

# JOINT SUBMISSION

BY THE EUROPEAN ROMA RIGHTS CENTRE AND THE ROSA PARKS FOUNDATION  
CONCERNING HUNGARY

To the Human Rights Council, Third Universal Periodic Review Cycle, for  
consideration at the 30th Session (October–November 2021)

CHALLENGING DISCRIMINATION PROMOTING EQUALITY



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## INTRODUCTION

The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.<sup>1</sup>

The Rosa Parks Foundation (RPF) is a Roma-led NGO founded in 2016 and based within a Romani community in Budapest. RPF's mission is to ensure that all children have access to inclusive and quality education regardless of their race, disability, or economic background.

The compilation of observations and recommendations from various UN committees, prepared by the Office of the United Nations High Commissioner for Human Rights for the 25<sup>th</sup> session of the Human Rights Council Working Group on the Universal Periodic Review in 2016, included the following:

- The government should take all the necessary measures to reduce the high Roma unemployment rate; increase efforts to eliminate racial discrimination and segregation of Roma in education; and ensure the effective participation of Roma in political and public life and their adequate representation in Parliament and political parties.
- Develop a comprehensive national strategy to prevent and combat racial violence against Roma, and that prompt, thorough and impartial investigations of racist acts against Roma be carried out and those responsible adequately prosecuted and sanctioned.
- Intensify its efforts to combat discrimination against and ill-treatment of Roma, persons belonging to national minorities and non-citizens by law enforcement officials, especially the police, including through the strict application of relevant legislation and regulations providing for sanctions.
- The Government was urged to take resolute measures to condemn hate speech, including against Roma, and to tackle the phenomenon of extremist paramilitary organizations targeting Roma.
- Concerning the multiple discrimination and exclusion that Romani women were subjected to, there was a call for a comprehensive plan of action aimed at protecting their rights and improving their living conditions; a recommendation to eliminate segregation of Romani girls in schools, and provide them with equal access to quality education at all levels.
- Increase access to and improve the quality of sexual and reproductive health services for women with disabilities, women with low income, Romani women, women living in rural areas and women living with HIV/AIDS.
- Hungary should allocate adequate resources to the Equal Treatment Authority; facilitate access to its complaint mechanisms by all women and members of minority groups; introduce follow-up mechanisms with regard to its decisions on specific petitions; and take measures to ensure the Equal Treatment Authority was fully independent.

Concerning the rule of law and the situation of human rights defenders in Hungary:

- The Committee noted that in 2013 the United Nations High Commissioner for Human Rights urged the Government of Hungary to revoke a series of constitutional changes that had been widely criticized by international and regional human rights bodies as representing a backward step in human rights protection, underscoring that the changes undermined the independence of judges and were a serious threat to democracy.
- In 2016 the Special Rapporteur on the situation of human rights defenders criticized attempts to delegitimize defenders and undermine their legitimate activities, and called on Hungary to refrain from stigmatizing and intimidating human rights defenders, and ensure that they can conduct their work in an enabling legal and administrative environment.<sup>2</sup>

<sup>1</sup> Since it was established in 1996, the ERRC has endeavored to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. More information is available at: [www.errc.org](http://www.errc.org).

<sup>2</sup> UN General Assembly, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights*. Human Rights Council Working Group on the Universal Periodic Review Twenty-fifth session 2-13 May 2016. Available at: [https://www.upr-info.org/sites/default/files/document/hungary/session\\_25\\_-\\_may\\_2016/a\\_hrc\\_wg.6\\_25\\_hun\\_2\\_e.pdf](https://www.upr-info.org/sites/default/files/document/hungary/session_25_-_may_2016/a_hrc_wg.6_25_hun_2_e.pdf).

In its 2019 Concluding Observations on Hungary, UNCERD repeated its concerns at the persistence of structural discrimination, segregation, and the extreme poverty faced by Roma. The Committee urged the government to end all segregation in education; cease forced evictions and housing demolitions; prevent all ethnic profiling by law enforcement; ensure all Roma have full and unhindered access to healthcare without discrimination and harassment; and to take proportionate measures to end extreme poverty among Roma.<sup>3</sup>

Bearing in mind the above observations and recommendations from the 2016 UPR, and the subsequent 2019 Concluding Observations from UNCERD, this submission will address the systemic and structural discrimination and racism faced by Roma; the continued racial segregation in the educational system; anti-Roma hate speech and paramilitary groups targeting Roma; issues around reproductive rights and access to health care for Romani women; as well as the wider context of the undermining of the rule of law and fundamental freedoms, and the continued intimidation of human rights defenders over the past five years.

<sup>3</sup> UNCERD, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, 10 May 2019. Available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/CERD\\_C\\_HUN\\_CO\\_18-25\\_34867\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/CERD_C_HUN_CO_18-25_34867_E.pdf).

