WRITTEN COMMENTS BY

THE HUNGARIAN HELSINKI COMMITTEE

REGARDING THE DEVELOPMENTS FOLLOWING THE SECOND REPORT ON HUNGARY BY THE EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE

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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.

INTRODUCTION

The Hungarian Helsinki Committee respectfully submits these written comments for consideration by the Commission against Racism and Intolerance.

Our written comments are filed to provide information on recent developments concerning the issues mentioned in ECRI's Second Report on Hungary Adopted on 18 June 1999 (hereinafter: Report). In doing so we follow the structure of the ECRI Report and refer to the problems by quoting its relevant paragraphs. Special attention is paid to the issues of particular concern as outlined under Section II of the Report.

We appreciate the efforts made by the Hungarian governments during the past years to take action against different forms of racial discrimination in Hungary. It must be noted, however, that in spite of the relatively comprehensive Hungarian framework for minority rights protection and the patchwork of anti-discrimination legislation, the Roma – Hungary's largest "visible" ethnic minority[1] – experience widespread discrimination, the key areas being official prejudices, segregation in education as well as discrimination in employment, housing and access to private services. These findings are supported by the annual reports by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities ("Minorities Ombudsman) and the everyday experience of various NGOs engaged in human rights activities. Furthermore, respect for the rights of non-Caucasian foreigners also merits severe criticism.

DISCUSSION

As regards § 4 of the Report (functioning of the minority self-governments):[2] The abuses of the minority election system in 2002 drew public attention to the fundamental problems raised by the system of minority self-governments. The elections for minority self-governments and local governments are held together (on the same day and premises) and most of the rules governing their arrangement are identical.[3] However, in some significant aspects, minority nominees are in a more favorable position: for instance, fewer citizens need to support their nomination and less votes are required for their election. This is the basis of the so-called "minority business", i.e. when candidates misuse their minority identity for the sake of political or economic ambitions.[4] An extreme form of this practice is when a person not belonging to a given minority runs for membership in the local

[1] The largest ethnic minority group living in Hungary is that of the Roma: estimates based on 1992 and 1993 educational statistics and regarded as reliable by experts put the number of Roma in Hungary at about 460,000 or 4.2% of the population (See: Kertesi, Kézdi: *A cigány népesség Magyarországon* /The Gypsy Population in Hungary/, Socio-typo, Budapest, 1998.) The Roma constitute the most frequent target of discriminative practices and acts from the part of both the public and the private sector.

[2] In this section we greatly rely on: András Kádár: *Legislative Review for the Hungarian Roma Education Policy Note.* Manuscript prepared for the Országos Közoktatási Intézet and the World Bank

[3] See: Act LXIV of 1990 on the Election of Mayors and Local Government Representatives and Act C of 1997 on the Election Procedure.

[4] See for example: *Beszámoló a nemzeti és etnikai kisebbségi jogok országgyûlési biztosának tevékenységérõl, 2002. január 1. – 2002. december 31.* (Report on the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January 2002 – 31 December 2002. Hereinafter: Ombudsman 2002). Országgyûlési Biztosok Hivatala, Budapest, 2003. p. 26.

minority self-government. A pertinent example of this so-called 'cuckoo' phenomenon is the case of the Jászladány Roma minority self-government when out of the five elected members four are admittedly non-Roma, and the reason for their running for membership was to secure the possibility of separating non-Roma pupils from their Roma schoolmates (see below under Section II K).

As opposed to some experts (e.g. the Minorities Ombudsman[5]), we do not believe that the election of a person not belonging to a given minority is in itself harmful, if that person is devoted to the case of that given minority and has some special (e.g. legal or administrative) expertise that may prove useful in the minority self-government's work.[6] The real problem is that members of the majority population are also entitled to vote on the minority self-government representatives.[7] We firmly believe that this solution is not in line with the original idea lying behind the establishment of minority self-governments. We cannot in fact talk about self-governance if not only people belonging to the given minority can cast their votes on the body's representatives.

Although dissolving the theoretical contradiction between the individual' right to or not to claim his/her minority affiliation and the minority's collective right to self-governance seems to be beyond the legislative potential, some practical legal techniques could be used to mitigate the problem. As early as 1998, the Minorities Ombudsman proposed a number of solutions, such as not holding the local government and the local minority self-government elections on the same day (or at least not in the same premises) or providing only those citizens with local minority self-government voting sheets who actually request it.[8] We fully agree with the necessity of such amendments to the relevant laws.

Another problem concerning the functioning of the system is that the budgetary allocations earmarked in the annual state budget for local minority self-governments are transferred through the local governments, whose task in this regard is – in theory – restricted to forwarding the support in four installments due by 15 February, 15 May, 15 August and 15 November respectively[9] and on the basis of an agreement of cooperation concluded with the minority self-government. The local government's obligation to conclude such an agreement of cooperation with the minority self-government is set forth in Articles 66 and 68 of Act XXXVIII of 1992 on the State Budget. However, as the Minorities Ombudsman points out,[10] in practice this system is not always functioning properly, which can impact the minority self-governments' independence, sometimes defining their loyalties and undermining their capacity to represent Roma interests effectively.

The scandalous removal of the new president of the National Roma Self-government also highlights the fundamental conceptual problems due to which the system (at least in the case of the Roma minority) cannot fulfill its objective. Aladár Horváth, the well-known Roma human rights activist was elected president in March 2003. He started a comprehensive investigation into the self-government's financial management under the previous leadership and also planned to introduce austerity measures

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[5] Ombudsman 2002, pp. 26–29.

[6] See for example the case of a priest who became a member of the local Roma minority self-government in order to assist the Roma community in asserting its interests – Ombudsman 2002, p. 13.

[7] Article 50/C Paragraph (1) of the Local Elections Act.

[8] *Beszámoló a nemzeti és etnikai kisebbségi jogok országgyûlési biztosának tevékenységérõl, 1998. január 1. – 1998. december 31.* (Report on the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January 1998 – 31 December 1998. Hereinafter: Ombudsman 1998). Országgyûlési Biztosok Hivatala, Budapest, 1999. p. 31.

[9] See: Annex 5 point 5 of Act LII of 2002 on the 2003 Annual Budget of the Republic of Hungary.

[10] *Beszámoló a nemzeti és etnikai kisebbségi jogok országgyûlési biztosának tevékenységérõl, 1999. január 1. – 1999. december 31.* (Report on the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January 1999 – 31 December 1999. Hereinafter: Ombudsman 1999). Országgyûlési Biztosok Hivatala, Budapest, 2000, pp. 99–102.

by cutting the different allowances of the self-government members. According to independent analysts this was the reason that his former coalition partners within the body (also involved in the financial irregularities) summoned a meeting on 25 June 2003 and initiated his removal.[11] Although the legality of the summoning is still in question, it is certain that Aladár Horváth lost his majority and will not be able to keep his position. According to experts, the present system of Roma self-governments is deeply corrupt, with a handful of Roma politicians using it as a source of living and offering their loyalty to the actual government in return.[12] Furthermore, a number of independent Roma intellectuals claim that Roma minority-self governments are a tool of separation, instead of furthering integration, since they tie governmental support to ethnicity and not to indigence and social status.[13]

When assessing this problem we must not forget that the rights and tasks of minority self-governments are mainly of cultural nature, i.e. related to the preservation of traditions, cultural values and so on, which is appropriate for let us say the German minority, whereas the problems the Roma are facing are at this stage completely different. The minority self-government system is obviously not equipped to solve the issues of poverty, discrimination, racism or integration, because – among other things – this is not what it was established for. Therefore, several experts, politicians and NGO's press for the comprehensive reform of the institution.

