachments/551_581_EN_original.pdf). See also European Roma Rights Centre, *Dis-interest of the child: Romani Children in the Hungarian Child Protection System*, (Budapest, 2007), available at [http://www.errc.org/uploads/upload\\_en/file/02/8F/m0000028F.pdf](http://www.errc.org/uploads/upload_en/file/02/8F/m0000028F.pdf), and Andrea Rácz, *Az előítéletes gondolkodás megjelenése a gyermekvédelemben*, *Esély*, 2014 (3), available at [http://esely.org/kiadvanyok/2014\\_3/2004-3\\_1-2\\_Racz\\_eloiteletes\\_gondolkodas.pdf](http://esely.org/kiadvanyok/2014_3/2004-3_1-2_Racz_eloiteletes_gondolkodas.pdf) as well as Darvas, Farkas, Kende and Vígh, *Roma gyermekek a szakellátásban. Gyermekjólét és gyermekvédelem Nógrád megyében*, in *Esély* 2016 (4)

third child is taken into state care due to his or her family's financial constraints. According to the ombudsperson this practice breaches obligations undertaken by Hungary with the United Nations Convention on the Rights of the Child and severely violates the child's right to be raised and looked after in a family. **Roma are disproportionately affected by this unlawful practice as they are highly overrepresented among the poorest societal groups.**

As the Hungarian government confirmed in its report, the removal of a child from its family should be the ultimate tool for protecting the child, which measure can only be enforced while respecting the principle of gradualism. In accordance with this principle, the child welfare services are responsible for the endangered families, they should assist them to take 'good enough' care of their children. If for instance the families have housing problems, alternative housing opportunities should be guaranteed. Every endangered child must be supported by the welfare services before being removed as an *ultima ratio* solution.

However, when it comes to reality, surveys show that just **a small minority of the disadvantaged children were assisted by the services before their removal from their families.**<sup>91</sup> The welfare services are in a critical situation in Hungary, as it was severally confirmed by the professionals.<sup>92</sup> The child welfare system is strongly underfunded and the staff turnover is very high. On the national level 30% of the personnel is missing.<sup>93</sup>

### **SITUATION OF WOMEN BELONGING TO ETHNIC MINORITY GROUPS**

The HHC conducted a research in 2018 to examine the situation of female asylum seekers and female beneficiaries of international protection.<sup>94</sup> The research found that: 1) **there are no specific services tailored to the special needs of vulnerable asylum seekers, including women and LGBTI persons, in the transit zones;** 2) LGBTI and vulnerable women asylum seekers **cannot be provided with separate accommodation** in the transit zones, despite the risks associated with the lack of such arrangements; 3) the transit zone **lacks a separate and safe environment for women** similarly to activities aimed at this group; 4) **psycho-social assistance provided in the transit zone is insufficient** when compared to the needs of vulnerable asylum seekers detained there, among them torture and trauma survivor girls, women and LGBTI applicants.

In Budapest, a wide variety of integration services was offered by NGOs and church-based organizations, most of them also funded by the national allocation of AMIF, however these services also stopped after June 2018.

Refugees belonging to the focus groups of the study reported on the effect of the hate campaigns of the Hungarian government (taking place since 2015) on their lives. Finding housing as a refugee woman or applying for a job has been made more difficult by the fears instilled through these campaigns.

### **NON-REFOULEMENT**

Amendments to the State Borders Act and the Asylum Act<sup>95</sup> entered into force on 5 July 2016 that 'legalised' the **extrajudicial push-back of third-country nationals** without the right to stay from Hungary to Serbia, if found within an 8 km area from the border fence erected along the Hungarian-Serbian and the Hungarian-Croatian border fence. **Those pushed back do not have the right to seek asylum in Hungary and as there is no formal procedure taking place, no judicial remedy is available against the measure.**<sup>96</sup>

<sup>91</sup> According to data from 2009, 17 % of the children were assisted prior to their removal. Data quoted in Andrea Rácz, Az előítéletes gondolkodás megjelenése a gyermekvédelemben, *Esély*, 2014 (3), p. 32., available at [http://esely.org/kiadvanyok/2014\\_3/2004-3\\_1-2\\_Racz\\_eloiteletes\\_gondolkodas.pdf](http://esely.org/kiadvanyok/2014_3/2004-3_1-2_Racz_eloiteletes_gondolkodas.pdf)

<sup>92</sup> Statement by the Hungarian Child Welfare Association (2015) available at [http://www.macsgyoe.hu/hirek/aktualitasok/2015-03-20/veszelyben\\_a\\_gyerekvedelem\\_-\\_macsgyoe\\_kozlemenye.html](http://www.macsgyoe.hu/hirek/aktualitasok/2015-03-20/veszelyben_a_gyerekvedelem_-_macsgyoe_kozlemenye.html).