# REPRODUCTIVE RIGHTS OF ROMANI WOMEN IN HUNGARY

## ARTICLES 2, 26, 27: HARASSMENT AND DIFFERENTIAL TREATMENT OF ROMANI WOMEN AT CHILDBIRTH

The following information is excerpted from the *2020 Cause of Action Report on the Reproductive Rights of Romani Women in Hungary*.<sup>4</sup> In 2016, the ERRC launched an initiative to address the reproductive rights of Romani women in five European countries including Hungary. The presumption that Romani women in Central Eastern Europe suffer from rights violations in the field of maternity care, was borne out by the academic research and human rights fact-finding that constituted the evidence base for subsequent legal action taken by the ERRC. The investigation in Hungary focused on two regions: North-Eastern and South-Western Hungary.

**Healthcare and corruption in Hungary:** In Hungary, prenatal and childbirth-related care is covered by statutory health insurance. However, in practice women using these services often have to (or are expected to) pay for the care informally. This is a general phenomenon in the Hungarian public health care system: for example, Hungarian public hospitals are infamous for the lack of basic amenities. Patients are supposed to bring their own toilet paper, diapers for newborns, or even eating utensils, etc. (or, in some hospitals, these goods may be bought from vending machines in the corridors).

The Parliamentary Commissioner for Fundamental Rights (the Ombudsman) published a report in December 2019 regarding a related issue; namely that some public paediatric clinics charge a fee to those parents who stay overnight with their hospitalised children, despite the fact that the Act on Health Care provides that minors have the right to be accompanied by their parents (or their legal representatives or adult companion of their choice) during their stay in a hospital. The Ombudsman found this policy (of charging a fee) to be unlawful, and claimed that health care institutions must not make respecting the rights of patients conditional on payment.<sup>5</sup>

Corruption is also contextually relevant. In the Euro Health Consumer Index 2018, a report which compares the health care services in 35 European countries, ranked Hungary as second only to Albania regarding the prevalence of “under-the-table payments” to doctors. It is to be noted that in the Hungarian context this is not a hidden practice (the money, usually in an envelope, is supposed to be handed “over-the-table”); and the practice of “tipping” the medical staff (the Hungarian phrase for this sort of informal payment is “gratitude money”) is especially widespread in the maternity units of public hospitals.

**Regional and structural inequalities:** The situation of Romani women in the field of maternity care, “[a]ll the women [...] who were selected for interviews mentioned the difficulties related to access to care”. If the nearest obstetric clinic is 20-30 kilometres away, both travel costs and travel time constrain access, especially when “the opening hours of obstetrical clinics do not take into account public transport schedules, meaning that it is virtually impossible to arrive at the obstetrician’s appointment on time and return home the same day travelling by public transport”.

Moreover, there are significant regional disparities in the distribution of health care services in Hungary, and the Romani population is disproportionately affected by the shortcomings (including the high number of vacant general/paediatric practitioner positions in the disadvantaged regions of the country). A previous investigation by the ERRC, *Ambulance Not on the Way*, revealed the phenomenon of denying emergency aid to Roma in several Central Eastern European countries, including Hungary.<sup>6</sup>

**Access to prenatal and maternity care:** Romani women participants to focus group discussion identified physical access to prenatal and maternity care as a crucial issue. Centralization of health care necessitates travelling to the city centre by bus, which is inconvenient for expectant mothers with young children and no babysitting support, who have to take their children with them when they travel to the city for prenatal check-ups. Some women noted that consultation hours for local paediatric practitioners and district nurses are very limited, and parents have virtually no opportunity to seek their advice on health issues.

4 ERRC, *Cause of Action Report: The Reproductive Rights of Romani Women in Hungary*. April 2020. Available at: [http://www.errc.org/uploads/upload\\_en/file/5228\\_file1\\_reproductive-rights-of-romani-women-in-hungary.pdf](http://www.errc.org/uploads/upload_en/file/5228_file1_reproductive-rights-of-romani-women-in-hungary.pdf).

5 Hungary, Parliamentary Commissioner for Fundamental Rights (2 December 2019), *Az Alapvető Jogok biztosa a kórházi ellátásra szoruló gyermekeket kísérő szülők bennartózkodási lehetőségének biztosításáról és feltételeiről*.

6 ERRC, *Ambulance not on the way: the disgrace of health care for Roma in Europe*. Available at: <http://www.errc.org/reports-and-submissions/ambulance-not-on-the-way-the-disgrace-of-health-care-for-roma-in-europe>.

**Neglectful care, verbal abuse and violence:** Other recurring themes were neglectful treatment and verbal harassment. One interviewee in Borsod described how when she went into labour and called for an ambulance, the dispatcher refused to send a car. A neighbour with basic first aid training assisted with the labour. After repeated calls, an ambulance eventually arrived, but by that time the baby was born, with the umbilical cord around her neck. Verbal harassment included inappropriate, judgmental questions and remarks from midwives such as statements to the effect that Romani women just have babies for the welfare money.

Women recounted being verbally abused, racially disparaged and even threatened by staff in one particular public hospital in Miskolc, where the phrase “You stinky Gypsy!” was used as a common form of ‘addressing’ Romani women. Interviewees who were extremely young at the time of giving birth recounted being slapped in the face and thighs for screaming during delivery. After one midwife slapped a 16-year-old in the face in the delivery room, she told her: “Shut up, you stupid Gypsy! If you do not calm down, you will get more slaps!”