As regards § 6 of the Report (unwillingness of the authorities to admit the racial motivation of attacks): 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 case – also covered by the media – triggered enormous public outcry and was investigated by both the Minorities Ombudsman and the Parliamentary Committee for Human Rights, Religious and Minority Affairs.[14]

Two criminal procedures were launched. The Minorities Ombudsman filed a report against the mayor and the members of the local government for abuse of official powers. The Szekszárd Town Prosecution refused to investigate the case, claiming that the council's decision to buy the house in order to prevent the Roma from moving in and the mayor's action to dissuade house owners from selling their houses to the Roma may not be regarded as criminal offenses. The Minorities Ombudsman filed a complaint against the refusal to investigate with the Tolna County Chief Prosecutor – to no avail. The Chief Prosecutor's argument was that many of the concerned Roma have a deviant reputation and this rather than racial prejudice triggered the population's worries and protest. The Chief Prosecutor claimed that the mayor did not try to dissuade potential sellers, only asked them to wait with the transaction until emotions simmer down. Furthermore, the council as a body may not be subject to criminal persecution, and – as the decision was unanimous – the criminal responsibility of the individual members may also not be established. After the Minorities Ombudsman filed another complaint – this time with the National Chief Prosecutor – the

[11] 'Leváltották Horváth Aladárt' (Aladár Horváth removed). In: *Népszabadság*, 26 June 2003.
[12] 'Betámadtál' (You've attacked me). In: *Magyar Narancs*, 3 July 2003.
[13] "Előítéletes magyarok, szeparatista cigányok' (Biased Hungarians, separatist Roma) In: *Élet és Irodalom*, 4 July 2003
[14] http://www.obh.hu/nekh/hu/beszam/2002/8f.htm

investigation was, eight months after the events, finally put in progress. It will be conducted by the Szekszárd Town Prosecution which refused to investigate in the first place.[15]

The other criminal procedure in the case was launched against ten residents who participated in the damaging of the house. In the course of the investigation the Paks Police Headquarters dropped the charges of violence against a member of any national, ethnic or religious group (Article 174/B of the Penal Code) and established the committing of the misdemeanor of deterioration causing a smaller damage (punishable with imprisonment up to one year, public interest labor, or a fine). Interestingly, the police estimated the damage at HUF 199,107, i.e. slightly less than HUF 200,000, the lower limit for the felony of deterioration causing "greater damage" punishable with up to three years of imprisonment. The police claimed that no racial considerations played a role in the offense. In their opinion – coinciding with that of the Chief prosecutor of Tolna County – the perpetrators protested against the moving in of not the Roma but of criminal elements.[16]

The authorities' reluctance to act in such cases is far from being unusual. Out of the five widely publicized attacks against Roma victims in 2001, four have ended with the police's failure to identify the perpetrators. Only in one case did the investigation produce results, however even in this one, the charges pressed against the four men who threw a Molotov cocktail into the house of a Roma family fail to take the racial motivation into consideration: the perpetrators are charged with the causing of a public danger.[17]

As regards § 13 of the Report (the introduction of a comprehensive anti-discrimination law): The professional debate that began on the necessity of adopting a comprehensive anti-discrimination law in 1997, started to intensify in late 2000 and reached its high point in early 2002, came to a conclusion in the spring of 2002 with the rise of the new left-wing government, the program of which explicitly contained the promise of a new comprehensive anti-discrimination law.[18] The Draft Bill of the Act on Equal Treatment and Equal Opportunities is presently in the process of being finalized (although according to the original schedule it ought to have been adopted during the Spring 2003 session of the Parliament). The Draft Bill is clearly aimed at transposing the European Community's two relevant directives – the Race Equality Directive and the Framework Directive – into the Hungarian legal system.[19] The intensity of involvement of independent experts, NGO's and social partners into the legislative process reached a higher than usual level, and the Justice Ministry also made efforts to inform the public about the planned reform. In spite of this, awareness of the coming changes and their consequences may not be regarded as appropriately widespread.

An important step in the combat against discrimination is that on 6 May 2003 a minister without portfolio for equal opportunities was appointed.

As regards § 16 of ECRI Report (rights granted to non-citizens in pre-trial detention): Non-citizens in pre-trial detention are granted the same rights as citizens as regards pre-trial detention, however a related problems can be raised in connection with the interrelation of the provisions governing the ordering of pre-trial detention and Act XXXIX of 2001 on the Entry and Stay of Foreigners (2001. évi XXXIX. törvény a külföldiek beutazásáról és tartózkodásáról) (Alien Policing

[15] http://www.origo.matav.hu/print/bunugyek/20030416nyomzas.html
[16] http://www.romacentrum.hu/aktualis/hirek/2003/01/rsk20030109.htm
[17] See: Romákat ért támadások: újabb nyomozásmegszüntetés (Attacks against the Roma: another termination of investigations), 14 February 2002, www.romapage.hu
[18] http://www.kormany.hu/program/III/C/: "We are going to submit and adopt the bill on anti discrimination."
[19] For the Draft Bill's text, see: http://www.im.hu/fooldal/cikk/cikk.phtml?cikkid=2595

Act). The Alien Policing Act makes it possible for the foreigner to request the judicial review of the alien policing authority's decision on placing him/her in custody.[20] Under § 51 (3) of the Alien Policing Act, the rules of the CCP governing "special procedures" shall be applied to the court procedure as appropriate.

The Alien Policing Act makes no reference to legal aid or the presence of a counsel. However, the "special procedure" invoked by § 51 (3) is the procedure for ordering pre-trial detention. According legal experts,[21] the general procedural guarantees of the CCP shall also apply to the special procedures included in the regulation. As the participation of a defense counsel is mandatory if the defendant is in pre-trial detention (although the hearing concerning the ordering of pre-trial detention may be held in the absence of the counsel) and if the defendant does not speak Hungarian, it might be argued that ex officio appointment of a counsel should be mandatory in the judicial review procedure concerning the detention of foreigners. The official judicial standpoint is that no counsel shall be appointed for foreigners in detention, as the CCP talks about "defendants", while the detained foreigners may not be regarded as such.[22] In our opinion the validity of this interpretation is highly questionable.

As regards § 17 of the Report (police discrimination and ill-treatment of the members of the Roma/Gypsy community): In an interview given to a daily newspaper, the Head of the National Police Headquarters' Department for Disciplinary and Supervisory Matters said that out of the 38 policemen sentenced for ill-treatment in 2001 that he knew, every second was indicted for the ill-treatment of Roma victims.[23] Let us refer to a number of cases in which policemen were found guilty of ill-treating Roma people:

- In 2002 two Nógrád County police officers were sentenced to effective imprisonment (2 years four months and two years 2 months respectively) for ill-treating, gas-spraying and threatening with their guns a Roma family.[24]
- The Tiszafüred Town Court (acting as a court of first instance) sentenced two policemen – along with three fisheries officials – to imprisonment (three years and three years two months respectively) for ill-treating and chasing into the River Tisza four Romani youth in the spring of 2001.[25]
- In February 2001 the Pest County Court sentenced the head of the Aszód police station and three other police officers to one year of suspended imprisonment for forced interrogation.[26]

As regards § 19 of the Report (reluctance of victims of police brutality to come forward with complaints): In spite of the fact that in the above listed cases, the police officers were sentenced, the latency of police ill-treatment is still very difficult to estimate, but is – by all probability – very high. As the tables below illustrate, still only 7–10 per cent of the reports on the relevant criminal offenses (ill-treatment in official procedure, forced interrogation, unlawful detention) lead to indictment, which obviously does not encourage victims to come forward with complaints.

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[20] The Alien Policing Act (Articles 46–48) distinguishes between a number of forms of custody: alien policing detention, detention for refusal of entry and detention in preparation of expulsion.

[21] E.g. the attorneys participating in the Hungarian Helsinki Committee's program "Effective Legal Counseling for Those in Need of International Protection".

[22] Memorandum of the session of the Metropolitan Court's Criminal Justice Board on the alien policing procedure, 1 July 2002.

[23] *Magyar Hírlap,* 6 November 2002.

