

HUNGARIAN HELSINKI COMMITTEE

REPORT ON THE SITUATION OF MINORITIES IN HUNGARY

September 1999

General situation

In general, we can say that most of the constitutional and legal instruments regulating minority rights in Hungary meet the requirements of the Framework Convention, that is minority rights are adequately protected at the level of acts and statutes. The problem is that the practice is often different. The group that is most often discriminated against is the Roma minority, however, there are fields in which the rights of other ethnic groups are not implemented properly either. This report follows the structure of the Framework Convention, focusing on those Articles the implementation of which raises the most problems in Hungary.

Article 4

1 The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

In this field the most often emerging problem is the phenomenon of so called „indirect discrimination”, i.e. when the law itself is neutral, however it is intentionally applied by authorities to discriminate against a certain group of society. The group the rights of which are most frequently infringed this way is the Roma minority. These cases can be divided into two main groups the first including the misuse of police powers, the second containing infringements by other authorities such as local governments and state agencies.

Police abuses: Human Rights Watch observed in its 1998 report¹ that the Roma are particularly likely to be the victims of police abuse (ill-treatment in official procedure, interrogation under duress, illegal arrests, etc.). There are numerous cases of Roma clients complaining about police

brutality in the practice of most human rights NGO's. Let us quote here the characteristic example of János O.:

"János O. is a 36 year old, 150 cm tall, thin Roma man with hearing impairment.

On 6 July 1998 his neighbor called the police on him stating that O. had previously threatened him with an object which looked like a weapon.

The police searched his flat and found the object in question: a red plastic toy gun. Then a policeman lifted him up from the bed and boxed him in the mouth. He was handcuffed and taken to the district police station. He was kept in a cell for ten or fifteen minutes and beaten and kicked in turns on several occasions. It is apparent from the file that a bucket of water was poured over him which he was made to mop up. The beating resulted in injuries in his stomach and chest. Three of his ribs were fractured and he needed to be hospitalized.

Policemen taking measures reported him on the count of disorderly conduct, i.e. for shouting down the building's outside corridor, waving a weapon-like object. Investigation into the petty offense of disorderly conduct was commenced.

NEKI [the abbreviation for Legal Defence Bureau for National and Ethnic Minorities] represented the client in the petty offense procedure which ended in acquittal and the returning to him of the toy gun. The decision contained the fact that his hearing impairment served as the reason for him shouting at his wife.

On report by the client, the prosecutor's special investigation department ordered investigation into ill-treatment.

The department has not yet responded to our query of 7 September 1998."²

The general anti-Roma attitude of the police force is also indicated by the high number of cases in which off-duty police officers harass Roma people. On 31 July, 1998 an off-duty non-Romani police officer from Budapest verbally and physically abused a group of Romani women attending a conference in a holiday resort in Balatonszemes³. The officer was verbally and psychologically supported by a group of allegedly drunken non-Romani men. One of the women suffered a concussion, while another one - six month pregnant at the time - suffered other substantial injuries. The men also allegedly offended the ethnic origins of the women. Local police were reluctant to provide assistance to the female victims. The officers of the Siófok City Police are

said to have arrived only after the women brought the incident to the attention of the national media.⁴

Furthermore, Roma victims are often unable to obtain adequate remedies for such abuses. The 1997 statistics concerning so called "official crimes" (i.e. crimes committed by public officials) shows a depressive picture. 386 reports were made on counts of *forcible interrogation*. In only three cases were policemen taken to court, in a further 38 cases were charges pressed. In 142 cases, investigation into the incidents was denied, and in 202 cases terminated. In summary, 89 % of the reports ended without indictment. In the case of *ill-treatment* the figures are the following:

- 843 reports
- 276 denials of investigation
- 448 investigations terminated
- altogether 86% of the cases ended without indictment.

The figures for *unlawful detention* are as follows:

- 174 reports
- 66 denials of investigation
- 86 investigations terminated
- altogether 87% of the cases ended without indictment⁵.

Altogether approximately 3 per cent of cases brought against the police led to convicting sentences. Even in the few cases where police officers had been convicted, penalties were usually fines, probation or suspended sentences, and police officers generally remained on the force.

Cases of discrimination by other agencies: According to the 1998 Report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, the most complaints were filed against *local councils*: altogether 409 complaints were submitted to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (henceforth: Parliamentary Commissioner) but only 241 complaints fell into his sphere of competence. Out of the 241 complaints 77 were filed against local councils (as opposed to the 37 complaints concerning the police), which means almost one third of the cases with respect to which the Parliamentary Commissioner was entitled to take action⁶.