**Segregation and isolation during delivery:** The Act on Healthcare includes a provision that women are entitled to be accompanied during childbirth by a person of their choice (an adult family member, a relative, a friend, or a doula, etc.). However, the presence of Romani women’s companions in the labour room was often objected to, and focus group participants claimed that the hospital staff use excuses, such as: “companions cannot enter the labour room during the night”, “companions are not allowed to enter during the early stage of labour”, etc.

In the case of a 16-year old girl, who also arrived at the hospital with her mother, no clear explanation was given when the medical staff prevented her mother from entering the labour room (despite the fact that she was ready to pay the fee for the hygienic attire). It should be noted that these cases included underage girls who would have a “double entitlement” for a companion during delivery; not just as birthing women, but also as children (under the age of 18 years) who have a special right to be accompanied by a parent or a trusted adult while they are in a hospital. According to the account of another interviewee it is a quite common experience for Romani families that companions are prevented from entering the labour room, regardless of the age of the birthing woman/girl.

**Lack of motivation to file a complaint:** Interviewees who reported that they had been mistreated in a hospital stated explicitly that they would not take any steps. A 38-year old woman, mother of four, claimed that she had never intended to file any kind of formal complaint since she thought that it would be useless to challenge the system because “nothing would change”.

**Litigation Case 1:** In February 2016, a Romani woman gave birth in was subjected to verbal harassment and discrimination on the basis of ethnicity by hospital staff while giving birth at a Hungarian public hospital. The national Equal Treatment Authority found the hospital had violated the claimant’s dignity and right to equal treatment based on ethnicity.

In April 2016, the claimant filed a complaint before the Authority. According to her statement: “I was transferred to the hospital by the ambulance on the morning of the 10 February. I was alone in the maternity ward. [...] During labour I was shouting because of the pain when the midwife yelled at me ‘if you shout once more I will push the pillow into your face’. [...] The doctor also walked in and said ‘if you had shouted once more I would have called the psychiatrist who would have taken your child away and then you wouldn’t receive the child benefit, because anyway, you Gypsies give birth only for the money!’”.

In June 2016, the Authority held a hearing in the case. At this stage, the ERRC joined the proceedings to provide legal representation to the claimant. On 15 December 2016, the Authority ruled that the hospital had violated the claimant’s dignity and right to equal treatment based on ethnicity, given the statement “you gypsies give birth only for the money”. The Authority ordered the hospital to pay a public fine of 500,000 HUF (approx. 1,700 USD) and to make the decision public for 60 days on the hospital’s website. (The Authority has no power to order compensation, only to impose a public fine).

The Authority found that the hospital’s investigation was not fair and unbiased given that: the doctor who harassed the claimant also undertook the subsequent hospital investigation; and, at that doctor’s request, the hospital staff concerned had formulated their version of the facts together. Conversely, the claimant had presented consistent, persuasive testimony, and was able to distinguish between those who were only present at the event and those who had discriminated against her. The Authority also took into consideration that, while in labour,

the claimant was in an especially sensitive situation that rendered her more vulnerable, and that the hospital failed to submit any documentation regarding the hospital investigation of the allegations.<sup>7</sup>

After the publication of the Equal Treatment Authority's decision, the claimant told the ERRC: "The hospital challenged my credibility. I am happy that my truth was finally revealed. I cannot prevent this happening to other Romani women, but I'm sending them the message now to dare to stand up for their rights, to know their rights, and to cease this humiliating, inhuman treatment against them."<sup>8</sup>

**Litigation Case 2:** The ERRC was informed by local pro-Roma activists, during its fact finding in 2016, that the maternity unit of a public hospital in Miskolc charged the women's birth companions HUF 3,000 ( then approx. 10 EUR) for so-called 'visitor attire' (a disposable suit, to be worn in the labour room for hygienic reasons). For families living in deep poverty, this is an extra cost they cannot afford.

The ERRC filed an *actio popularis* civil lawsuit, claiming the policy of the hospital in Miskolc amounts to direct discrimination based on pregnancy/maternity and on social/economic status (these are protected grounds in the Hungarian anti-discrimination legislation), and indirect discrimination based on Romani ethnicity.

The first instance court, the Regional Court of Miskolc, ruled in favour of the ERRC on the 15th of October 2018, ordered the hospital to pay a fine of 5 Million HUF (cca. 17,000 EUR), and to cease the unlawful practice of charging a fee for the mandatory hygienic attire for the companions of birthing women. This judgment of the Miskolc Regional Court was upheld on appeal by the Debrecen Court of Appeal on the 24th of January 2019, although the fine was decreased to 2 Million HUF (cca. 6,800 EUR). The reasoning of the Court of Appeal's judgment stressed that the enjoyment of a patient's right cannot be made conditional on payment; thus the practice of the hospital was unlawful.