[24] *Fehér füzet 2002. A Nemzeti és Etnikai Kisebbségi Jogvédő Iroda beszámolója.* (White Booklet 2002. Annual report of the Legal Defence Bureau for National and Ethnic Minorities) Másság Alapítvány, NEKI, Bp., 2002. pp. 72–76.

[25] http://www.romacentrum.hu/aktualis/hirek/200211/rsk04.htm

[26] Ibid.

Ill-treatment in official proceedings (§ 226 of the Penal Code) – data for the year 2002

	Number	Percentage
Reports	759	100.0%
Refusal of investigation	282	37.2%
Termination of investigation	397	52.3%
Indictment	72	9.5%
Other	8	1.1%

Forced interrogation (§ 227 of the Penal Code) – data for the year 2002

	Number	Percentage
Reports	321	100.0%
Refusal of investigation	176	54.8%
Termination of investigation	121	37.7%
Indictment	24	7.5%

Unlawful detention (§ 226 of the Penal Code) – data for the year 2002

	Number	Percentage
Reports	93	100.0%
Refusal of investigation	44	47.3%
Termination of investigation	42	45.2%
Indictment	7	7.5%

Source: Egységes Rendőrségi és Ügyészségi Bűnügyi Statisztika (Unified Police and Prosecutorial Statistics)

A telling example is that the head of the Aszód police station and his colleagues later to be found guilty of ill-treatment in another case (see above, under § 17) were also involved in the Bag incident of February 2001, when 13 policemen were charged with ill-treating several Roma people (including women and children) during a raid. In the winter of 2001 he Pest County Public Prosecutorial Investigative Office terminated the investigation due to the lack of "objective external witnesses".[27]

As regards § 20 of the Report (deficiencies of police training as regards the Roma community): The infamous Gyöngyös case is a telling example what problems the lack of appropriate knowledge of Roma culture and traditions may cause. On 1 November 2002 in the Gyöngyös hospital (Heves County) the police – called by the hospital's security service – got into a conflict with a large group of Roma people mourning a dead relative. The conflict escalated into a fight, several Roma and policemen were injured. The parties initiated criminal proceedings against each other. However, the internal disciplinary investigation of the police established no outstanding professional errors.[28] Appropriate knowledge of the traditional ways of mourning within the Roma community on the part of the police might have prevented the unfortunate incident.

As regards § 21 of the Report (access to public services): As the tables below show the proportion of complaints submitted by Roma and against local governments to the Minorities has decreased to some extent, these percentages are still rather high.

[27] Ibid.
[28] Roma Sajtóközpont, 8 January 2003.

Distribution of complaints submitted to the Minorities Ombudsman (2000, 2001, 2002)

	2000		2001		2002	
	Number	%	**Number**	%	**Number**	%
Roma	291	68	292	65	274	59
All minorities	431	100	453	100	468	100

Organs concerned by the complaints (2000, 2001, 2002)

	2000		2001		2002	
	Number	**%**	**Number**	**%**	**Number**	**%**
Police	35	8	49	11	29	6
Local government	126	29	118	26	103	22
Total	431	100	453	100	468	100

Source: Annual reports of the Minorities Ombudsman (http://www.obh.hu/nekh/hu)

Although complaints filed with the Minorities Ombudsman against health service providers have been rather scarce, discrimination in health care has received increased attention in the past few months. A film recorded with a hidden camera by a popular TV program showed that the Markhot Ferenc Hospital of Eger (Heves County) maintains a segregated maternity ward for pregnant Roma women. The program triggered fierce official denial, however, the case is being investigated by both the Minorities Ombudsman and the competent Ministry.

As regards § 22 of the Report (segregation in housing and local authorities): The majority of the most conspicuous ethnic conflicts in Hungary are related to housing. Local governments – often under pressure from the population – resort to different techniques to prevent Roma families from moving into the settlement or a certain part of it. Offering a higher amount, they often attempt to buy those 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. Besides the Németkér case described above (under § 6), the same happened 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.[29] If the contract is concluded, local governments often try to raise administrative obstacles, e.g. in Sátoraljaújhely, where in 1998 a Roma family's request to be entered into the register of residents was rejected.

A wave of evictions was triggered by anti-squatting amendments introduced in May 2000, which give notaries the power to order eviction from council housing within eight days notwithstanding the outcome of legal processes that may be underway.[30] The law has come under ferocious criticism from human rights organizations, which argue that it is unconstitutional and jeopardizes fundamental rights.[31] It is already apparent that Roma are bearing the brunt of application of this law, which thus

[29] *Fehér füzet 2002. A Nemzeti és Etnikai Kisebbségi Jogvédő Iroda beszámolója.* (White Booklet 2002. Annual report of the Legal Defence Bureau for National and Ethnic Minorities) Másság Alapítvány, NEKI, Bp., 2002. pp. 21–31.

[30] *Act No LXI of 2000.*

[31] See *Constitutional Court submission from constitutional lawyer Gábor Halmai.* See also László Bihary: 'Szociális biztonsági őrök (Social security guards)', *Fundamentum.*2000/3, p. 59. Rights are ensured by, for example, *Act XXXI of 1997 on the Protection of Children* (Child Protection Act) and *Act III of 1993 on Social Administration* (Social Protection Act).

appears to function in an indirectly discriminatory manner.[32] NGOs warn that families with children will have to be cared for under the Child Protection Act, which will create a further financial burden on social administration.

Local governments generally suspend the evictions for the winters, however, spring usually brings a new wave of evictions. In May 2002 for example the eviction of 18 Roma families from a house located in the 7th district of Budapest (headed – ironically – by a Socialist member of the Parliament's Human Rights Committee) drew public attention because public figures (including an MP from SZDSZ, the smaller party of the coalition) protested against the measure and tried to prevent the police from implementing the measure. According to the Mayor of Budapest, the local government acted in an unlawful manner, because it failed to fulfill its obligation concerning the placement of those families where there are children. The local government later rented out the evicted building to a temporary open-air café.[33]

Another technique used by local governments to get rid of the Roma population is to declare their homes – often in a bad state of repair – dangerous to life and order the compulsory demolition of the buildings instead of providing the families with assistance in fixing the damages. In 2000, 47 members of the Roma community of Zámoly (Fejér county) fled to France in search of asylum, as a result of repeated efforts by the local government to expel them from their hometown.[34] Following storms in the summer of 1997, the houses of six Roma families in Zámoly were torn down by the local government, in actions judged by the Ombudsman to be unlawful.[35] The families were prevented from purchasing building plots in the village by the Mayor, and during their temporary sojourn in Budapest, efforts were made to have them struck from the local registry, thus terminating their social assistance. The families became the subject of media attention, and were threatened with, and actually suffered, a number of racially motivated attacks directed at their person and property. Following their arrival in France, the French Office for the Protection of Refugees (OFPRA) recognised a number of the Zámoly Roma as refugees under the Geneva Convention in March 2001.

In spite of this international fiasco, the approach has not changed. In the fall of 2002 a group of indigent Roma living in the outskirts of Paks (Tolna County) sought help from the local government to renovate their ruinous house. After a field visit by the local government officials, the families were obligated to underpin the damaged building and support the walls, however, despite the indigence of the concerned families, no official assistance was offered for the performance of the task. The Roma of course could not fix the damages. When after a storm the roof collapsed, the notary ordered the compulsory demolition of the building. The four Roma families lived in the woods for weeks before the Roma Civil Rights Foundation managed to find a place for them. The local government of Paks attempted to export the problem into the neighboring villages by offering to help the families to buy houses there, however, as a result of the demonstrations of these settlements' residents and the demolition of the house in Németkér (see above, under § 6) it gave up the plan and managed to find accommodation for the concerned families.[36]

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[32] Interview with János Bársony, member of the Roma Civil Rights Foundation, spring 2001

[33] See: Kilakoltatás a Király utcában: Demszky szerint jogsértően járt el Erzsébetváros (Eviction in Király street: in Demszky's opinion the 7th district acted in an unlawful manner), 28 May 2002, www.romapage.hu

[34] Information taken from all major daily newspapers published between 31 July 1999 and 4 August 2000.

