



## HUNGARIAN HELSINKI COMMITTEE

### Briefing paper for the visit to Hungary by the UN Independent Expert on Minority Issues

13 June 2005

The Hungarian Helsinki Committee (HHC) wishes to respectfully call the Independent Expert's attention to the following minority-related human rights issues, which the HHC has detected in the course of its activities connected to its primary mandate, the monitoring of law enforcement and detention.

#### **I. Discriminative practices in ID checks**

Due to the Hungarian data protection law there are no official statistical data on the ethnicity of inmates and detainees. There are however scientific studies showing that the Roma are heavily overrepresented among Hungary's prison population.

According to a research into the representation of Roma in penitentiary institutions, prisoners regarding themselves as Romani amounted to 30 and 40 percent of the prison population in 1995 and 1996 respectively. This result only slightly deviated from the data based on the identification of the interviewees (they regarded 44 percent of the respondents to be of Roma origin), while differed greatly from the estimation of wardens, who thought 61 percent of the prison population to be Roma.<sup>1</sup>

In the HHC's 2000–2001 prison research, out of the 549 convicts choosing to answer the question on ethnic affiliation, 179 said that they were of Roma (81) or Hungarian and Roma (98) origin. This means 32,6 percent, which is close to the result of the 1995–96 survey. Interestingly, only 129 persons said that in their opinion their environment regarded them as Roma.<sup>2</sup>

As to the reasons of the significant overrepresentation of the Roma in prisons, interesting information was provided by the HHC's research carried out in 2002–2003 into discrimination against Roma in the criminal justice system.<sup>3</sup> By scrutinizing 1,147 court files, the research of the HHC focused on possible discriminatory practices in the different phases of the criminal procedure from investigation to criminal sentencing.

The research's findings on how perpetrators were initially detected by the authorities appeared to be fully in line with similar Anglo-American studies conducted in analyzing discrimination in the criminal justice procedure against visible minorities. Research results show that if a non-Roma perpetrator is not caught red-handed, he/she stands a much better chance of not being found at all than a Roma offender. 21 percent of Roma defendants were detected by the police this way as opposed to 38 percent of non-Roma suspects.

The trend is reversed concerning identity checks (stop and search measures): 29 percent of Roma perpetrators were identified by the authorities this way, whereas only 17 percent of non-Roma suspects were caught during identity checks.

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<sup>1</sup> László Huszár: Az „ethnic issue” – romák a börtönben (The ethnic issue – Roma in prisons). In: *A büntetés-végrehajtás néhány problémája a kutatások tükrében*. (Some problems of the penitentiary system as reflected by research). BV. Szakkönyvtár – 1997/2. BVOP Módszertani Igazgatóság, Budapest.

<sup>2</sup> For details see: András Kádár – Ferenc Kőszeg (eds.): *Double Standard: Prison Conditions in Hungary*. Hungarian Helsinki Committee, Budapest, 2002

<sup>3</sup> For details see Lilla Farkas – Gábor Kézdi – Sándor Loss – Zsolt Zádori (2004) “A rendőrség etnikai profilalkotásának mai gyakorlata” (The current practice of racial profiling by the police) in *Belügyi Szemle* (Review of the Ministry of Interior) 2004/2-3, p. 33.

The police in Hungary enjoy practically unlimited discretion in deciding whom to stop: according to the Police Act,<sup>4</sup> a policeman may stop anyone whose identity he/she needs to establish. The law does not say anything about the possible reasons why this necessity may arise. Therefore the fact that proportionately more Roma suspects are detected in the course of stop and search measures gives rise to the suspicion that racial profiling exists in Hungary, and that the disproportionate number of Roma inmates in prisons may at least partly be attributed to the discriminative practices of the authorities.

In further stages of the procedure (investigation and court phase), the HHC research did not detect significantly discriminative trends; however, it must be noted that in this respect the research may not have been fully representative. The research was based on the scrutiny of individual case files. Access to the files was provided by the presidents of particular courts researchers had approached. In terms of the Hungarian legal background, the presidents of the courts exercise discretion in this regard, i.e. they can decide whether to allow access to their files or not. The organizers of the research approached altogether 37 courts, out of which only 18 granted access to the case files. Interestingly, in counties where the percentage of the Roma in the total population is low (below 6 percent), 26 percent of the courts rejected the HHC's request for permission, whereas in counties where the proportion of the Roma population is higher than this, 78 percent of the courts gave a negative answer. This at least gives rise to the suspicion that these courts would not have been comfortable with a scrutiny of their sentencing, so the fact that the research did not trace discrimination in the court phase may not mean that there are no such tendencies.