<sup>93</sup> *A gyermekjóléti szolgálatok feladatellátásának értékelő elemzése országos szinten*, edited by Andrea Rácz, (Budapest, 2015, Rubeus), available at <http://rubeus.hu/wp-content/uploads/2015/07/a-gyermekjoleti-szolgalatok-feladatellatasanak-ertekelo-elemzese-orzasagos-szinten.pdf>

*Contribution authored by the Társaság a Szabadságjogokért (Hungarian Civil Liberties Union)*

<sup>94</sup> Hungarian Helsinki Committee, *Safety-net torn apart: Gender-based vulnerabilities in the Hungarian asylum system*, 2018. Available at [https://www.helsinki.hu/wp-content/uploads/SAFETY\\_NET.pdf](https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf)

<sup>95</sup> Amended Section 71/A (1) of Act LXXX of 2007 on Asylum and newly added Section 5 (1a) of Act LXXXIX of 2007 on State Borders

<sup>96</sup> <https://www.helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf>

The area from which these push-backs could have taken place was extended in March 2017 to cover the entire territory in Hungary<sup>97</sup>: since 28 March 2017, any third-country national without the right to stay in Hungary is to be 'escorted' to the external side of the border fence through the nearest gate of their apprehension. It is especially important to note that since 28 March 2017 those that do not have the right to stay in Hungary and are not in detention can only lodge an asylum application in one of the two transit zones located at the Hungarian-Serbian border. Since the beginning of 2018, an arbitrary limit of 1 person per transit zone per working day is imposed on the admittance therein. These measures, when taken together, further aggravate the already significant and systemic human rights violation that push-backs cause.

According to official Police statistics there were **46,985 push-backs and blocked entries between 5 July 2016 and 26 March 2019**. Please note that as no identification or documentation takes place during these measures, this number does not refer to the affected individuals, but to the number of measures. Apart from that these measures are in breach of Hungary's international obligations, the use of excessive force during push-backs aggravates the situation<sup>98</sup>.

The table below<sup>99</sup> shows the growing gap between the number of asylum applications allowed to be lodged and the number of push-back and blocked entry measures.

	Asylum applications	Push-backs and blocked entries (percentage of push-backs in brackets)
<b>2016</b>	29 432	19 057 (44%)
<b>2017</b>	3 397	20 100 (45%)
<b>2018</b>	671	5 819 (72%)

## **ETHNIC PROFILING**

Although according to the State Report 'it is of paramount importance that police officials are strictly prohibited from initiating procedures against someone on the basis of his/her ethnic, religious or linguistic origin or nationality, therefore police profiling is a non-existing phenomenon'<sup>100</sup>, **several examples give rise to concerns that ethnic profiling against the Roma is present in actions carried out by the Hungarian police.** As referred to in the State Report<sup>101</sup>, an ordinance of the National Police Headquarter<sup>102</sup> regulates police actions carried out in multicultural environment in the interest of local communities living in a conflict-free environment. The State Report describes that commanders have a briefing obligation to their personnel that 'extends to behavioural patterns required when performing actions, the importance of objectivity, the protocol to be followed, the prohibition of discrimination and the importance of police actions free from bias or prejudice'. **Nevertheless, in fact, the police ordinance does not include any exact criteria concerning the briefing obligation of police measures in a multicultural environment.** The few number of reported complaints, referred by the State Report does not refute the presence of ethnic profiling. **A research demonstrated that Roma are disproportionately targeted by ID checks of the police.**<sup>103</sup>