On 31 August 2020, the Hungarian Supreme Court has ruled in favour of Romani mothers who were discriminated against in the maternity ward of a hospital in Miskolc. This final judgment from the highest court of Hungary confirms two previous judgements (before the Miskolc Regional Court and the Debrecen Court of Appeal) which were won by the European Roma Rights Centre (ERRC) and found that the practice of charging for mandatory maternity clothing for companions of pregnant mothers in Miskolc was discriminatory against Roma.

The Supreme Court ruled in favour of the ERRC on the 20 May 2020, communicating its judgment on 26th August. The court agreed with the ERRC's arguments that this practice directly discriminates against mothers living in poverty, and indirectly discriminates against Romani mothers who are disproportionately affected and often forced to give birth alone. The hospital was ordered to cease the practice and pay a public fine of 2 million HUF.<sup>9</sup>

7 ESRC-NET Caselaw Database: KR v Miskolc County Hospital. Available at: <https://www.esrc-net.org/caselaw/2017/kr-v-miskolc-county-hospital>.

8 ERRC Press Release. Available at: <http://www.errc.org/press-releases/romani-woman-harassed-by-racist-hospital-staff-during-childbirth-wins-case>.

9 Available at: <http://www.errc.org/press-releases/romani-mothers-win-hospital-discrimination-case-in-hungarian-supreme-court>.

## DISCRIMINATION AGAINST ROMANI CHILDREN

### GENERAL MEASURES OF IMPLEMENTATION (ARTS. 4, 42 AND 44 (6) OF THE CONVENTION): COMPREHENSIVE POLICY AND STRATEGY

An estimated 36.1% of children aged 0-17 years old are at risk of poverty and social exclusion and 30% of at-risk children are separated from their families for financial reasons. As the coalition *Opening Doors for Europe's Children* stated, support services in the community remain severely under-resourced and are often non-existent, especially in rural, remote and poor areas where needs are the highest. Local authorities tend to refer clients to institutional care – under the financial authority of national Government – rather than invest in community-based services. In many instances, staff in the care homes are “underqualified, staff numbers fluctuate, supervision of staff is needed and the burnout rate is high. Given the low standard of care, children often run away. The prevalence of violence and substance abuse are also widespread.”<sup>10</sup>

According to FRA, for Hungary, the rates of household members at risk of poverty were 15% for non-Roma and 75% for Roma. A disturbingly high share of the Roma population still lacks tap water in their dwellings. Although some progress was registered since 2011, the gap between Roma and the general population remained: Non-Roma 0%; Roma 33%. As for the highly-correlated rate of people living without toilet, shower, or bathroom inside the dwelling, the figures were 3% for the general population; and 38% for Roma. Other indicative data concerning the situation of young Roma in Hungary, included the prevalence of verbal harassment of Romani children while in school in the past 12 months which was 24%; the rates for young persons being neither in employment nor in education or training (NEET) were 11% for the general population and 51% for Roma. When FRA put these figures in a global context, the NEET rate for young Roma in Hungary is higher than Palestine (31.6 %); Bangladesh (28.9%); and Yemen (44.8%).<sup>11</sup>

The most vulnerable children are those who live in families with parents of low level education, unemployment, single parent families and families with more children. The poverty risk of Romani children is extremely high, as poverty risk factors (such as severe unemployment, low education, large families, and place of residence) are seriously concentrated in the Romani population in Hungary. Other studies confirm that Romani children are disproportionately affected by extreme poverty, and are at high risk of intergenerational transmission of poverty, which is strongly related to their weak opportunities in the educational system.

No data disaggregated by ethnicity is collected in Hungary which hinders the effective protection of rights of Romani children and the development of targeted policy measures. Data disaggregated by ethnicity, gender and other identities to disclose multiple and/or intersectional discrimination is missing preventing protection children with multiple and/or intersecting identities against discrimination. Limited efforts have been undertaken to collect data disaggregated by ethnicity in the field of education due to obligations to comply with the implementation of the European Court of Human Rights' *Horváth and Kiss v. Hungary* judgment.<sup>12</sup> The Hungarian National Public Education Act was amended to enable the registration of data on ethnic origin subject to parental consent in the Integrated Follow-up System that holds data on children with special education needs. However, the system does not in practice collect ethnic data. A proxy used for Roma in education policy, the multiply disadvantaged status (*halmozottan hátrányos helyzetű*) was significantly modified in 2013.

In 2013, the definition of multiply disadvantaged children in the Child Protection Act was modified, and were added further conditions to the eligibility criteria (unemployed status of the parents, or inappropriate living conditions e.g. in segregated settlement) While NGOs and experts on the field have warned the Government that “it is highly possible that many Roma will fall out of the scope of allowances, and/or many will be reclassified from the category of multiply disadvantaged into the category of disadvantaged; the scope of services available will therefore be narrowed”, their concerns were disregarded. Ever since the amendment, the number of children in Hungary qualifying for the multiply disadvantaged status has significantly

10 Opening Doors for Europe's Children, Hungary 2018 Factsheet. Available at: <https://bettercarenetwork.org/library/principles-of-good-care-practices/transforming-institutional-care/opening-doors-for-europes-children-2018-country-factsheet-hungary>.