[35] Ombudsman 1998, pp. 74-77. The Ombudsman established that on the mayor's order the municipality's notary violated the provisions of administrative procedure, as well as relevant construction laws, which would have required a much more thorough examination before the decision on tearing down the houses could have been delivered.

[36] Report no. 4147/2002 of the Minorities Ombudsman.

Although discrimination is housing is a hotbed of further racist acts and intolerance, the Government fails to draw adequate attention to the problem. The policy of leaving this problem to the local governments has obviously failed.

As regards § 23 of the Report (hate-speech): There is still a tendency of Hungarian public figures to openly use hate speech, most often targeted against the Roma minority,[37] "illegal" migrants or often with a coded but well understandable anti-Semitic content – a phenomenon paralleled and enhanced by the ineffective system of sanctions.

Due to the Supreme Court's relatively restrictive interpretation of the offense of incitement to hatred (according to which incitement shall be taken to occur only if the person committing the incitement calls for *effective action* directed against the given group, i.e. simply defamatory utterances are not to be qualified as "incitement"), the number of recorded criminal offenses relating to hate speech (§ 269 of the Criminal Code) is minuscule. There were some highly publicized cases in which the authorities refused to launch a criminal procedure, although they themselves acknowledged that the expressions used in public are degrading and humiliating with respect to a certain group of society.

When for instance the vice-president of the radical right-wing Hungarian Truth and Life Party (MIÉP) described the purchase of the country's most popular football team by a businessman associated with liberal and Jewish circles as a "transaction directed against the nation" and the Association of Hungarian Jewish Communities filed a report with the Public Prosecutor's Office, the office claimed that although the aggrieved statements are "very degrading and debarring towards the Jewry, they are not inciting to effective exclusion realized in the form of concrete actions."[38]

Similarly, at present, no criminal procedure on counts of incitement to hatred could be launched against those football fans, who after their team lost the championship on 30 May 2003, flooded the field, beat up players, damaged the equipment and chanted 'Dirty Jews!' 'Heil Hitler!' escorted with the Nazi arm raising. [39]

In reaction to this, the Government has started the preparation of the amendment of the Criminal Code so that the restrictive interpretation of the Supreme Court could not in the future prevent the penalization of such behavior.

Although Act I of 1996 on the Media contains the ban on discrimination and incitement against hatred, this provision has not so far been implemented with adequate consistency. The National Radio and Television Board vested with the right to sanction broadcasters violating this provision failed for a long time to take firm action against "Pannon Rádió", a radio station notorious for its chauvinistic, anti-Semitic, homophobic and anti-Roma language and affiliated with the extreme rightist Hungarian Life and Truth Party (MIÉP). Similar reluctance was characteristic of the Board

[37] Former Prime Minister Viktor Orbán for instance offered a flagrant example of how spending on Roma can be presented so as to contribute to stereotypes and increase general anti-Roma sentiments, in a January 2001 radio broadcast of his weekly Wednesday interview. Referring to a Roma housing scheme he stated that "the real issue was whether we could find a way to ensure that these flats will not end up in so sad a state as those previously constructed, [where] Roma families moved in and […] within less than a year, the flats had completely fallen apart, the hardwood floors were ripped up, and the doors and windows destroyed. In other words, people felt that the state had provided support from their taxes to those in need in vain..."

[38] See: 'Kirekesztő beszéd: marad a szabályozás' (Hate speech: no changes in the regulations) *Népszabadság*, 29 January 2002. p. 1.

[39] See for example: 'Hétköznapi fradizmus' (Everyday "Fradism") and 'Megkövetés' (Saying sorry) In: *Népszabadság*, 2 June 2003.

with regard to "Vasárnapi Újság" (Sunday Magazine), a regular program in the Hungarian public service radio, which promotes racist and chauvinistic ideas.[40]

After the change in the government in 2002, the composition of the Board was also altered, which brought about a somewhat firmer approach concerning inciting utterances. This however primarily means that the body is quicker to react to violations, whereas the sanctions imposed still lack the necessary gravity. On 30 March 2003, the commercial channel TV2 broadcast an entertaining program that raised a public outcry and led to protest from Roma politicians, NGO's and the Minorities Ombudsman for its defamatory depiction of the Roma minority. In its decision, the Board concluded that "there was hardly any moment in the program, when laughter was not intended to be triggered by some negative characteristic of the minority". Therefore, on 10 April 2003 the body ordered that the broadcasting of the channel's program be suspended for 30 minutes in prime time, although the maximum suspension allowed by the law is 30 days.[41]

After the change in the composition of the Board, the body has also been showing more willingness to deal with complaints against the aforementioned "Vasárnapi Újság". Although the management of the Hungarian public service radio removed the program's editor in chief in October 2002, the racist, primarily anti-Semitic tone has remained. On 16 June 2003 the Board's Complaint Committee condemned a speech broadcast in the program on 25 May. On 4 July 2003 the Board decided to look into another broadcast (22 June 2003) of the program because of its racist contents.[42] However, the management of the national public service radio (appointed during the previous government) consistently neglects the warnings and fails to do anything about the sometimes intolerable contents of the program.

As regards § 25 of the Report (specialized bodies): In the Report ECRI suggested that "the role, powers and functions of this body [the Parliamentary Ombudsman for National and Ethnic Minorities] could usefully be extended further." In fact, the scope of authority of the Ombudspersons was restricted by Act XC of 2001, which removed the prosecutorial organs from the circle that may be subject to investigation by the Parliamentary Commissioners. The Ombudsman is still authorized to look into the actions of prosecutorial investigative offices (which are responsible for the investigation for a number of special offenses, such as the ones committed by policemen), however, some restrictions as to the inspection of files originating from secret data gathering were imposed on this authorization of the Ombudsman as well.

This might prove especially problematic, as according to the new Code of Criminal Procedure (Act XIX of 1998),[43] which entered into force on 1 July 2003, the prosecutor shall be in charge of all investigations (before the new code's entry into force, the police was in charge of investigations, whereas the prosecutor had supervisory powers), so it may be inferred that the Parliamentary Commissioners may almost completely lose their right to look into the investigation of criminal offenses (with the exception of those ones, where the prosecutorial investigative offices conduct the investigation).

A positive development in connection with the institutional background is that the Draft Bill of the Act on Equal Treatment and Equal Opportunities (see under § 13) proposes the setting up of a so-called Equal Treatment Committee (ETC). In terms of the Draft Bill, the ETC would consist of four

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[40] See: Péter Molnár: 'Gyűlöletbeszéd Magyarországon' (Hate speech in Hungary) *Élet és Irodalom*, 2001/43, 26 October 2001.

[41] See: 'Bazi nagy tévés büntetés' (Enormous media sanction) In: *Népszabadság*, 11 April 2003.

[42] See: 'Az ORTT ismét vizsgálja a Vasárnapi Újságot' (The National Radio and Television Board investigates Vasárnapi Újság again) In: *Népszabadság*, 4 July 2003.

[43] Article 165

members and a president appointed for six years by the Prime Minister upon the suggestion of the Minister of Justice. The ETC's activity would extend to discrimination based on any ground, not only race. The ETC would have the power to conduct investigations, issue recommendations, impose sanctions, initiate lawsuits and administrative procedures, and provide advice in the legislative process.[44]

As regards § 26 of the Report (protection of ethnic data): In spite of the fact that the regulations prohibiting the collection, processing and disclosure of sensitive data (ethnicity, religion, etc.) without the consent of the person concerned, have been in force for years,[45] in June 2003 a journalist still found five warrants of caption on the homepage of the National Police Headquarters, which explicitly mentioned the Roma origin of the person wanted. The Headquarters promised to modify the texts and to pay increased attention so that no such error be committed in the future.[46]

Last year it came to light that in institutions of child protection the ethnicity of children awaiting adoption is registered. From 1 January 2003 no such data may be recorded or disclosed to the potential adoptive parents. According to the competent Ministry's promise, all databases containing such data will be eliminated.

