WRITTEN COMMENTS BY

THE HUNGARIAN HELSINKI COMMITTEE

REGARDING THE SECOND MONITORING CYCLE

ON HUNGARY

UNDER THE

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

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Hungarian Helsinki Committee
Hungary, H-1073 Budapest
Kertész utca 42-44.
Tel: +36 1 321 4327
Fax: +36 1 321 4323
Email: helsinki@helsinki.hu
Website: www.helsinki.hu

ABOUT THE HUNGARIAN HELSINKI COMMITTEE

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

HUNGARY: SECOND MONITORING CYCLE UNDER THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Observations of the Hungarian Helsinki Committee

Ethnic data

Ad question 4: register of minority voters

In order to ensure that only members of the given minority can vote and be elected to the minority self-government, the Bill redefines the meaning of Article 68 Par (4) of the Hungarian Constitution. This article stipulates that national and ethnic minorities have the right to establish minority self-governments. The Bill thus departs from the preexisting dedication to the free choice of identity and by eliminating the explicit provision allowing for the recognition of multiple identity, it sets forth legal requirements for minority political participation.

According to the Bill, both the right to stand as candidate and the right to vote at the minority elections would have a prerequisite registration: one can be registered only on one list and for such registration one needs to enclose her name, address, identification number and declare minority affiliation. This declaration needs to be supported by one of the following statements: proof of language or minority acquiescence, membership in a minority civil organization or minority self-government, voluntary work for the given minority community or other activities that can be related to the minority. The registering committee's refusal is subject to judicial review. The registering committees are run by the minority group and a registered minority electorate is required for elections to be held.

We can only make guesses, as the Bill would set forth further legislation to specify the procedural whereabouts. There is an official dedication to the ideals of privacy and data protection. That is, data collected can only be used for specific and narrowly defined purposes. According to the Bill, ethnic data collection only comes up in the context of minority self-government elections, hence, in connection with additional political rights only. Also, ethnic data collection and processing appears to be in the exclusive competence of the minority organizations themselves, and state election bodies only exercise authorities in questions of general suffrage (right to vote).

Discrimination and inter-ethnic relations

Ad question 5: the effect of the ban on discrimination

Although clear definitions of direct and indirect discrimination were missing from the Hungarian legal system, the ban on discrimination did exist before the entry into force of the Equal Opportunities Act (EOA).

Three new institutions introduced by the EOA are expected to bring along the most radical changes in the functioning of the Hungarian system of anti-discrimination: 1) the

availability of *actio popularis* (namely the authorization of associations to bring actions against perpetrators of discriminatory acts the victims of which are not or may not be identifiable); 2) the reversal of the burden of proof in all discrimination cases /with the exception of criminal and petty offence procedure/; 3) the new Administrative Authority vested with the right and obligation to take measures against discriminatory acts.

With regard to the first two we do not have information at this point (no news of *actio popularis* initiated with regard to discrimination against national or ethnic minorities have been published, while lawsuits and other procedures in which the issue of the reversed burden of proof will come up are still in progress), with regard to the Authority, see question 8 below.

Ad question 7: housing

Housing is covered by the EOA. Article 26 of the EOA runs as follows:
"(1) It is a particular violation of the principle of equal treatment when any person because of his/her characteristics defined in Article 8 [enumerating the protected grounds] is
a) subjected to direct or indirect discrimination in respect of the granting of housing subsidies, benefits, interest subsidies provided by the state or a municipality,
b) put in a disadvantageous position in the course of determining the conditions of the sale or leasing of state-owned or municipal housing and plots.
(2) The issuing of occupancy and other building permits by the relevant authorities shall not be denied, or tied to any conditions, based directly or indirectly on the characteristics defined Article 8.
(3) The manner in which the conditions of access to housing are determined may not be aimed at artificially separating any particular group based on characteristics defined in Article 8 at any settlement or part thereof; such separation may only based on the group's voluntary decision."

Housing provided by private actors is however only partly covered by the EOA. Under Article 5 of the Act, only four groups of private actors fall under its scope: (i) those who make a public proposal for contract (e.g. for renting out an apartment) or call for an open tender; (ii) those who provide services or sell goods at premises open to customers; (iii) self-employed persons, legal entities and organisations without a legal entity receiving state funding in respect of their legal relations established in relation to the use of the funding; and (iv) employers with respect to employment (interpreted broadly).

From the point of view of housing, group (i) may be interesting. In terms of the above provision, a private person offering or providing housing will only be bound by the requirement of equal treatment if he/she publicly advertises the apartment or house to be rented out or sold.