The most problematic aspect of such cases is that most of them include indirect discrimination which is very difficult to prove. However, in some of the cases the discriminative nature is so self evident that the Commissioner is able to take the necessary measures. Such was the so called "Zámoly case": In the village of Zámoly the roof of the building in which the Roma families lived was severely damaged. Seeing a good chance to get rid of the Roma families putting a serious burden on the social budget of the local council, the mayor offered them to temporarily move to the community center and "ordered" the public notary (in charge of building affairs in the Hungarian system) to qualify the Roma building as "unsuitable for accommodation" and to order the owners to pull down the building. The notary of the local council whose position is dependent upon the mayor in several respects chose to break some rules of the procedure to be followed in such cases as brought the decision required by the mayor. The mayor did not even wait until the deadline for submitting an appeal against the notary's decree terminated and had the building torn down. In connection with this case the Parliamentary Commissioner submitted a recommendation for legislation to the Minister of Interior concerning a mechanism providing public notaries with more independence from mayors who - trying to ensure their being re-elected - sometimes play the "ethnic card" to win popularity. The Minister's answer was a negative one⁷.

The biased attitude of *judges* towards the Roma is another problematic area, which - similarly to the case of local councils - is very hard to examine due to the difficulty of finding proofs for such presentiments. In this respect the situation is even more problematic since - as a result of the fundamental requirement concerning the independence of the judiciary - the Parliamentary Commissioner is not authorized to examine the activity and decisions of judges, although a significant percentage of the complaints are filed against them (29 out of 270 in 1998⁸). The 1998 Report of the Parliamentary Commissioner raises the question whether this solution is in harmony with the freedom of opinion, however, the regulation excluding the courts from the Parliamentary Commissioner's sphere of scrutiny is unlikely to be modified. The Hungarian Helsinki Committee therefore plans to launch a pilot project into the question of discrimination in the Hungarian criminal justice system. The project will be an in-depth examination into possibly existing differences between criminal sentencing in cases where the suspect is Roma or non-Roma.

The Hungarian Helsinki Committee will carry out a research project focusing on studying an equal number of similar 'ordinary' criminal cases (i.e. theft, group robbery) where suspects were Roma and non-Roma respectively. The research will be conducted by contacting defense counsels throughout the country who will make available entire case files to law students and legal sociologists. Researchers will carry out detailed analyses of cases with the aid of a questionnaire, prepared by practicing attorneys and experts of criminal law and sociology. Finally, the Committee will prepare a lengthy report on the project's findings.

The project will be implemented in two phases. First, a 6-month long pilot project will involve 15 attorneys who regularly act as defense counsels. Each attorney will provide 5 cases to be studied by researchers (law students under the supervision of legal sociologists). After the pilot phase of the project, the Hungarian Helsinki Committee will evaluate the information gathered and a preliminary report will be prepared. The pilot phase will also enable the Committee to identify changes, if necessary, that need to be made in research methodology and selection of cases.

During the project's second phase, the Hungarian Helsinki Committee will examine a greater number of cases (approximately 300 cases in all) by increasing the number of project participants (both attorneys and researchers). Thus, we hope to gain some information on this extremely important sociological aspect of equality before the law.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

We have to start the discussion of this unit by a brief summary of cases indicating the areas of economic, social and cultural life in which the general anti-Roma presentiment of the Hungarian society cause the most problems:

Discrimination in the *service sector*: On 19 September 1995 Gyula Góman took his wife to the hairdresser's. He decided to wait for her in a nearby pub. He ordered a coffee and a coke, also he asked for change for 100 HUF to spend his time with the gambling machines. The waitress refused to serve them because he was a Roma. He appealed to Mr. B, the owner of the place but the man confirmed what the waitress had said: "no Gypsy is allowed to eat, drink or enjoy himself in my pub." Mr. Góman started a criminal proceeding against the owner. In its judgment of January 1997 the court of second instance decided that Mr. B had committed the misdemeanor of slander and put him on probation for the period of one year. The civil procedure - based on Article 76 of the Civil Code (prohibition of discrimination and offenses committed against human dignity) and aiming at a court decision ordering the offender to provide public compensation and non-pecuniary damages - ended on February 3, 1998. The court of second instance approved of the decision of the court of first instance authorizing the plaintiff to publish at the defendant's expense a declaration containing the defendant's apology in the biggest Hungarian daily newspaper and obliging the defendant to pay Gyula Góman damages in the sum of 150.000HUF⁹.