**Individual cases reinforce ethnic profiling by the police with regard to certain petty offences, mainly minor pedestrian and bicycle traffic offences.** In 2011 The Equal Treatment Authority launched an *ex officio* investigation against Nógrád County Police headquarters in a case, based on the popular action that HHC brought before the Authority as a consequence of a report by the notary of a Nógrád-county village

<sup>97</sup> An English translation of the adopted changes: [https://www.helsinki.hu/wp-content/uploads/Bill\\_No-13976\\_20-February-2017.pdf](https://www.helsinki.hu/wp-content/uploads/Bill_No-13976_20-February-2017.pdf)

<sup>98</sup> Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017, pp. 10-19., available at <https://rm.coe.int/16808d6f12>. See also the Concluding Observations of the UN Human Rights Committee CCPR/C/HUN/CO/6, pp. 9-10., available at [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/HUN/CO/6&Lang=En](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/HUN/CO/6&Lang=En)

<sup>99</sup> Source of data: Immigration and Asylum Office and Police

<sup>100</sup> CERD/C/HUN/18-25 §115.

<sup>101</sup> CERD/C/HUN/18-25 §110.

<sup>102</sup> Ordinance no. 27/2011 (XII. 30.) of the National Police Headquarters

<sup>103</sup> András Kádár, Júlia Körner, Zsófia Moldova, and Balázs Tóth, *Control(l)ed Group – Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*. (Budapest: Hungarian Helsinki Committee, 2008), available at [https://www.helsinki.hu/wp-content/uploads/MHB\\_STEPSS\\_US.pdf](https://www.helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf)

and a field research that provided evidentiary data of ethnic-based fine practices in the village. Finally, the **discriminatory fining practice** was acknowledged by the county Police Chief, and a settlement was made between HHC and the police.<sup>104</sup> Ongoing field work of HHC and other NGO's reflects that ethnic profiling has not stopped.<sup>105</sup> According to their field-work experiences **there are towns and villages, where certain fines are almost exclusively imposed against Roma residents.** The fact that the police is not allowed to process data of the ethnic origin of petty offenders makes it difficult to identify ethnic profiling as part of local fining practices. The Independent Law Enforcement Complaints Board has also proceeded in a number of ethnic-profiling related complaints<sup>106</sup>. But the fact that profiling can be only examined in a comparative study of several cases – which is not feasible when examining individual complaints – hinders the effective detection and acknowledgement of ethnic profiling in individual complaints. **Six NGOs initiated the establishment of an NGO-police working group against ethnic profiling in 2014**, stating that cases of ethnic profiling have been reported to NGOs on a regular basis. **The National Police Chief rejected the proposal, stating that ethnic profiling is not practiced by the police.**

### **ARBITRARY DETENTION OF ALMOST ALL ASYLUM SEEKERS IN THE TRANSIT ZONES**

Since 28 March 2017 the Immigration and Asylum Office automatically places all asylum seekers in detention in the transit zones (with the sole exception of unaccompanied minors under 14). As the placement of all asylum seekers in the transit zones is not considered detention by the Hungarian authorities, no detention order is issued hence there are no legal remedies available to contest the lawfulness of detention (in breach of Articles 2 (3), 9 (4) ICCPR, Articles 5 (4), 13 ECHR, Articles 32, 33 of the 1951 Refugee Convention). Moreover, the legislation lacks any clearly defined maximum length of placement (that is, detention) in the transit zones. **That placement in the transit zones amounts to unlawful detention and that the lack of remedies against such placement violates fundamental human rights was also established by the European Court of Human Rights (ECtHR) in its judgment of 19 March 2017 in the case of *Ilias and Ahmed v. Hungary***<sup>107</sup>. The case, upon the request of the government, was referred to the Grand Chamber. The hearing took place in April 2018 and the judgement of the Grand Chamber is expected to come out very soon.