11 Fundamental Rights Agency, *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, 2018. Available at: <https://fra.europa.eu/en/publication/2018/persisting-concern-anti-gypsyism-barrier-roma-inclusion>.

12 *Horvath and Kiss v Hungary*, Execution of Judgments, Last exam of the Committee of Ministers, December 2017, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116124%22%5D%7D>.



dropped, while integration policies are still targeting them. As a consequence, the amendment created an obstacle for efficient and accountable implementation of the integrated education programmes and hindered assessment of continuously increasing segregation in the Hungarian public education system.

Although the government strategy (NSIS II) in 2014 again acknowledged the need for the employment of full-time professionals in schools to provide social work and socio-pedagogical services to prevent drop-out and the risk of victimization of vulnerable children, these professional capacities have not been created in schools.

## **GENERAL PRINCIPLES (ARTS 2,3, 6 AND 12 OF THE CONVENTION): DISCRIMINATION**

Romani children continue to be discriminated in all spheres of life: they continue to be living in social and economic exclusion, in segregated and inadequate housing, they attend segregated schools, are often victims of misdiagnosis and channelled into special education, and are overrepresented amongst children in state care due to widespread discrimination and stereotypes against Roma. Romani girls are often face multiple and / or intersectional forms of discrimination, in particular in the field of education and sexual and reproductive healthcare. Romani girls are also overrepresented among victims of human trafficking.

While the Hungarian government is aware of all of the above, there are no targeted policy measures taken against the discrimination of Romani children. The mainstream measures that aim to promote social inclusion lack any targeted focus on Roma and mainly consist of positive (affirmative) measures that fail to challenge the systematic nature of social exclusion and discrimination.

For those mainstream measures introduced under the auspices of the National Social Inclusion Strategy, the lack of impact assessment and monitoring makes it impossible to track and to measure their impact on Roma.

## FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTS. 5, 9–11, 18 (1 AND 2), 20, 21, 25 AND 27 (4) OF THE CONVENTION)

### SEPARATION FROM PARENTS - ROMANI CHILDREN IN STATE CARE

While for the last 30 years deinstitutionalisation has been part of the Hungarian child welfare and protection policy, children in Hungary are still entering too often to institutional care due to poverty and lack of community-based prevention and early intervention services. Kinship care is not supported properly, foster parents are not supervised and both foster carers and small group homes are frequently located in isolated communities. Staff are still following the old institutional culture, children are not heard and there is no adequate access to schools or services in accordance to children's diverse needs.

The overrepresentation of Romani children in institutional care continues to be alarming and appears to be the result of indirect discrimination against Romani families, a lack of clear guidance in the child protection law and policy on family separation and various shortcomings in the operation of the child protection system, which disproportionately impact Romani families. Poverty-related material conditions remain one of the major reasons for the removal of Romani children from their home environment, despite an explicit ban on such actions in the Hungarian Child Protection Act. The perception that Romani families “deviate” from societal norms, compounded with negative stereotypes among some child welfare workers, also increases Romani children's chances of institutionalisation. The cumulative effects of poverty and marginalisation are often insurmountable barriers to the return of Romani children to their families once in state care.

Research conducted for the ERRC by The Chance for Children Public Benefit Association (*Gyerekesély Közhasznú Egyesület*) in Nógrád County, Hungary once again confirmed that Romani children are vastly overrepresented in the care system. The study also found that in most cases, taking children into care does not seem to have been justified. Interviews with key actors also revealed that prejudice plays a key role in making such decisions.

Key findings of the research include the following:

- Although they make up under 20% of Nógrád county's population, Romani children make up over 80% of those in care. The data gathered in the research showed a strong correlation between deep poverty, severe deprivation, and the entry of children into the care system.
- Even though, in line with the basic principles of Hungary's Child Protection Act, children cannot be removed from their family solely for material reasons, the poverty of the affected families was clearly a significant reason for most removals. In many cases, removal could have been prevented by providing comprehensive support and appropriate services to impoverished families.
- The characteristics of the affected families, in terms of ethnic origin and number of children, also indicate that deep poverty and severe material deprivation strongly correlate with the placement of children in State care. The children of Romani families are at an extremely high risk of poverty and are strongly overrepresented within the county's professional child protection service. Two thirds of the families have at least one of the examined “social problems” and one fifth of the families are “severely deprived”.
- The main justifications given for removing Romani children from their families were neglect, endangerment, and “parental unsuitability”. The vast majority of children in care – most of whom maintain strong contact with their parents – never return home. Thus, the main issue is not bad relationships between parents and children, but rather environmental circumstances (insufficient income, lack of employment, unsuitable housing conditions, and lack of services) that cannot be mitigated by the families' efforts alone.
- The system is officially colour-blind, and professionals do not believe there is any need for official recognition of the child's ethnic identity. Yet in interviews, they frequently attributed the removal of children to reasons they see as connected with the children's “Romani origin”, such as lack of understanding, distrust, non-cooperative behaviour of parents. It is clear that ethnicity plays a massive role, with significant consequences for many of the county's Romani families.<sup>13</sup>

13 ERRC, *Cause of Action: Romani Children in State Care in Nógrád County (Hungary)*, 20 November 2017. Available at: <http://www.errc.org/reports-and-submissions/cause-of-action-romani-children-in-state-care-in-nograd-county-hungary>.