The above described "Góman case" raises two major questions: in this case the owner of the pub admitted that he had been led by a racial motive when refusing to serve the Roma man, however, in most of the similar cases discrimination is not so explicit. Restaurant and disco owners usually deny entry saying that a private party is being held or a membership card is needed. Such cases of discrimination are very hard to prove. Some legal experts have raised that the burden of proof should be shifted, i.e. the person charged with discrimination shall prove that the disputed measure was not taken on a discriminative basis¹⁰.

The other problem - first raised by NEKI in their "White Booklet 1996" - is that there is no adequate legal sanction for racially motivated petty offenses. Article 174/B of the Criminal Code (which came into force in 1996) provides sanctions for severe offenses (abuse, duress, harassment, etc.) committed in connection with the victim's national, ethnic, racial or religious identity, however, no proper criminal sanctions exist for discriminative deeds causing psychological injuries (such as the humiliation in the Góman case).

NEKI suggests that the following steps should be taken:

- an *anti-discrimination* act should be passed by the legislation
- an adequate *system of sanctions* should be developed which is suitable for the prevention of discriminative acts and the effective punishment of the offenders
- an effective *institutional system* should be set up to guarantee the implementation of the anti-discrimination act and the above sanctions.

The suggestions of NEKI are still topical: no such measures have been taken yet. (The example of Great Britain might be followed where, according to Article 32 of the Act on Racial Relations /1976/, the employer is responsible for any discriminative act of the employee unless he/she proves that he/she has taken all the necessary measures to prevent discrimination. Another important achievement of the Act is that it contains an Article (Article 20) which explicitly prohibits any form of discrimination with respect to the providing of services)¹¹.

Discrimination in the field of *employment*: The other problematic area is discrimination connected to employment. Numerous complaints were submitted by Roma clients to the Parliamentary Commissioner in connection with employment - in several cases when the employers realize that the job-seeker (they found suitable for the job on the basis of a telephone conversation) is a Roma they turn the applicant down saying that the job is already taken. With respect to the difficulties of proving discrimination in such cases we would like to refer to what has been set forth above in connection with discrimination in services, however, the legal background is somewhat different: Article 75 of Government Decree 17/1968 on Petty Offenses orders the negative discrimination of employees to be punished. This regulation is implemented by either the public notary of the local council or the so called "labor inspectorates". The inspectorates are authorized to impose a public administrative fine (ranging from 50.000 to 1.000.000HUF) on the employers infringing this Article. Thus, we might say that the legal background seems sufficient to restrict discriminative phenomena in the field. However, the practice shows a different picture: no procedure for the implementation of Article 75 of the Government Decree was initiated and no fine was imposed on employers in 1998 or in the previous years¹².

According to the point of the Parliamentary Commissioner, there are two possible explanations for this phenomenon: firstly, the great extent of latency, which results from the fact that worrying about spoiling their chance to get employed, the defenseless employees do not wish to clash with the employers and that the group that is almost exclusively concerned by such discrimination (i.e. the Roma minority) has - due to social and educational circumstances - a low level of ability to assert its interests. Secondly, there is basically no flow of information (at least with respect to the area of discrimination) between labor inspectorates and "labor centers". The reason for this might be that according to Article 3 of Act LXXV of 1996 on Labor Supervision the inspectorates are entitled to investigate cases of discrimination only on the basis of the aggrieved person's complaint, so they are not entitled to act if the labor centers indicate that some form of discrimination has taken place.

The Parliamentary Commissioner made several suggestions addressed to the Minister of Welfare and Family Affairs, the Minister of Justice and the Minister of Interior in connection with the question. Some of the suggestion have been accepted (e.g. the developing of a leaflet informing the employees about their rights in cases of discrimination, the launching of gathering information on discrimination on employment and the modification of Article 3 of the Labor Supervision Act), however the Minister of Interior did not accept the suggestion that the authorities and officials perceiving that the petty offense of employment-related discrimination has been committed shall be obliged to initiate a petty offense procedure.

Another legal gap in connection with employment is that no public administrative sanctions exist against those employers who issue discriminative job advertisements (such as the following: „White, non-alcoholic masons are immediately required"). The Parliamentary Commissioner submitted recommendations to both the Minister of Justice and the Minister of Interior, however, he received no official reply in more than six months, so he submitted a recommendation to the Hungarian Parliament within the framework of his Annual Report¹³.

Article 12

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

In 1997 the Parliamentary Commissioner carried out a thorough investigation into the question of the situation of minority education in Hungary. The investigation revealed some problematic points in this area (for instance, there was a serious delay in the development of the definitive principles of minority education - these documents were prepared by the date of the publication of the 1998 Report, so we do not wish to go into details in connection with this question), however, according to the conclusions of the report most of the problems originate from the lack of effectiveness and an appropriate level of knowledge on the part of the public administrative system in charge of educational matters and not from discriminative presentiments of the administrative staff.