As regards Section II. K of the Report (discrimination against Roma in education):[47] Three common patterns of segregation seem to unfold in the Hungarian educational system: 'special schools' established for children with mental disabilities, often predominantly attended by Roma students; segregated 'Gypsy schools'; and segregated classes within 'mixed' schools, usually of a lower standard in terms of teaching materials and quality. A relatively new form of segregation results from the abuse of the provisions concerning so-called "private students".

Special schools: Channeling Roma students into special schools originally established for children with slight mental disabilities is a form of segregation common to the countries of the CEE region. Hungary is no exception. Where doubts emerge about the ability of students to cope with normal school, a so-called 'expert panel' examines them for possible attendance at a 'special school', intended for children with physical or mental disabilities with lower requirements for pupils. Children remain at these schools until their abilities are considered to be sufficient for elementary education, and may continue through the auxiliary system throughout primary level, with practically no chance of continuing to secondary schools afterwards. Roma are disproportionately represented at both the testing and selection stages. According to the latest research 84.2% of the children in special schools are of Roma origin. Approximately every fifth Roma pupil is sent to special schools (or remedial classes within normal schools),[48] while most experts agree that a good number of Roma children attending special schools are not even slightly mentally disabled and are only relegated to such institutions due to the negligent failure to take into consideration their specific socio-cultural characteristics and owing to – conscious or unconscious – discriminatory considerations.[49]

The statute regulating the activity of expert panels[50] was amended twice with the aim of strengthening the role of the parents in the process.[51] At present the parent has numerous rights

[44] See: http://www.im.hu/fooldal/cikk/cikk.phtml?cikkid=2595
[45] The joint statement of the Minorities Ombudsman and the Data Protection Ombudsman claimed that warrants of caption may not contain ethnic references as early as 1997.
[46] http://www.romacentrum.hu/aktualis/hirek/2003/06/nsz20030619.html
[47] In this section we greatly rely on: András Kádár: *Legislative Review for the Hungarian Roma Education Policy Note*. Manuscript prepared for the Országos Közoktatási Intézet and the World Bank.
[48] Havas Gábor–Kemény István–Liskó Ilona: *Cigány gyerekek az általános iskolában* (Roma Children in Elementary School) Oktatáskutató Intézet – Új Mandátum Könyvkiadó, Budapest., 2002. pp. 61–99
[49] Ombudsman 1999, pp. 236–238.
[50] Decree 14/1994 of the Ministry of Education on Educational Obligations and Pedagogical Services

which could in theory prevent the wide-ranging abuse of the institution (e.g. upon the voluntary request of the parent, in the course of their examination the educational advice center and the expert panel shall take into consideration the special linguistic and socio-cultural characteristics of children belonging to minority groups; the examination may not be started without parental consent; parents receive the expert opinion in writing; they may appeal against the expert panel's opinion, etc.). The Minorities Ombudsman's comprehensive investigation of the problems came to the conclusion that "the relegation of children into special (auxiliary) schools is sufficiently regulated. […] The violation emerges primarily in the course of implementation."[52]

The main reason for this is that if the parents are undereducated and unable to assert their rights, their involvement in the process means no real guarantee against abuses. They do not understand the procedure and – even if the information on available remedies formally takes place – they do not know whom to turn to.[53]

This kind of problem is very difficult to tackle through legislative measures. A closer control on the operation of the expert panels seems possible though. One field in which (legislative) improvement may be achieved is the determination of criteria for qualifying children as slightly mentally disabled, since at present, the picture is not very clear in this regard. In the lack of strict legal criteria, it may solely depend on the discretion of the members of the expert panel which children falling into the IQ 70–95 category are relegated to special schools and which are sent to normal elementary schools. And this is exactly where discriminatory patterns may emerge. We therefore suggest that the Minister of Education – based on the authorization contained Act LXXIX of 1993 – issue a decree on this question.

Segregated schools: A 2000 research by the Institute for Educational Research provides convincing evidence that the degree of school segregation (concerning "normal" schools) has increased significantly during the past decade. The research concerning 192 elementary schools where the proportion of Roma pupils was over 25% or their numbers exceeded 100 in the 1992/93 school year shows that while in 1992 7.1% of Roma pupils studied in schools where they were in majority, today this percentage is 18.1. While numbers of pupils attending the surveyed schools have fallen overall, the absolute number of Roma children has increased. In a country-wide comparison 44% of Roma pupils study in schools where their proportion exceeds 25% or their number exceeds 100, while only 6,3% of non-Roma children attend such schools.[54]

The primary factors leading to this increased separation of majority and minority pupils are not of legal nature. The development of segregated Gypsy schools is closely related to segregation in housing – the schools reflect local ethnic divisions. As a result of the spontaneous migration of the 1990's the proportion of Roma population has significantly increased in the small settlements located in the poorer regions of the country and in the deteriorating quarters of bigger cities. Young, non-Roma families tend to move out from such areas, so the proportion of non-Roma students in the schools serving them, drops radically, leading to the development of segregated Gypsy schools.[55]

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[51] In 1998 by Decree 3/1998 of the Ministry of Education and in 2001 by Decree 4/2001 of the Ministry of Education.

[52] Ombudsman 1999, p. 147. and p. 239.

[53] Ombudsman 1999, p. 147.

[54] Gábor Havas, 'Kitörési pont: az iskola' (Breaking point: the school), *Beszélő*, November 2000 (hereinafter: Havas, 2000). 50-65

[55] See: Beszámoló a nemzeti és etnikai kisebbségi jogok országgyûlési biztosának tevékenységérõl, 2001. január 1. – 2001. december 31. (Report on the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January 2001 – 31 December 2001. Hereinafter: Ombudsman 2001). Országgyûlési Biztosok Hivatala, Budapest, 2002. p 41.

Another related factor in this increased distancing is non-Roma parents taking their children out of 'Gypsy schools'. When due to the migration process described above, the proportion of Roma pupils starts rising in the school, even those non-Roma families take out their children who do not move out. Of the 192 schools examined in the aforementioned survey, in the case of 28 there was clear indication that although the given school was the only one in the given village or town, most non-Roma children living there were sent to schools located in different settlements.[56]

As the financing of schools is performed on a per capita basis, this situation puts the schools and the maintaining local governments under an enormous pressure to segregate the Roma children in order not to loose the majority pupils. This is done through segregation on either the school level (creating separate schools for the Roma and the non-Roma children within one settlement) or on the class level (establishing segregated Gypsy classes within the school).

To the former, the scandalous Jászladány case provides an elucidating example. In early 2002, the Jászladány local government made a decision about renting out a part of one of the settlement's three school buildings to a foundation that wished to launch a private school in the settlement. From the circumstances of the case, it is highly probable that this measure was intended to disguise an effort to create a separated school for non-Roma children. The expressly articulated objective of the private school's establishment was to achieve that the approximately 70 pupils whose place of residence was Jászladány but went to school in other settlements would return to continue their studies in Jászladány.

Taking into consideration the problem described above, it is quite likely that these children were sent to study in schools outside the settlement, because in those institutions the proportion of Roma pupils was not so high as in Jászladány. In theory, the private school would have been open to all pupils, however, the HUF 3,000 (USD 13) tuition fee was clearly beyond the capacity of almost all the Roma families in the settlement. The building concerned by the rental was the most modern of the three buildings in which the Jászladány public school operates. Its gym would have also been given into the exclusive use of the private school, so those public school students who study in the other half of that building would have had to walk about a kilometer to the other gym located in one of the older buildings.