Hungarian authorities ignored interim measures communicated to them by the ECtHR in five cases in 2017.<sup>108</sup> All of these interim measures concerned vulnerable asylum seekers detained in the transit zones and the ECtHR in all cases indicated to the Hungarian government to ensure that the applicants (a total of 29 persons, including 14 minors) are placed in an environment that complies with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment as under Article 7 ICCPR and Article 3 ECHR. In 2018 the IAO continued its practice of ignoring the interim measures of the ECtHR concerning the placement of asylum seeking applicants in an environment that meets the requirements of the absolute prohibition of inhuman or degrading treatment enshrined in Article 3 of the European Convention on Human Rights.<sup>109</sup>

#### *Conditions of detention in the transit zones*

At the moment of writing, most asylum seekers in Hungary are detained in one of the two transit zones along the Serbian-Hungarian border. The material conditions and the services available in the transit zones are seriously lacking and unfortunately have not significantly improved since their opening. Offices and living quarters are found in containers about 13 sq. meters in size (approximately 4 x 3 meters). Asylum seekers stay in containers furnished with 5 beds. When five people are staying in a room, there is no moving space left. The containers are placed in a square and in the middle there is a courtyard with a playground for children and a ping-pong table. The entire transit zone is surrounded by a razor-wire fence, and is patrolled

<sup>104</sup> For the related Equal Treatment Authority case, see: <https://www.opensocietyfoundations.org/voices/fined-being-roma-while-cycling>

<sup>105</sup> Roma monitoring report p. 33. It also describes ethnic profiling as a crucial discriminatory practice targeting the Roma population of Hungary, particularly people living in segregated Roma settlements.

<sup>106</sup> Resolutions where ethnic profiling was targeted as an issue are available on the website of the Independent Law Enforcement Complaints Board, only in Hungarian. E.g.: 107/2011. (IV. 13.); 278/2009. (IX. 16.); 308/2012. (IX. 13.); 351/2013. (XI. 26.) See: [https://www.repate.hu/index.php?option=com\\_content&view=category&id=19&Itemid=215&lang=hu&limitstart=280](https://www.repate.hu/index.php?option=com_content&view=category&id=19&Itemid=215&lang=hu&limitstart=280)

<sup>107</sup> *Ilias and Ahmed v. Hungary*, Application no. 47287/15, available at <http://hudoc.echr.coe.int/eng?i=001-172091>

<sup>108</sup> A summary of these cases is available at <https://www.helsinki.hu/en/interim-measures-granted-in-cases-against-hungary-until-may-2017/>

<sup>109</sup> More information about the individual cases can be read here: <https://www.helsinki.hu/wp-content/uploads/transit-placement-infobonbon.pdf>

by police officers and armed security guards. **There are cameras in every corner; there is no privacy or silence.**

Specialized medical assistance is not available within the transit zones. Therefore, when pregnant women have to be taken for a medical examination, 2 or 3 policemen escort them to a nearby hospital. A pregnant woman reported that the policemen had stayed in the examining room during her pre-natal medical 8 check-up. **No interpretation is provided during the medical examination**, which makes communication and building confidence between doctor and patient extremely difficult.

In 2018, the HHC had to request 6 interim measures from the ECtHR **to ensure that authorities provide food to detained asylum seekers** whose claims were found inadmissible but whose first asylum procedure was still pending while they were detained in the transit zones. In all cases, the ECtHR granted the requests and ordered the Hungarian government to provide food to the 10 affected persons.<sup>110</sup> The IAO had to change its practice and since the successfully granted interim measures the IAO has not deprived asylum seekers of food whose first asylum procedures are still pending before the domestic authorities.

**However in 2019 the IAO continued with its inhuman practice of starving detained persons in the transit zone.** This year the IAO has been depriving of food people whose asylum procedures have been rejected at all instances and whose placement in their alien policing procedures – with a view to their deportation – have been ordered in the transit zones. Therefore the HHC again had to request interim measures from the ECtHR in February and March 2019 in the cases of 6 more families where adults have been deprived of food.<sup>111</sup> All the requests for interim measures have been granted, the latest on 26 March 2019.

Owing to the harsh living conditions, the transit zones are highly inappropriate for accommodating vulnerable individuals, even for a short period of time.<sup>112</sup> The carceral nature of existence in the transit zones have been confirmed by reports published by, for instance, the European Commission against Racism and Intolerance (ECRI)<sup>113</sup> and **the Committee for the Prevention of Torture (CPT) which concluded that such an environment cannot be considered adequate for the accommodation of asylum seekers, even less so when these include families and children.**<sup>114</sup>

As regards the establishment of the **National Preventive Mechanism (NPM)** under OPCAT in 1 January 2015,<sup>115</sup> it must be noted that the department, operating within the Office of Commissioner for Fundamental Rights is conducting **a very limited number of monitoring visits to facilities of concern** in general and to facilities where foreigners are kept in particular. In fact, only two such monitoring visits took place until 2019: in the now-defunct Asylum Detention Centre in Debrecen in 2015<sup>116</sup> and in the Children's Home for Unaccompanied Minors in Fót the same year<sup>117</sup>.