There is one area however, where urgent measures have to be taken: this is the segregation of Roma students in educational institutions (especially elementary schools). The comprehensive report reveals that the Roma students are strongly discriminated against in the Hungarian system of education. This discrimination has two basic forms: segregation and the insufficiency of pedagogical methods used in the education of the Roma. The most wide spread means of segregation is that the Roma students are placed in special schools or classes established for children with slight mental disorders. While their average proportion in the educational system is between 7 and 10 per cent, more than half of the pupils in the "special" units are Romani, which in most cases does not result from the lack their mental capacity - rather from the discriminative traditions and the pedagogical failure of the educational institutions. Another - more straightforward - form of segregation is the establishing of purely Roma classes: in 1995 such classes were organized in 132 of the 840 elementary schools providing data for the research. According to the estimation of the Parliamentary Commissioner this number must be over 150 by now. The Ombudsman's report concludes that after one or two years spent in such segregated classes the Roma pupils become unable to integrate into the ordinary classes and that this practice widens the gap between the majority and minority children to a tragic extent¹⁴.

There are some positive signs, however. On December 2, 1998 the Local Council of Tiszavasvár was compelled by the court of first instance to pay a compensation of 100.000HUF per capita to the Roma students who initiated a civil case against the elementary school that had organized a separate formal for the Roma students and forbidden them to use the gymnasium. The court of second instance has approved of the decision which thus has become absolute. This was the first such lawsuit, so hopefully it will be treated as a precedent for similar cases.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

The so called *local and national minority councils* are probably the most important institutions guaranteeing that collective minority rights - especially the ones in connection with preserving the cultural traditions and achievements of minorities - be implemented properly. The members of local minority councils are elected by the population of the given village or town while the members of the national minority councils (representing the given national or ethnic minority at the national level) are elected by electors (the electoral body consists of the members of local minority councils and other eminent representatives of the given minority). Local minority councils function parallel with local councils - their sphere of authority is different from that of local councils (see below). (In some cases the two bodies might coincide: if more than 50 per cent of the local council representatives belong to a given minority they are entitled to form a so called "minority local council" which exercises the rights of both the local councils and the local minority councils. However, in most cases the two bodies operate separately)

The rights and obligations of local and national minority councils are described by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.

The most important rights of local minority councils are the following:

- They are entitled to

- request information from

- submit suggestions and initiatives to

any public administrative authority in connection with any question having some relevance with respect to national minorities. In such cases the addressed authority is required to react to the request, suggestion or initiative within 30 days.

- They are entitled to establish and maintain institutions with special respect to institutions in connection with

- local education

- local printed and electronic media

- the preserving of traditions

- Without their consent of the local councils cannot adopt decrees concerning the minority population in the following areas:

- local education

- local media

- preserving culture and traditions

- collective use of language

- Without their consent of the local councils cannot make decisions concerning the appointment of the leaders of minority institutions.

The sphere of authority of the National Minority Councils is similar however on a national level.

Their most significant rights are the following:

- They are entitled to establish and maintain

- theaters

- minority libraries

- museums

- publishing companies

- institutions of high-school and university education

- scientific institutes

- They are entitled to express their opinion in connection with acts, statutes and decrees concerning the minority group they represent.

- They are also entitled to
 - request information from
 - submit suggestions and initiatives to

any public administrative authority in connection with any question having some relevance with respect to national minorities. In such cases the addressed authority is required to react to the request, suggestion or initiative within 30 days.

- They participate in the professional supervision of all levels of minority education.

These rights make minority councils the most important factors in preserving the cultural traditions and values of the national and ethnic minorities living in Hungary. However, the system on the basis of which the members of these councils are elected does not always function efficiently thus threatening the appropriate representation of minority groups. There are several problems the solving of which would require the modification of the regulation presently in force. The most conspicuous inadequacies of the system are summed up below:

The "cuckoo" phenomenon and the generality of the elections: The electoral system (regulated by Act LXIV of 1990 on the Election of Mayors and Local Council Representatives) is a rather complex one with different rules concerning settlements with a population of less than 10.000, settlements with a population of 10.000 or more and the capital. The above mentioned act sets forth the rules for the election of both the local councils and the local minority councils. The two elections are held at the same time and most of the rules governing their arrangement are identical, however in some significant aspects the minority nominees are in a more favorable position: the support of less citizens is needed for their nomination and less votes are required for their election. This is the basis of the so called "minority business", i.e. when people misuse their - sometimes only alleged - minority identity for the sake of political or economic ambitions. Exploiting the advantages provided by the law for the representatives of the local minority councils, they have themselves nominated and elected without actually being interested in the preservation of the achievements of minority culture.