In connection with housing it is also necessary to draw attention to techniques applied by local governments to prevent Roma families from moving into their settlements as well as to the lack of firmness on the part of the courts and authorities that would be obliged to act against such actions.

Offering a higher amount, local governments often attempt to buy houses the owners of which have already agreed on the purchase transaction with the Roma families. We also

know about cases when local government officials try to dissuade the owners from selling their houses to the Roma.

In early September 2002 a group of buildings where Roma families lived was damaged and had to be torn down in Paks (Tolna County). One of the five concerned families purchased a house in the nearby village of Németkér (Tolna County), in spite of the local mayor's attempt to convince the owner of the house not to sell it to the Roma family. The mayor's action was based on the local government's decision to rather buy the house from public money than allowing the Roma family to move in. On 19 September 2002, one day before the Roma family planned to move in, the house was systematically and severely damaged by a large group of locals who had gathered to protest against the Roma family's arrival. Almost 500 local residents were present including the mayor and the local government members. The roof as well as doors and windows had been completely destroyed by the time the police arrived and dissolved the crowd.

The local authorities also tried to prevent the sale of a house in Gyüre (Szabolcs-Szatmár-Bereg County), where a Roma family the home of which had been previously destroyed by the flood tried to buy a new house. The mayor and the notary attempted on several occasions to dissuade the seller, and finally the transaction was practically sabotaged by the competent authorities. The purchasers and the seller launched a civil lawsuit against the local council, the mayor and the notary, but their claim was rejected by the both the first and the second instance court. The Supreme Court also rejected their petition for legal review. The case is now pending in Strasbourg.

Ad question 8: Administrative Authority to ensure compliance with the principle of equal treatment

The EOA only creates the framework of setting up the Administrative Authority that is envisioned to have a very wide scope of authority. The Authority will have an authorisation to act against any discriminatory act irrespective of the ground of discrimination (sex, race, age, etc.) or the field concerned (employment, education, access to goods, etc.). Besides the authorizations required by the EC's Race Equality Directive, the new body is vested with the right to impose severe sanctions on persons and entities violating the ban on discrimination.

As to its status and relation to the Government the following can be said. Article 13 of the EOA runs as follows: "(2) the Authority operates under the direction of the Government; its supervision is performed by a delegated member of the Government.
(3) The Authority shall not be instructed with regard to the performance of its duties defined in the Act.
(4) The Authority – whose budget forms an independent title within the budgetary chapter of the Prime Minister's Office – is a budgetary organ vested with budgetary rights."

This means that the Authority will lack the necessary independence from the Government. This is in contradiction to General Recommendation No. 2 of ECRI. Furthermore, it is unclear how the Government's direction will be exercised if it does not have the right to instruct the Authority, i.e. the relation between Paragraphs (2) and (3) seems ambiguous.

Article 64 of the EOA authorizes the Government to issue a Decree about the statutes and procedure of the Authority. We do not know whether the Decree's actual drafting

has commenced. Taking into consideration the fact that the Authority ought to be operating from 1 January 2005, and that consultation with NGO's having expertise in the field seems desirable, the process appears to be delayed.

Ad question 11: police abuses

A questionnaire-based survey, carried out by the HHC in 2003[1], 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?

	Roma (persons)	Percent of all Roma defendants	Non-Roma (persons)	Percent of all non-Roma defendants	Roma and non-Roma together (persons)	Percent of the total number of defendants
Yes	26	21.85	56	15.14	82	16.77
No	93	78.15	314	84.86	407	83.23
Total	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

[1] *Presumption of Guilt*, report to be published by the HHC in Fall 2004

The investigator	21	25.61
The police jail guard	1	1.22
The prison guard	2	2.44
Other	13	15.85
Total	82	100.00

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?

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

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.

Ad question 12: Constitutional Court ruling on the amended version of Article 269 of the Penal Code

On 25 May 2004, in its Decision 18/2004 the Constitutional Court abolished the amendment of the Penal Code's hate speech provision. The Constitutional Court's decisions concerning hate speech offences have been rather inconsistent. The decision referred to above regards as unconstitutional the limitation of the freedom of speech that the amended Penal Code provision would have deemed public incitement to violent actions against any nation, national, ethnic, racial or religious group punishable with imprisonment, whereas in an earlier decision (14/2000) the Court accepted as constitutional a penal provision (Article 269/B of the Penal Code) that rendered the spreading, public use and display of Nazi and Communist symbols punishable.

The legal and political inconsistency of the handling of hate speech seems to practically paralyze authorities vested with the task of implementing relevant legal provisions, as the example below clearly shows.