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<sup>110</sup> For more on these cases, see <https://www.helsinki.hu/wp-content/uploads/Denial-of-food-for-inadmissible-claims-HHC-info-update-17August2018.pdf>

<sup>111</sup> For more on this case, see [https://www.helsinki.hu/en/echr\\_eighth\\_interim\\_measure\\_denial\\_of\\_food/](https://www.helsinki.hu/en/echr_eighth_interim_measure_denial_of_food/)

<sup>112</sup> Hungarian Helsinki Committee, *Crossing a Red Line: How EU countries undermine the right to liberty by expanding the use of detention of asylum seekers upon entry – case studies on Bulgaria, Greece, Hungary, and Italy*, 2019. Available at [https://www.helsinki.hu/wp-content/uploads/crossing\\_a\\_red\\_line.pdf](https://www.helsinki.hu/wp-content/uploads/crossing_a_red_line.pdf)

<sup>113</sup> European Commission against Racism and Intolerance, ECRI Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up, 15 May 2018, p. 5. Available at <https://rm.coe.int/interim-follow-up-conclusions-on-hungary-5th-monitoring-cycle/16808b57f9>

<sup>114</sup> Report to the Hungarian Government on the visit to Hungary carried out by CPT from 20 to 26 October 2017, <https://rm.coe.int/16808d6f12>.

<sup>115</sup> CERD/C/HUN/18-25, §21, p. 6.

<sup>116</sup> Office of the Commissioner of Fundamental Rights, *Commissioner for Fundamental Rights as OPCAT national preventive mechanism report in case of AJB-366/2015, visit site: Debrecen Guarded Refugee Reception Centre*, April 2015, [http://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366\\_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f](http://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f)

<sup>117</sup> No report of this visit is available, see the short statement of the visit:

[http://www.ajbh.hu/documents/14315/1887891/F%C3%B3t\\_knk\\_r%C3%B6vidh%C3%ADr\\_EN.pdf/b37fb5d7-5f8b-4035-bb12-ea84012ff4a6](http://www.ajbh.hu/documents/14315/1887891/F%C3%B3t_knk_r%C3%B6vidh%C3%ADr_EN.pdf/b37fb5d7-5f8b-4035-bb12-ea84012ff4a6)

**INFORMATION ON THE JUDICIAL AND ADMINISTRATIVE OR OTHER MEASURES, IN PARTICULAR ON  
THE PRACTICE AND DECISIONS OF COURT AND OTHER JUDICIAL AND ADMINISTRATIVE ORGANS  
RELATING TO CASES OF RACIAL DISCRIMINATION  
QUESTION 11 (ARTICLE 6)**

**DISCRIMINATION IN THE CRIMINAL JUSTICE SYSTEM**

The HHC conducted an empirical research in 2013 about the situation of the Roma defendants in the criminal procedures and the penitentiary system. In the first phase of the research, we interviewed approximately 400 convicted inmates about their criminal case and their experiences in prison. In addition, we assessed their penitentiary documentation on the basis of a previously set list of criteria. In the next phase, we selected 90 inmates, and processed the criminal case files of 67 duly selected (36 Roma and 31 non-Roma) detainees on the basis of a standardised questionnaire to assess whether any difference based on ethnicity may be demonstrated. In certain prisons we also carried out focus-group discussions with – the anonymous and voluntary participation of – penitentiary staff members.