## II. Excessive use of force against the Roma minority and foreigners

A questionnaire-based survey, carried out by the HHC in 2003<sup>5</sup>, focusing on the situation of pre-trial detainees in police jails and penitentiary institutions found that out of the 491 persons answering the question concerning ill-treatment, 83 (16.9%) claimed to have been ill-treated during the criminal procedure. Ill-treatment most frequently occurs in the initial phase of the procedure, sometimes even before the formal commencement of the criminal proceedings. It is not uncommon that the ill-treatment that is started on the scene of the crime or during the arrest is continued in the police car and then at the police premises. The majority of police brutality takes place when the suspect is apprehended by the police. From the data related to the frequency and method of cases of ill-treatment in the initial phase of the procedure, it seems that no significant improvement in the attitude of police officers implementing apprehensions has taken place in the past eight years. Ill-treatment also occurs in the subsequent phases of the procedure, although somewhat less frequently. Most of these cases amount to forced interrogation, i.e., the ill-treatment is not so much motivated by emotions as by the clear intention to obtain a confession. Ill-treatment is already relatively rare in detention and it is less serious than in the beginning of the procedure and during interrogations, especially the first interrogation.

The research also focused on how ethnicity influences the likelihood of ill-treatment.

In response to the question concerning ethnic background out of 497 persons 121 (24.3 percent) identified themselves as Roma. Out of the 491 persons who responded to the question concerning ill-treatment 489 revealed his/her ethnic background, and 119 (24.3 percent) of them declared themselves to be Roma.

### Were you ill-treated during the procedure?

	<b>Roma (persons)</b>	<b>Percent of all Roma defendants</b>	<b>Non-Roma (persons)</b>	<b>Percent of all non-Roma defendants</b>	<b>Roma and non-Roma together (persons)</b>	<b>Percent of the total number of defendants</b>
<b>Yes</b>	26	21.85	56	15.14	82	16.77

<sup>4</sup> § 29 (1)

<sup>5</sup> *Presumption of Guilt*, report to be published by the HHC in Fall 2004

<b>No</b>	93	78.15	314	84.86	407	83.23
<b>Total</b>	119	100.00	370	100.00	489	100.00

As the above table shows, 21.9 percent of the Roma persons reported ill-treatment, while the percentage of ill-treated persons among the non-Roma is "only" 15.1 percent. This difference is not statistically significant (6.8 percentage points). However, there is a rather important difference concerning the initial period of the procedure (the apprehension and the short-term arrest).

#### **Who ill-treated you?**

Perpetrator of the ill-treatment	Persons	%
The police officer performing the apprehension	45	54.88
The investigator	21	25.61
The police jail guard	1	1.22
The prison guard	2	2.44
Other	13	15.85
<b>Total</b>	<b>82</b>	<b>100.00</b>

Of the 26 Roma persons claiming to have been ill-treated, 64 percent (16 persons) said that the perpetrator had been the police officer who carried out the short-term arrest/72-hour detention, while that percentage is 50.9 percent (29 out of 57) among the non-Roma defendants. The difference is 13.1 percentage points and is therefore statistically significant. Meanwhile, as far as ill-treatment committed by investigators is concerned, 20 percent of Roma and 28 percent of non-Roma defendants (5 and 16 persons, respectively) claimed that the officer used unlawful force on them. This difference is not statistically significant.

The reason for the difference might be that violence applied during the apprehension of the supposed perpetrator (i.e. in a very stressful situation) is more driven by emotions, whereas unlawful force applied in order to extort a confession is motivated by more rational considerations. Therefore, biases, potential anti-Roma sentiments may play a more significant role in aggressive acts committed at the beginning of the criminal procedure.

Out of 497 persons 44 (8.9 percent) claimed to be foreign. Most of them (19 persons, 43.2 percent) were Romanians. Other groups included Serbs, Croats and Hungarians from Romania (4 persons, or 9.1 percent each). Two persons (4.5 percent) each identified themselves as Germans, Chinese and Syrians, while one person (2.3 percent) each as Moldovan, Vietnamese, English, Bulgarian, Italian, Algerian and Montenegrin.

#### **Were you ill-treated during the procedure?**

	<b>Foreigners (persons)</b>	<b>Percent of all foreigner defendants</b>	<b>Not foreigner (persons)</b>	<b>Percent of all non-foreigner defendants</b>	<b>Foreigner and non-foreigner combined (persons)</b>	<b>Percent of the total number of defendants</b>
<b>Yes</b>	13	30.23	70	15.63	83	16.90
<b>No</b>	30	69.77	378	84.38	408	83.10
<b>Total</b>	<b>43</b>	<b>100.00</b>	<b>448</b>	<b>100.00</b>	<b>493</b>	<b>100.00</b>

According to the numbers above, there is a significant difference (14.6 percentage points) between the probability that a foreigner or a non-foreigner becomes a victim of ill-treatment.