14 Bernard Rorke, *Segregation in Hungary: the long road to infringement*. ERRC News, 30 May 2016. Available at: <http://www.errc.org/news/segregation-in-hungary-the-long-road-to-infringement>.

## EDUCATION AND SCHOOL SEGREGATION OF ROMANI PUPILS (ARTS. 28 AND 29 OF THE CONVENTION)

School segregation of Romani children shows no signs of abating, and approximately 45% of Roma children attend schools or classes in Hungary where all or the majority of their classmates are also Roma. In 2014, 381 primary and secondary schools have been officially reported to have 50% or more Roma among their students.<sup>14</sup> According to the Roma inclusion index of 2015, “While literacy is not a problem and preschool inclusion has been significantly improved, the situation of Roma in education in all areas is worsening. Gaps are increasing and percentages of Roma not completing different levels of education are very high. At the same time school segregation is increasing and the only available data for special education indicate overrepresentation of Roma.”

No specific measure had been adopted to decrease segregation of Romani children based on these strategies; combating racial segregation is neither a priority nor a long-term goal for the Hungarian government. Mainstream education policies adopted since 2010 however have significantly worsened the opportunities of Roma children in education and increased the gap between Roma and non-Roma children (see in particular the decrease of the compulsory school age) Rather the central authority responsible for schools since 2013 expressed its position towards integration in a lawsuit on segregation of Romani children, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools.

The ratio of students obtaining a baccalaureate diploma is 75 per cent among non-Roma students, and 24 per cent among the Roma students.<sup>15</sup> Vocational schools have become a typical form of further education for disadvantaged and severely disadvantaged students. The introduction of three-year vocational school training (from the 2010/2011 school year) and the reduction of public knowledge training classes are problematic from a professional standpoint. Due to the fact that the average student that enrolls in a vocational school is characterised by basic skills deficiencies brought on from primary school, these students would require a longer training duration and remedial programs to ensure that they can begin acquiring vocation specific knowledge without problems.<sup>16</sup> There are virtually no paths leading from vocational schools to vocational grammar schools and grammar schools, where a baccalaureate diploma can be earned, which is a process that clearly reinforces segregation within the structures of education. The introduction of the dual training system and the reduction of the mandatory schooling age to 16 occurred virtually at the same time which had a direct negative effect on the career orientation of young people. The reduction of the mandatory school age to 16 is an “inhibiting” measure, as it increased dropout rates tremendously. The vast majority of Roma young people (living within a segregated area) do not usually choose a profession, rather they choose a school which is close by and is willing to admit them.<sup>17</sup>

While there is no comprehensive analysis available on how private schools (including church schools) can contribute to or trigger segregated education, experience gathered from studies conducted in a particular region and of NGOs indicate that the level of segregation has gained momentum, particularly due to the rising numbers of church schools. On places where “*white flight*” was perceived earlier, that is middle-class families take their children to schools with lower number of “problematic”/Roma students, a newly-founded church school becomes the place where these families aim to enrol their children.

According to the law, church schools are exempt from compulsory enrolling students who reside within the district of the local kindergarten/school. As a result, they can pick and choose students, *e.g.* based on “commitment to a church or denomination”, whereas state run schools cannot. Since church schools receive three times more funding from the state than state schools and these schools enjoy greater flexibility in designing own curriculum and education program, they are very attractive to middle class parents. This also contributes greatly to the extreme selectivity of the Hungarian public education, that is schools (and kindergartens with better reputation) drain students of families with higher status.

<sup>15</sup> Kertesi, G., Kézdi, G. (2016) Opportunities of Roma youth and the inequalities of the school system. MTA KTI.

<sup>16</sup> Makó, Á., Hajdu, M., Tóth, I. J. (2015) Szakiskolák, oktatás, szegénység – egy interjú kutatás eredményei (Vocational schools, education, poverty – outcomes of an interview based study). In: *Esély* Vol. 27 Issue 6 / 2016, p. 42, available at: [http://real.mtak.hu/80982/1/Esely\\_2016\\_6\\_2\\_1\\_Mako\\_Hajdu\\_Toht\\_Szakiskolak\\_u.pdf](http://real.mtak.hu/80982/1/Esely_2016_6_2_1_Mako_Hajdu_Toht_Szakiskolak_u.pdf).

<sup>17</sup> Civil society monitoring report on implementation of the national Roma integration strategy in Hungary. Assessing the progress in four key policy areas of the strategy. Directorate-General for Justice and Consumers. 2019. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-2-hungary-2018-eprint-fin-2.pdf>.