The rental fee paid by the private school to the local government would have been approximately HUF 40,000 (USD 174) per month, in return for which the local government would have undertaken the payment of the overhead costs (gas, electricity, water, etc.), which means that the local government would have in fact supported with a significant amount of money the operation of the private school which most of the Roma children could not have attended due to the financial limitations (and the money spent by the local government on the private school would by all probability have been drawn from the funds available for education, and thus for the education of these Roma pupils).

Before delivering its decision, the Jászladány local government failed to request and acquire the approval of the minority self-government, which, in fact strongly objected to the whole idea, warned of the discriminatory consequences on several occasions, and finally turned to the Minorities Ombudsman. The Ombudsman requested the regional administrative office to exercise its supervisory rights and call on the local government to withdraw its decision. A long and complex legal battle began with the local government, the mayor and the notary for, the Minorities Ombudsman, the Ministry of Education and the regional administrative office against the establishment of the private school, at the end of which the court claimed that the Ministry of Education lawfully prevented the private school from starting its operation in September 2002.

[56] Havas, 2000, p.59.

It seems then that the minority self-government of Jászladány succeeded in taking action against school segregation, however, the Jászladány case took a rather bizarre turn in the fall of 2002 at the minority self-government election: instead of the members of the old Roma minority self-government that tried to prevent the local government from setting up the private school, new members were elected. Out of the five members only one belongs to the Roma minority. The other four members are admittedly not of Roma origin, one of them being the mayor's wife, who actually became the minority self-government's president. The private school started a new registration procedure for the 2003/2004 school-year.[57] The new minority self-government willingly gave its approval to the decisions necessary for launching the private school, so it would now be very difficult to find – formal – legal arguments against the school's registration.

In the meantime it became clear from a news program of TV2 (presenting a hidden camera recording) that although the private school formally did not start its operation, in practice two separate institutions operate within the buildings of the public school with separate classes, separate teachers and a separate dining room for those children who would have gone to the private school had it started its operation. In fact, the two groups of children use separate entrances!

Segregation at the class level: The other technique to keep non-Roma children in the schools is to establish segregated classes within the institution. There are three basic forms of class segregation: (i) special remedial classes, usually with a lower requirement level, poorer educational work and a disproportionate number of Roma pupils; (ii) special faculty classes offering extracurricular education (e.g. language teaching, advanced mathematics, etc), usually reserved for non-Roma children; and (iii) classes set up by misusing the institution of "Roma minority education".

The same procedure applies to relegating pupils into remedial classes as to relegating them into special schools, so the problems outlined above are relevant here as well. As to special faculty classes, the 2000 research by the Institute for Educational Research examined the proportion of Roma children in remedial and special faculty classes at the 192 surveyed schools. It showed that while the proportion of Roma pupils was 45.2% in normal curriculum classes, their percentage in mathematics faculty classes and language faculty classes amounted to 16.2% and 17.5% respectively. In the light of the above it shall also come as no surprise that their proportion was 81.8% in remedial classes.[58]

A very positive change was introduced by Decrees 57/2002 and 58/2002 of the Ministry of Education with regard to the misuse of "Roma minority education" programs. Before the change these programs had to contain two elements: information on Roma people and culture on the one hand and a catch up element on the other. The program's regulation allowed for the setting up of separate classes for children participating in the program. The school received a certain amount of money (determined in the annual budgetary act) per year after each child participating. This amount was transferred to the local government maintaining the school and had to be – at least in theory – spent on providing the personal and material conditions of this special form of education.[59] Although in theory no pupil could have participated in such programs without the approval of the parents, the

[57] For more details see: Jászladányi iskolaügy – még nincs engedély az alapítványi iskolára. (Jászladány school case – still no permission for the private school) 24 April 2003. At: http://www.romapage.hu/hirek/index.php?kozep=hir959.htm.

[58] Havas, 2000, p. 63

[59] For further details see: *Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről, 2000. január 1. – december 31* (Report on the Activities of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January – 31 December 2000), (hereinafter *Ombudsman Report 2000*) Office of the Parliamentary Commissioners, Budapest, 2001, pp. 47-52

"Roma minority education" programs – partly due to the problems of parental approval outlined above – proved to be a hotbed of abuses.

In his 2000 report the Ombudsman summarized his main experiences concerning Roma minority educational programs: a) in most cases only the catch-up element is realized and the obligation to provide the pupils with knowledge on Roma culture is completely neglected; b) in some cases parallel to the organization of Roma minority education, other subject (such as foreign languages and computer science) disappear from the agenda of the Roma pupils; c) the proportion of not properly qualified teachers is higher in this form of education than in ordinary primary school education; d) in several cases it is not the parents who initiate the organization of such education: they are sometimes not even asked for their approval but in most cases they are not informed appropriately about what this form of education comprises.[60] The Ombudsman's conclusion is the following: "We would not like to fall into the error of exaggerating generalization but we must say that in several cases the local governments – in cooperation with the schools – only organize Roma minority education to obtain the supplementary normative support and exploit this form of education to segregate the Roma pupils in a seemingly lawful manner."[61]

The change introduced by the two decrees adopted by the Ministry of Education in the fall of 2002 is the following: the "catch up" element has been deleted from the legal definition of the Roma minority education programs, and only cultural education has remained.[62] This is the result of the recognition that it is both degrading and counterproductive to mix up the teaching of a rich minority culture with educational efforts to decrease social disadvantages (even if the effort is real and not just a pretext for segregation).

At the same time, the possibility to address social disadvantages a new educational form is created by introducing two new forms of education: in terms of the amendments, with the aim to counterbalance the student's social or developmental disadvantages, educational institutions may organize a skills development training, in the framework of which the student is assisted in developing his/her talents and catching up with the others.[63] It is important that the education of students participating in the skills development training shall be conducted in an integrated manner, together with other students. This way the skills development training may not be used as a pretext for segregation.

The other new educational form is the so-called integration training.[64] Such a training program may be organized for those students who participate in the skills development training and attend the same class (or group) as those students who do not participate in such training. In order to create financial incentives, similar per capita budgetary support is attached to these new forms of education as used to be to the old form of Roma minority education.[65]

As these new forms of education – along with the reformed Roma minority education programs – will be applicable only from the beginning of the 2003/2004 academic year, we have no experience as to the extent to which they achieve the goal of integration instead of segregation. However, the direction of the change is by all means positive.

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[60] Ibid., p. 49.
[61] Ibid, p. 50
[62] See: Decree 58/2002 of the Ministry of Education.
[63] Decree 57/2002 of the Ministry of Education inserted this new Article 39/D into Decree 11/1994 of the Ministry of Education on the Operation of Educational Institutions.
[64] The newly inserted Article 39/E of MKM Decree 11/1994
[65] See in: Act LXII on the 2003 Budget of the Republic of Hungary

Another positive development is the coming into force (on 13 May 2002) of Article 142 Paragraph (5) of Government Decree 218/1999 on Petty Offenses, according to which the person who, by deliberately violating legal provisions pertaining to public education discriminates against a child or student is punishable with a fine up to HUF 100,000 (approximately EUR 385). As of yet we have no information on how frequently and efficiently it has been invoked, how many petty offense procedures have been launched on this count and what the decisions have been. It is however somewhat unfortunate that it is the notary who is entitled to conduct such petty offense procedures, since the notary is employed by the local government, which is in many cases the discriminating actor.

Roma children as private students: 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 spite of the Ministry's attempt to solve the problems, further complaints arrived in the year 2002.[66]

As regards Section II L of the Report (discrimination against Roma in employment): ECRI found it "noteworthy that in cases of labour discrimination, the burden of proof lies with the employer". The difficulties and the Hungarian authorities' reluctance related to the utilization of the reversed burden of proof are illustrated by the case of Katalin F., a young Roma woman working as a nurse, who in April 2000 applied for the position of chambermaid at a hotel in Budapest.[67] While waiting for the interview, she overheard the manager stating: "I do not hire Gypsies here, I hate them all". She immediately sought assistance from two social workers. She told her roommate about the incident and subsequently contacted the Minorities Commissioner.