This is accompanied by the so called "cuckoo" phenomenon, i.e. when a person not belonging to a given minority runs for membership in the local minority council. Act LXXVII of 1993 declares

that the right of choosing one's identity is one of the fundamental and unalienable human rights, and thus everyone is entitled to regard him or herself as belonging to one or more ethnic minorities (and consequently to become a representative of the given local minority council). This is paralleled by another debatable solution of the electoral system, namely that the majority population is also entitled to vote on the minority council representatives. No sufficient amount of information is at the disposal of the members of the majority population, so their votes are cast on a rather "haphazard" basis. The names of the minority candidates (grouped on the basis of the minority they belong to) are enlisted in an alphabetical order on the voting sheet. The tendency is that those members of the majority population who cast a vote at all on minority council representatives tick the first three or five names without knowing anything about the candidates or the given minority. Therefore, it often happens that the persons becoming minority council representatives are not actually members of the given minority - this is the so called "cuckoo phenomenon".

The Parliamentary Commissioner has formulated several suggestions which could at least partially solve this problem¹⁵:

- Acknowledging that such a procedure would to some extent restrict the right of choosing one's identity, the Parliamentary Commissioner raises the possibility of setting up special groups of experts (consisting of well-known representatives of the given minority) authorized to decide whether a candidate is entitled to run for membership in the local minority council).
- Not wishing to restrict the generality of suffrage, the Parliamentary Commissioner did not propose that the members of the majority population be excluded from the election of the local minority councils (such a solution would also be unacceptable because it would require some sort of registration on the basis of ethnic identity, which would mean the infringement of several fundamental human rights such as the right to the protection of personal data, the right to choose, declare or not to declare one's ethnic identity, etc.), however, he raised that the "cuckoo" effect could be restricted by using certain legal techniques:
 - not holding the local council and the local minority council elections on the same day
 - providing only those citizens with local minority council voting sheets who actually request it, etc.

*The electoral system for the national minority councils*¹⁶: The members of the national minority councils (and the minority councils for Budapest) are elected by electors. The electoral body consists of members of local minority councils and electors elected in a special procedures (in those settlements where no local minority council was elected). The main problem with the electoral system is that the quorum for the elections is extremely high: 75 per cent of the electors have to be present so that the electoral body would be capable of deciding on the members of the given national minority council. In such cases a second meeting can be held, however, the same quorum is valid for the repeated meeting as well, so the difficulty remains the same. This may be very problematic for those minorities the groups of which live in separate and distant parts of the country.

The situation is made even worse by the fact that if the electoral body fails to choose the new members, the national minority council ceases to exist (i.e. it is not allowed to function with the participation of the same members. Thus, if due to the lack of the quorum both meetings of the electoral body are unsuccessful no national minority council will function for the given minority during the next four years. This was the case with the Romanian National Minority Council, the Romanian Minority Council for Budapest and the Roma Minority Council for Budapest in 1998. This means a severe infringement of the minority groups' right to self-government and participation in public life.

¹ Human Rights Watch - HRW World Report 1998, p. .262.

² White Booklet 1998 - Cases of Ethnic Discrimination and Other Significant Human Rights Violations in Hungary, published by the Legal Defence Bureau for National and Ethnic Minorities, 1998, Budapest, p 66.

³ See the Report of the European Roma Rights Center submitted to the UN Nations Committee Against Torture, p. 3

⁴ Another example is the case of the K. Family. For details see White Booklet 1998, p 80.

⁵ Source: the Chief Prosecutor's Office

⁶ Report on the 1998 Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Budapest, 1999, p. 164

⁷ Ibid. p. 76

⁸ Ibid. p. 164

⁹ White Booklet 1998, p 102-106

¹⁰ Balázs Tóth: *Impossibilium nulla obligatio est*. In: A hátrányos megkülönböztetés tilalmától a pozitív diszkriminációig (From the prohibition of negative discrimination to positive discrimination), p. 98.

¹¹ White Booklet 1996 - Cases of Ethnic Discrimination and Other Significant Human Rights Violations in Hungary, published by the Legal Defence Bureau for National and Ethnic Minorities, 1996, Budapest, p 106.

¹² Report on the 1998 Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Budapest, 1999, p. 92

¹³ Ibid, p. 104

¹⁴ Report on the 1997 Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Budapest, 1998, pp. 167-168

¹⁵ Report on the 1998 Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Budapest, 1999, pp. 28-34

¹⁶ See: The conclusions and measures of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities on the basis of the experiences of the 1998-1999 minority council elections, Budapest, March 10, 1999