Taking advantage of the legal status that exempted them from the law, the church-maintained school segregation of Roma students in several cases, and these cases ended in lengthy lawsuits. However, a modification of the law came into force in July 2017, as by then enrolment to schools for the 2017-2018 school year was finished, so it can only have an impact as of 2018-19 school year; stating that “The organisation of education based on religious or other ideological conviction according to the definition of Article (2) may not lead to unlawful segregation based on features set out in §8 points b)-e).”

The modification marks a positive move, however, it remains an open question how the church, having maintained schools that have been exempt from the law for so long, and proven very adept in segregating Roma children, will meet the requirement of the modified law, whether they keep up segregation on the grounds of some other privilege, or they will show willingness to implement effective desegregation measures. The Civil Monitor concluded:

*While individual education programmes towards eliminating disadvantages – like tanoda projects, e-learning and tutoring activities, afternoon clubs, other extracurricular education programmes – are very important and well-regarded, they are not able to mitigate the social damages caused by the selection mechanisms of the education system. Segregation practices/mechanisms in the education system will exist until the central government’s education system implements complex and targeted policies to eliminate segregation in the whole education system (irrespective of the school maintaining organisations: state, church or foundation).<sup>18</sup>*

## MISDIAGNOSIS OF ROMA CHILDREN

Despite the ruling of the European Court of Human Rights in *Horváth and Kiss v. Hungary* in 2013, Roma children continue to be channelled to special schools in Hungary. The Hungarian government has failed to date to implement the Court’s judgment.<sup>19</sup>

The testing methods had substantially changed over the years, as new, culturally independent testing methods were standardized in Hungary, which can provide results in a non-discriminatory manner. However it has been a subject of another litigation - the Heves county misdiagnosis case - whether the new tests were actually available in an adequate number to all expert panels; whether the experts were trained to use these new tests; and whether the use and effects of the new testing methods were monitored or supervised by the respective authorities.

Since 2010, the presence of an equal opportunity expert has been mandatory for the first examination of multiply disadvantaged children at the expert panels.<sup>20</sup> The purpose of this institution was to avoid misdiagnosis of Roma and socially disadvantaged children. However, in practice, the expert is quite seldomly involved in the examinations.<sup>21</sup> Presumably, the primary reason for this is that despite the legal obligation, the expert’s visits are linked to direct parental requests. In the absence of detailed information on the role of the equal opportunity expert, the parents of a multiply disadvantaged child cannot make an informed decision as to whether the expert’s participation is required in the examination of the child.

Despite repeated calls from the Committee of Ministers, the Government has not been able to substantiate with figures the effectiveness of the new measures introduced in the testing procedure and their actual consequences for Roma students. This is mainly due to the fact that there is not any actual data collection on the ethnicity of the pupils concerned, either in the expert panels or in the special schools. As already mentioned in section 2.2, there are two important measures that have not made a significant breakthrough, and thus still do not work in practice. Neither the institution of the equal opportunity experts, who assist multiply disadvantaged

18 Centre for Policy Studies, CEU, *Civil society monitoring report on implementation of the national Roma integration strategy in Hungary*, European Commission, 2018. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-hungary-2017-eprint-fin.pdf>.

19 See: *Horvath and Kiss v Hungary, Execution of Judgments, Last exam of the Committee of Ministers, December 2017*, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-116124%22%7D>.

20 See Art. 14 (3) of EMMI decree No. 15/2013 (II.26.) on the operation of pedagogical service institutions.

21 While in 2013 there were 69 occasions when an equal opportunity expert was present on the examination of a multiply disadvantaged child in 2017 there was only one such occasion while in 2018 only 2 examinations took place in the whole country with the presence of an equal opportunity expert, based on the the answer of the Educational Authority to a freedom of information request. Available at: <https://kimitud.atlatszo.hu/request/11846/response/17439/attach/html/4/SKMBT%20C20318112715300.pdf.html>.

families during the examination, nor a proper form, which provides the possibility for the parents to declare their ethnicity prior to the examination exist appropriately.

These and the lack of targeted inspection led to a recent judgment in the Heves misdiagnosis case that established that the respondents - including the Ministry responsible for education - has failed to prove that the practice to misdiagnose Roma children has ceased to exist, therefore Roma children are constantly discriminated against when channeled into special education while having normal mental abilities.<sup>22</sup>

The extent of local litigation challenging segregation practices, the constant appeals against court judgments and the foot-dragging by the authorities clearly demonstrate the depths of resistance from the government to meet its 'positive obligation to undo a history of segregation' as stipulated in the Horváth and Kiss judgment.<sup>23</sup>

On 18 September, 2019, the Debrecen Court of Appeal upheld the first instance judgment of Eger Regional Court and concluded that the Hungarian state is required to pay compensation to Romani school children from the town of Gyöngyöspata who were segregated from their peers for years. Romani children were not allowed to visit the first floor of their school, and instead were forced to stay on the ground floor where facilities such as toilets were worse or absent.<sup>24</sup> (For more on the afterlife of this case see section below: *Segregation, Viktor Orbán, and the Gyöngyöspata ruling*).