She sued the hotel in the Metropolitan Labor Court. As it was a discrimination case, under the pertaining terms of the Labor Code, the hotel as a potential employer ought to have proved that there was no discrimination in the case. The plaintiff however denied ever seeing the applicant or making any comments about her ethnic background. Other employees present at the time corroborated his statements. Therefore, the burden of proof was "re-reversed": Katalin F had to prove that she had been to the hotel and met the manager. In the court's view however, she failed to fulfill this obligation, so her claim was rejected.

The court admitted testimonies from the employees of the hotel, claiming they had never met her before. It found the testimony of one social worker flawed because (a year after the incident) she could not recall the name of the hotel. Further, (and contrary to the minutes of the trial) it found discrepancies in the plaintiff's account with regard to the time of the appointment and the circumstances of waiting. Though the plaintiff submitted a certificate from MATÁV [the Hungarian telephone company] verifying the time of the telephone conversation between her and the hotel, this could not save her case, and neither could the fact that in the procedure of the labor inspectorate (preceding that of the court) she described with reasonable precision the people she met and the reception where she waited (in fact the labor inspectorate found the employees who testified against Katalin F., on the basis of her description). The case – showing the difficulties in the proper application of the reversed burden of proof – is now before the Supreme Court.

A positive development is that more and more victims of discrimination bring cases before the courts. István V., a typesetter applied personally for a job with a Budapest printing house but was told that the job had already been filled. He later called under a false name and received the

[66] Minorities Ombudsman 2002, p. 127.
[67] For a detailed description, see: NEKI, *Fehér Füzet 2000*.

information that the job was still vacant. He sought help from the Legal Defence Bureau for National and Ethnic Minorities (NEKI), which used the test method: a Roma and a non-Roma typesetter with similar experience were sent to the printing house. The Roma typesetter was rejected, his non-Roma colleague was employed. The case is in progress.[68]

55-year old V.P. has brought a lawsuit against the Dél-Pest Hospital because she was dismissed without proper reasons. She worked as a data recorder. Her labor contract (concluded for determined periods) was renewed from time to time – which is not lawful under the Hungarian legislation –, until after three and a half years she was dismissed. A 25-year old non-Roma woman was employed instead of her. V.P. claims damages for discrimination based on age and ethnic origin.[69]

As regards Section II M of the Report (the situation of non-citizens):

1.)
Since 1999 the legislative background concerning the entry and stay of foreigners in Hungary has significantly changed. A new Act on the entry and stay of foreigners came into force on January 1, 2002, the Act on Asylum, the Act on naturalization and the Act on guarding the country's borders have been significantly amended. The 'migration-package' was passed by the Parliament on May 29, 2001. The government claimed that at the threshold of Hungary's accession the new regulations were necessary in order to harmonize the national regulations with the *acquis communautaire* of the European Union, with special regard to the Community's aims restraining illegal migration and the Schengen requirements. For the sake of the laws' uniform application, it is only the Interior Ministry's Office of Immigration and Nationality (hereinafter: OIN) – and its seven regional directorates – that deal with all the issues relating to the entry, stay and naturalization of foreigners, and in addition the refugee status determination procedure and the social support of those granted international protection belong to its scope of authority.

2.)
The awkwardness of the refugee status determination procedure: as a new development of the procedure the three-instance system of legal remedy has been expanded into a four-instance one. However, the possibility of administrative legal remedy lacks content: with the establishment of the second instance public administrative body the informational and professional background and the preparedness of the departments have not increased, and the staff of the professional machinery is still insufficient in number.[70] The second instance administrative procedure is actually not independent of the first-instance one, and there is no possibility for hearing the applicants or a for a more thorough investigation of the statements of facts.[71] In terms of the Strasbourg standards this results in a seriously awkward situation: the refugee status determination procedure becomes significantly slower. [72] Further, as a result of a mistake of legislation every applicant of asylum has the opportunity to file an appeal against the decision of the first instance court. Consequently, more than two years might pass before the legally binding judgment of a manifestly unfounded application.

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[68] Information from NEKI, 2003.
[69] Ibid.
[70] According to a 1999 report the staff of the Office of Refugee and Migration included 27 persons. At the OIN 33 people decide on the applications for asylum at the first instance and 7 at the second instance.
[71] The Austrian Independent Refugee Senate, which brings the second-instance decisions on asylum applications, is not subordinated to the government. In Germany the Federal Refugee Office operates under the direction of the Federal Minister for Home Affairs, but he/she cannot give orders to the officials who are authorized to bring the substantial decisions.
[72] dr. Imre Papp: *Analysis of certain migration law related questions*.

With the amendment of the Asylum Act the institution of expulsion came into force within the refugee status determination procedure. The wording of the regulation is inaccurate, the decisions of expulsion are unlawful (since the new regulation itself is against the Constitution), furthermore, it proved to be impossible to implement in practice. Therefore the asylum authorities' power of expulsion is questionable. Moreover, the fact that the authority responsible for adjudicating asylum applications practices the power of expulsion at the same time results in the asylum-seekers' essential distrust against the asylum authority.

3.)
The dominance of the alien policing procedure within the asylum procedure: within the organizational system of the OIN the alien policing departments are more powerful than the refugee institutions. No matter if the foreigner is captured or s/he voluntarily reports him/herself to the border-guards, to the police or to the OIN's alien policing department, the alien policing procedure is implemented first, and it is not suspended despite the submission of an application for refugee status.[73] The expulsion of an asylum-seeker can be ordered even if the deportation cannot be implemented (though the law does not explicitly exclude this possibility), and the asylum seeker whose expulsion was ordered can be detained for one year. According to the new Act on Aliens the maximum length of the detention was reduced from 18 months to 12 months. Practice has shown that if a foreigner who entered or stay illegally in the territory of the Hungarian Republic expresses his/her intention to seek asylum, it depends exclusively on his/her nationality, whether s/he will be placed in a reception center or detained in the alien policing jail for the time his/her application is being adjudged. [74] Asylum-seekers of Bangladeshi or Chinese citizenship are most likely to face a 12-month alien policing detention.

Moreover, alien policing detention bears a decisive effect on the asylum procedure. Although the asylum procedure is formally performed even in a detained foreigner's case meaning that on paper the detained foreigner also has access to the asylum procedure, according to our knowledge, since January 1, 2002 not one detained applicant has received protection in practice, either as a refugee or as a 'person authorized to stay'.[75]

Furthermore, the authority ordering detention ignores the fact that if the expulsion can obviously not be implemented, detention should be terminated according to the law. This never happens. Those in detention speak of their release in terms of "how much from the one year period is left". Currently there are about 250 foreigners kept in alien policing detention in Hungary. The vast majority of them are asylum-seekers.

4.)
Questions and problems of subsidiary form of protection: The category of 'person authorized to stay' has been transferred from the Asylum Act into the Act on Aliens. On the basis of the current practice someone is considered to be a 'person authorized to stay' if the clause of non-refoulment of

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[73] This practice is in contradiction with Article 31. of the 1951 Geneva Convention concerning the situation of refugees: „The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." (According to the interpretation of the OIN leaders the expression of the Article 31. „coming directly from a territory" makes it impossible to apply the regulation to the cases of those, who arrive in Hungary via some third country.)