During the first half of 2004, two cases of alleged police ill-treatment received wide press coverage:

- On 10 June, a 27-year old Bulgarian man turned violent on a flight from Amsterdam to Budapest. An accelerated criminal procedure was carried out against him in Budapest, and the court expelled him from Hungary for 5 years. After the trial he was being transported in a police car, from which he tried to break out. A fight ensued with police officers, in the course of which he was brought down to the ground, then died because he suffocated from the grasp on his upper body and neck. The police stated that the officers had applied legitimate

force, but the two police officers involved in the incident were suspended from their job for the duration of the investigation. The prosecutor's office started a criminal investigation on account of death caused by negligence; this procedure is still pending as of writing.

- On July 25 in Kecskemét Richárd Jakab, a 19-year old Romany man died during a police measure. He tried to run away from police officers who were pursuing him for being suspected of theft, and died while being pushed to the ground by a police officer. The police officer was suspended from the police force for the duration of the preliminary forensic medical examination, but the final forensic medical examinations concluded that the young man's death resulted from a genetic heart malfunction, and the police officer returned to work. The investigating bureau of the county prosecutor's office is still investigating the case as of writing.

We do not in any way wish to imply that these incidents refer to an intentional tendency, it must be noted however that almost all the recent cases in which the use of excessive force by the authorities had lethal consequences (including a case from December 2000, when a Camerunian citizen died at the Budapest airport when the police used coercive measures during his deportation) have involved foreigners or Roma people as victims. In our view, an explanation may be that police officers tend to act more harshly when taking measures against persons who do not belong to the majority population.

### III. Action taken with regard to racially motivated offences

It is very difficult to statistically prove that there would be a degree of police inaction in response to racially motivated offences in Hungary, however, statistics show that the offense of "Violence Against a Member of a National, Ethnic, Racial or Religious Group" is very rarely invoked. This offense is regulated by Article 174/B of the Penal Code (Act IV of 1978) as follows: "A person who assaults somebody else because he belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him with violence or menace into doing or not doing or into enduring something, commits a felony and shall be punishable with imprisonment up to five years. The punishment shall be imprisonment from two years to eight years, if the act of crime is committed a) by force of arms, b) in an armed manner, c) causing a considerable injury of interest, d) with the torment of the injured party, e) in groups, f) in criminal conspiracy."

The table below shows the statistics for reports on and investigations into Article 174/B offenses. The source is the Department of Computer Application and Information of the Chief Public Prosecutor's Office.

#### **Violence Against a Member of a National, Ethnic, Racial or Religious Group (Penal Code, Article 174/B)**

	2003		2004	
	number	%	number	%
<b>Reports all together:</b>	<b>19</b>	<b>100.0</b>	<b>9</b>	<b>100.0</b>
out of which:				
<b>rejection of the report</b>	<b>5</b>	<b>26.3</b>	<b>0</b>	<b>0.0</b>
out of which: reported behavior is not a criminal offense	2	10.5	0	0.0
the suspicion of a criminal offense is lacking	3	15.8	0	0.0
<b>termination of investigation</b>	<b>3</b>	<b>15.8</b>	<b>2</b>	<b>22.2</b>
out of which: the committing of an offense may not be established	2	10.5	1	11.1
lack of necessary declaration	1	5.3	0	0.0
termination of the investigation after	0	0.0	1	11.1

the postponement of pressing charges				
<b>pressing charges</b>	<b>7</b>	<b>36.8</b>	<b>5</b>	<b>55.6</b>
<b>other</b>	<b>4</b>	<b>21.1</b>	<b>2</b>	<b>22.2</b>
out of which: the perpetrator's identity may not be established	1	5.3	2	22.2
suspension due to any other reason	1	5.3	0	0.0
with postponement	2	10.5	0	0.0

When assessing the above data one has to take into consideration that if someone believes that a criminal offense was committed against him/her due to his/her ethnic affiliation, but the investigating authority does not qualify the offense as one falling under Article 174/B, it will not appear in the statistics as such, and if investigation into such an offense is terminated, this will not appear under the heading of Article 174/B, but will be recorded among, for instance the numerous cases of "violent behavior". Therefore, the data may look more favorable than the truth is.

The HHC's Human Rights Legal Counseling Office for example had a case when a person of African origin was not allowed to enter a bar, and when he called the police, he was pushed around and hit in the face by the bar's security guards. He was also verbally abused, called a "black monkey", and was told to "go back to Africa, where he came from". The prosecution originally pressed charges for "violence against a member of national, ethnic, racial or religious group", but since the guards firmly denied that they were led by racist motives, and since the court was apparently reluctant to look into the motivations of the offence, finally the prosecution modified the charges and the guards were convicted for "violent behavior" punishable with imprisonment up to three years. (In the concrete case each security guard was punished with a fine of HUF 120,000, or EUR 450.)