We found the following practices as discriminatory:

- In several cases, documents produced in the criminal procedure make a reference to the Roma origin of the suspect/accused person/defendant even in cases when it is absolutely unjustified and has no procedural function whatsoever (which can be a sign of bias). Penitentiary case files refer much less frequently to the Roma origin of the defendants, however, examples for that could also be found.
- Every third of those persons who identified themselves as Roma (33%) sensed bias from the authorities, and every fifth person (19%) experienced discrimination, with no relevant differences between penitentiary institutions.
- Ethnicity was significant as to the days spent in solitary confinement in the 12 months of research, the **Roma spent significantly more days in solitary confinement than the non-Roma**. While the chance of launching a disciplinary procedure against a Roma defendant is not significantly different from that chance in relation to a non-Roma defendant, the punishments imposed on Roma defendants appear to be graver.
- The number of **rewards received by the detainees** in the 12 months preceding the interviews was influenced significantly by the Roma origin of convicts. The Roma received a reward 2.7 times on average in the pre-ceding 12 months, while the non-Roma received a reward 3.2 times.
- During the focus-group discussion, some of the 29 participants (**penitentiary staff members**) demonstrated **bias** through their statements, such as: 'He/she is excluded [from the community] because he/she works. The subsidy is the goal. They settle in to receive the support and they steal', 'the family traditions are hard to change. No need to discriminate, these are facts', 'there is a family motivation, to put it mildly' 'Criminality is the norm, a career. In Roma families, prison is a family "expectation". Being in prison for them is what the military used to be: he becomes a man after he spent time in there'  
These extreme formulations, however, are not typical. It can be said – in line with the findings of the questionnaire survey – that much more emphasis is placed on the circumstances and the difficulties related to the detainees and the detention conditions, and these appear to have much more impact on the issue of equal treatment.
- As pointed out above, we found that the investigation files included references to the defendants' Roma origin in the case of 83% of those defendants who were perceived by the researchers as Roma. This rate was 17% in the case of documents prepared during the judicial phase of the proceeding. These references appeared mostly in the records of witness testimonies and concerned the description of the perpetrator. Our most worrisome observation is that even in documents which do not record statements of persons participating in the procedure – and therefore shall not include any reference to the ethnicity of anyone – **the investigative authorities sometimes refer to the Roma origin of the – assumed – perpetrators**. In one of the cases, there were seven references to the Roma origin of the suspects in a one and a half page long police report, and in another case, the police motion for the defendant's pre-trial detention included two references to the fact that the suspect is 'a Gypsy woman'.

- In the case of **65% of Roma and 40% of non-Roma defendants, the defence lawyer was notified less than one hour before the beginning of the interrogation**, which (especially if notification is not done by phone but for example by fax) will probably not make it possible for the defence lawyer to be present and/or properly prepared. **Both with regard to notifications performed more than one hour but less than 5 hours and more than 5 hours before the interrogation, non-Roma defendants were in a better situation.**

Differences based on the ethnicity of Roma and non-Roma defendants were not detectable as regards the ordering of pre-trial detention, and the length of detention was also close to identical in the investigation phase of the procedures: in the case of Roma defendants it was on average 3.5, while in the case of non-Roma defendants 3.9 months. However, if we consider the judicial phase, differences can be demonstrated between the two ethnic groups. **The average length of pre-trial detention in the judicial phase was 9 months in the case of Roma and 6.9 months in the case of non-Roma defendants.**

Evaluating the cases from this perspective, the researchers drew the conclusion that the decisions on coercive measures were more frequently not or only partially individualised in the case of Roma defendants than in the case of the non-Roma. The research looked into this issue in relation to both the decisions ordering and prolonging the coercive measure. The rates were the following. The **decisions ordering pre-trial detention during the investigation were not or only partially individualised much more frequently in the case of Roma (67%) than non-Roma (41%) defendants.** With regard to the investigation phase, the researchers have concluded that both first and second instance decisions on the continuation of pre-trial detention were individualised more frequently in the case of non-Roma than Roma defendants. In the case of Roma defendants, 15% of the first instance decisions on coercive measures were regarded by the researchers as individualised (as opposed to 50% of decisions taken in the case of non-Roma defendants), while none of the second instance decisions were individualised (second instance decisions are not sufficiently individualised in the case of non-Roma defendants either, but still in a higher proportion, 14% of the cases, individual assessment is provided in them).