[74] *Report on the visit of the Hungarian Helsinki Committee at the Border-Guards Directorate of Szombathely and the Szombathely Branch of the Western Transdanubian Regional Directorate of the Interior Ministry's OIN* (April 16, 2003, Szombathely)

[75] *Report on the visit of the Hungarian Helsinki Committee at the Border-Guards Directorate of Győr and at the Győr Branch of the Western Transdanubian Regional Directorate of the Interior Ministry's OIN* (April 15, 2003, Győr)

the Act on Aliens pertains to him/her.[76] The decision on the applicability of the non-refoulement clause in a specific case and thus the granting of the 'person authorized to stay' status takes place without formal acknowledgment, during the asylum or alien policing procedure. The asylum and alien policing departments of the OIN or even the proceeding department of the Border Guards is competent to bring a decision in this matter.

As no official decision is being brought on the 'person authorized to stay' status, currently the time of an admitted person's legal stay can be defined only on the basis of a certificate issued for him/her. His/her situation is even more difficult due to the fact that s/he is not provided with the so-called "permission to stay for humanitarian reasons" prescribed by law, but with a "certificate entitling the holder of temporary stay", which is arbitrarily extended for one or two months. This results in his/her feeling of uncertainty of existence and constant fear and makes his/her adaptation entirely impossible. At the suit of the Hungarian Helsinki Committee also the Administrative Law Department of the Metropolitan Prosecutor's Office stated the obvious violation of law: "contradicting item a), paragraph 1., Article 15 of the Act of XXXIX 2001 on the entry and stay of foreigners" the authority did not start issuing permissions to stay for the 'persons authorized to stay' within the legal deadline, but provided them with certificates entitling the holder for temporary stay. In order to achieve legal remedy of the unlawful omission, the Prosecutor's Office filed a complaint and an indication to the OIN. [77]

5.)
Non-refoulment: compared to the former regulation it means serious decline that since January 1. the alien policing authorities have not been obliged to ask for the asylum authorities' expert opinion on the question of the refoulment of asylum-seekers who report themselves to or are captured by them. Decisions on the question of non-refoulment are not brought on the basis of individual evaluation, but on the basis of internal directives applying to particular countries: non-refoulment applies to Iraqis and Afghans, but does not to Bangladeshis, whatsoever persecution they might report on.[78] Evaluating the Hungarian Helsinki Committee's report, in her letter of June 24, 2003 dr. Zsuzsanna Végh, director general of the OIN made it clear: "Should the case occur that the court or the alien policing authority has already decided on the question of expulsion, the asylum authority refrains from deciding on it." This statement clearly supports our assumption that in most cases it is not the asylum authority performing the substantial hearing of the applicant that decides on the question of non-refoulment, but the alien policing authority, which primarily enforces policing points of view. This practice reflects the will of the common leadership of the two branches.

It would be definitely expedient to have an impartial authority to decide on this question, one, which is motivated by interests independent from the "struggle" against illegal migration.

Conclusion: The new laws and their application have related the asylum-seekers into a situation which is even worse than it had been earlier, and reduced the chances of integration of those

[76] Paragraph 1, Article 43 of the Act of XXXIX 2001 on the entry and stay of foreigners: „Returning, refusal of entry and expulsion shall not be ordered and shall not be implemented with respect to a country which, with regard to the person concerned, does not qualify as safe country of origin or a safe third country, in particular, where the foreigner would be exposed to persecution owing to reasons of race, religion, national or social affiliation or political views, or to the territory of a state or the border of an area where there is good reason to suppose that the returned, refused or expelled foreigner would be exposed to torture, inhuman or degrading treatment or the death penalty."
[77] In a letter of June 20, 2003 the director general of the OIN informed the president of the Hungarian Helsinki Committee that the competent head of department ordered the issuance of permissions to stay for humanitarian reasons for 'persons authorized to stay' on February 3, 2003 and for asylum-seekers on June 6, 2003, according to the Act that came into force on January 1, 2003.
[78] The summary of the Hungarian Helsinki Committee (Budapest, September 20, 2002.)

receiving protection. A recognized refugee is extremely rare in the procedures of the OIN. Considering the total number of applicants (7755) only 1.34% were recognized as refugees in 2002. Among applicants, whose cases were concluded with an in-merit decision (2682) the proportion of recognition is 3.9%. With regard to the Western European average of 10%, this is to be definitely considered rather little. The OIN provides those seeking asylum in Hungary with the legally unregulated "person authorized to stay" status (according to the wording of the Act on Aliens: 'admitted' person) – accompanied with legal irregularities and uncertainty of existence. The proportion of recognized refugees to those authorized to stay was 1:1.6 in 2001, while in 2002 this proportion changed to 1:12.5.[79] The report of the UNHCR Branch Office in Budapest righteously stated: "However, strong indications suggest that subsidiary protection is not implemented in such a way which would strengthen the existing global refugee protection regime, but unwarrantedly undermines the latter."

Hence the law has turned against the aims of its creation: the restrictive measures applied against asylum seekers increase the volume of illegal migration towards the member states of the European Union.[80] In 2002 7755 people applied for asylum in Hungary and in the cases of 5073 applicants the procedure had to be terminated, because the applicants left the country before an in-merit decision could be brought in their cases.

The official terminology still uses "illegal migrant" to refer to asylum seekers, which expression is adopted also by the media. In 2002 the residents of Békéscsaba protested against the establishment of a camp which was intended to accommodate unaccompanied minor – thus children - asylum seekers. Finally the camp was opened on June 27, 2003.

6.)
Residence: the Act of XXXIX 2001 on the entry and stay of foreigners, which came into force on January 1, 2002, introduced the legal institution of residence instead of the earlier "immigration" for the long-term stay of foreigners. The new regulation means a significant decline: the permission of residence does not involve a wide range of rights that are attached to Hungarian citizenship. According to the reasoning for the bill: "The residence of the foreigner with permission of residence is not the same as that of a Hungarian citizen, as the foreigner with permission of residence does not fall under the scope of personal data and address registration when reporting his/her place of residence. The place of residence of the foreigner with permission of residence will be registered under the alien policing records. Again, the reason for the different regulation in this case is that the foreigner with permission of residence will not have the same rights as Hungarian citizens - or even immigrants - do concerning either the right of vote or social benefits."

7.)
The OIN – as the new authority adjudicating foreigners' applications for residence – started its work with an already enormous backlog of cases. As a result the judgment of applications protracted remarkably, and the Office made significant efforts in order to judge the applications within deadline. In his report of April 15, 2003 (Nr. OBH 4859/2000) the Parliamentary commissioner for civic rights states that the repeated exceeding of deadlines in administration contradicted paragraph 2., article 20 of the Act on Aliens, which caused irregularities related to the right to a fair procedure originating in the rule of law guaranteed in paragraph 1, Article 2 of the Constitution."

A point of the report mentioned above investigated the time the judgment of Chinese citizens' applications for residence takes: it took even longer than the average. The supervision explored the following circumstance: one of the causes of protracting judgment was the "order of the leader of the

[79] Source: Office of Immigration and Nationality 2001, and its official statistical data concerning the year 2002.
[80] The summary of the Hungarian Helsinki Committee (Budapest, September 20, 2002)

Public Administration Office, which ranked the administration of applications according to the applicants' citizenship or nationality. (…) The first group included applicants of Hungarian nationality. The second one included those who filed their applications as family members in order to unite families, if the applicant him/herself was of Hungarian nationality. The order ranked the citizens of the European Union and of the Japanese Empire into the third group. The last group contained "other applicants", i.e. those, who did not belong to any of the previous three categories." According to paragraph 5., Article 2. of the Act of IV, 1957 on public administration, clients enjoy complete equality before the law during procedures, and their cases should be administered without any discrimination or partiality. The report condemned the Office as follows: "With regard to the fact that the order of the leader of the Office of Public Administration distinguishes foreigners applying for immigration in a way that goes beyond the regulations of the Act on Aliens, its application resulted in irregularities related to the right to discrimination-free treatment guaranteed in paragraph 1, Act 70/D of the Constitution and the right to fair procedure originating in the rule of law guaranteed in paragraph 1, Article 2 of the Constitution."