A small, but provocative neo-Nazi organization, the Hungarian Future Group was given permission by police to hold a rally in Budapest on 15 October, to commemorate the 60th anniversary of the beginning of the Arrow Cross (Hungarian Nazi) regime. The police – correctly – referred to the fact that the exisiting legislation does not contain a provison based on which even an openly Nazi demonstration could be forbidden.

Another problem related to the above mentioned Article 269/B was also raised by the Hungarian Future Group's appearance. The group followed the habitual practice of neo-Nazi groups in Hungary: they altered one of the banned symbols ever so slightly, but the references were clear and unmistakable. Showing a serious inconsistency in their actions, at first the police appeared receptive to their strategy and accepted the defence that the slightly distorted Nazi symbol was not identical to any of those listed in the criminal statute and refused to investigate the case.

In response to political and media pressure however, the police changed its policy, arrested the leader of the group (who has been quoted as saying, "we intend to seize power, but we will need at least five years to become a party, and ten more years to take over complete power") and made recommendations to the Prosecutors Office for charges to be brought on both accounts of incitement to hatred and for the usage of Nazi symbols. The prosecutor decided to charge the group's leader with the latter but abandoned claims for inciting racial hatred.

Education

Ad question 16: private pupil status

A relatively new method of separating problematic Roma children has evolved recently: declaring them private students and exempting them from going to school. In terms of Article 69 Paragraph (3) of Act LXXIX of 1993 on Public Education (Public Education Act), private students must be exempted from all class attendance. Article 21 Paragraph (4) of Decree 11/1994 of the Ministry of Education on the Operation of Educational Institutions (MKM Decree 11/1994) sets forth that private students fulfill their educational obligation by taking exams at the end of each semester before an independent panel.

There are two ways in which a child can become a private student. Under Article 7 Paragraph (1) of the Public Education Act, depending on the parent's choice, the child's educational obligation may be fulfilled by school attendance or as a private student. The other case is when the child has some kind of disability, learning or behavioral disorder, and – in accordance with what is set forth in Section 2 – the expert panel decides that he/she shall become a private student. In the former case it is the parent's obligation to prepare the child for the exams, whereas in the latter, this obligation remains with the school (in terms of Article 23 Paragraphs (2) and (3) of MKM Decree 11/1994).

In 2001 the Minorities Ombudsman started receiving complaints claiming that in some schools the parents of "problematic children" are persuaded to request that the child be declared a private student. Sometimes parents are even threatened that they either do so or the child will be sent away from the school. Therefore, the Minorities Ombudsman requested the Ministry of Education to introduce safeguards that may prevent such abuse. In accordance with the request, Decree 4/2001 of the Ministry of Education inserted a new provision into MKM Decree 11/1994 (Article 23 Paragraph (1)), which stipulates that if the parent claims that the child wishes to become a private student, the school's principal shall within three days request the opinion of the local child care service, which shall respond within 15 days.

In his 2002 report the Minorities Ombudsman states the following: „In spite of the amendment, we still receive complaints from this field. The local government, the school and the child care service usually stand on the same side. Numerous complainants claimed that the child care service [...] contributed to the pressure from the school and the local government with its consenting opinion. The reason behind the phenomenon is to be found in the often helpless situation of the Roma parents and in the approach that can only handle differences through the means of segregation."[2]

[2] Report on the activities of the Minorities Ombudsman in the year 2002, p. 127.

We believe that this task should be delegated to an organ that is not bound by local networks and relations.

Political participation

Ad question 24: representation of national and ethnic minorities in the Parliament

This issue is absolutely off the agenda, there is no sign or remote possibility of considering it seriously. The Bill No T/9126 makes no reference to it.

Legal framework concerning minorities

Ad question 28: proposed amendments to the 1993 Act on National and Ethnic Minorities

Subquestion (i)
It is a mere proposal; nothing will change before the passing of the Bill. It must be noted that it had already been the (legally controversial) practice of electoral committees to issue minority ballots to non-citizens with "settled" status, who were otherwise eligible to vote for local elections.

Subquestion (ii)
It is very difficult to reach consensus among ethnic and national minorities. The thirteen recognized groups differ substantially in size and in their consequent claims and aspirations. Agreement is all the more difficult to come by because some groups will even have rival factions and may even change their position. The most we can say is that all minority organizations participated in the preparation of the Bill and most of them approved most or at least some of its innovations.

Subquestion (iv)
After the first round of committee proceedings in the spring, in order to achieve a wider social consensus, the legislative procedure was suspended for some months. We are not aware of any recent developments after the summer recess.