Researchers have drawn the same conclusion with regard to the decisions taken on coercive measures by the **judges in the course of preparing the trial: in the case of 78% of Roma defendants the court did not individualise or only partially individualised the decision as opposed to the 39% of non-Roma defendants.** According to the evaluation of researchers, this ratio was 83 and 50% respectively in the case of second instance decisions. Results were similar with regard to the regular review of pre-trial detention. The first instance decisions were sufficiently individualised in the case of 20% of Roma and 39% of non-Roma defendants, while second instance decisions were qualified by the researchers as including a reasoning based on the individual circumstances of the defendant in 20 and 50% of the cases respectively.<sup>118</sup>

## **INFORMATION ON LEGISLATIVE AND ADMINISTRATIVE MEASURES TAKEN TO COMBAT PREJUDICES WHICH LEAD TO RACIAL DISCRIMINATION**

### **QUESTION 13 (ARTICLE 7)**

#### **DISCRIMINATION AGAINST CIVIL SOCIETY ORGANIZATIONS PROVIDING SUPPORT TO ASYLUM SEEKERS**

In the summer of 2018, the Hungarian Parliament passed a series of legislation criminalising otherwise lawful activities aimed at assisting asylum seekers and introducing a **25% special tax on certain migration-related activities.**<sup>119</sup>

The justification of the special tax on migration related activities was that the 'government seeks to employ all possible methods to protect the country from illegal migration'<sup>120</sup>. However, the tax is to be paid after 'activities [that] promote migration'<sup>121</sup> realised 'as part of

<sup>118</sup> András Kristóf Kádár, Anna Bárdits, Nóra Novoszádek, Bori Simonovits, Dániel Vince, and Dóra Szegő, *Last Among Equals – The equality before the law of vulnerable groups in the criminal justice system* (Hungarian Helsinki Committee, Budapest, 2014), available at [https://www.helsinki.hu/wp-content/uploads/HHC\\_Last\\_Among\\_Equals\\_2014.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf)

<sup>119</sup> An English translation of the adopted provisions is available at <https://www.helsinki.hu/wp-content/uploads/Criminalization-and-taxation.pdf>

<sup>120</sup> <https://dailynewshungary.com/organisations-supporting-migration-to-pay-25-pc-immigration-tax/>

<sup>121</sup> Section 253 (1) of Act XLI of 2018, see above.



- Carrying out media campaigns and media seminars and participating such activities,
- Organising education,
- Building and operating networks or,
- Propaganda activities that portray immigration in a positive light.<sup>122</sup>

Thus it is clear that the government aims to financially punish activities that would counter the effects of its xenophobic campaigns discussed above in relation to Article 4.

The Hungarian Parliament also **amended the Criminal Code**<sup>123</sup> with a new section on 'facilitating illegal immigration'. The Minister of Interior, in the justification attached to the legislation submitted to Parliament argued that 'the Hungarian people rightfully expects the government to use all means necessary to combat illegal immigration and the activities that aid it, the Stop Soros package of bills serves that goal, making the organisation of illegal immigration a criminal offence. We want to use the bills to stop Hungary from becoming a country of immigrants'<sup>124</sup>.

**The new criminal provision covers activities such as assisting an asylum seeker to submit an asylum application, conduct human rights-focused border monitoring activities, issue or distribute information leaflets about the asylum procedure or organising a network (of specialised lawyers, for example).**<sup>125</sup> The European Commission initiated an infringement procedure against Hungary upon the adoption of the proposals<sup>126</sup> as they are **in violation of the Treaty on the Functioning of the European Union, the EU Charter of Fundamental Rights, the Asylum Procedures Directive, the Reception Conditions Directive, and the Free Movement Directive.**

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<sup>122</sup> Section 253 (2) of Act XLI of 2018

<sup>123</sup> An English translation of the adopted changes is available at: <https://www.helsinki.hu/wp-content/uploads/T333-ENG.pdf>

<sup>124</sup> Ibid. See also <https://www.theguardian.com/world/2018/jun/20/hungary-passes-anti-immigrant-stop-soros-laws>

<sup>125</sup> For a detailed legal assessment of the new provisions, see: <https://www.helsinki.hu/wp-content/uploads/HUNGARIAN-GOVERNMENT-MARKS-WORLD-REFUGEE-DAY-BY-PASSING-LAW-TO-JAIL-HELPERS-20June2018En.pdf>

<sup>126</sup> Commission takes further steps in infringement procedures against Hungary, European Commission Press Release, 19 July 2018, available at [http://europa.eu/rapid/press-release\\_IP-18-4522\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4522_en.htm)