The widening inequality and persistence of segregation in education is summed up in this assessment from the latest 2019 Roma Civil Monitor:

*The Hungarian educational system today is not only not able to compensate for the disadvantages arising from a child's social background, but it is actually reinforcing them through the selection and segregation mechanisms present at all levels of public education. The latest research results on ethnic segregation show that the level of segregation in schools is primarily determined by student mobility and the proportion of Roma students. It is an important correlation to note that with a given proportion of Roma residents and a given education policy environment the greater mobility of higher status students coincides with even higher rates of segregation in school.<sup>25</sup>*

## NON IMPLEMENTATION OF COURT JUDGMENT ORDERING DESEGREGATION OF SCHOOLS

In September 2009, a Hungarian NGO, the Chance for Children Foundation (CFCF) filed a legal action against the Ministry of Education alleging that by failing to take action against segregating school maintainers (local governments) the respondent violated the principle of equal treatment. In 2003 the Ministry of Education entrusted two experts to research and investigate the situation of Roma children in Hungarian primary schools. The outcome of the research included a list of segregated schools. Since the Ministry did not take any action against segregation even in possession of such a detailed study and list of schools, CFCF decided to bring an actio popularis claim against the primary stakeholder in public education.<sup>26</sup> By the time the first instance decision was delivered after 9 years of litigation, altogether

22 See the judgement of the Appeals Court of Debrecen No. Pf. I. 20.214/2020/10., 24 September 2020.

23 See for example from the Roma Civil Monitor p. 73: "On 14 February 2019, a second instance judgement was passed in Hungary in a segregation court case that lasted for more than ten years. The court case was opened by the Chance For Children Foundation (CFCF) against the education authority on the grounds of violating the criteria of equal treatment. The case concerned 28 segregated schools. In its ruling of first instance in April 2018, the Metropolitan Court of Budapest ordered the Ministry of Human Capacities (EMMI) to instruct the managing authority not to launch a first grade in the following school-year, and to set out the school admission district borders with respect to the prohibition of admission to first grade; and furthermore also ordered the Ministry to draw up an anti-segregation plan within three months with the involvement of experts. The ruling stated that EMMI is to pay a public interest fine of 158.000 EUR (50 million HUF), which is to be used to finance the monitoring by civil society organisations of the implementation of desegregation programmes for a period of five years. The Ministry of Human Capacities appealed the ruling. As per the ruling of second instance on 14 February 2019, the court again ruled in favour of the CFCF and stated that the Ministry is to be held responsible for the segregated education of Roma children. At the same time, it gives cause for concern that the second instance decision did not address the prohibition of launching a first grade in the schools concerned, just as it also failed to address the requirement of re-defining the district boundaries."

24 Vivien Brassói, School Segregation Comes at a Price: Hungarian Appeal Court Confirms Authorities Must Pay Compensation *ERRC News*, 23 September 2019. Available at: <http://www.errc.org/news/school-segregation-comes-at-a-price-hungarian-appeal-court-confirms-authorities-must-pay-compensation>.

25 Roma Civil Monitor. Available at: <https://cps.ceu.edu/sites/cps.ceu.edu/files/attachment/basicpage/3034/rcm-civil-society-monitoring-report-1-hungary-2017-eprint-fin.pdf>.

26 Adel Kegye and Crina Elena Morteau (Lilla Farkas ed.): Handbook on tackling the segregation of Roma children in nursery and primary schools, From investigation to decision making, Part two, Chance for Children Foundation, p. 30.

28 schools were included in the claim out of which 13 schools were still operating in a segregated manner. CFCF requested the court to order the Ministry to elaborate desegregation plans, prohibit the launching of new first classes in the segregated schools, redraw accordingly the school districts, monitor the implementation of the desegregation plan and start collecting perceived ethnic data. While the court of first instance delivered a progressive decision approving all of CFCF's claims<sup>27</sup>, the Metropolitan Appeals Court, upon the appeal of the respondent ministry, ultimately made an ambiguous decision that did not result in an actual improvement in the situation of Roma children enrolled to the segregated schools in question. The Metropolitan Appeals Court has - apart from the declaration of the responsibility of the Ministry for maintaining segregation - only ordered the respondent to give an order to the school maintainer school districts to elaborate a desegregation plan but did not prohibit the launching of new first classes nor did it oblige the Ministry to monitor the implementation of the desegregation plans.<sup>28</sup>

While all desegregation plans were completed accordingly, none of the desegregation plans envisage the real possibility of inclusive education for the local Roma children. The quality of the prepared desegregation plans is heterogeneous, most of them contain data-based situation analysis. At the same time, action plans are generally not suitable for influencing the distribution of Roma and disadvantaged students between institutions, making them more balanced. The plans generally do not take into account the fact that the distribution of disadvantaged and Roma pupils between schools should be planned for the whole municipality.

Action plans are not suitable for significantly reducing segregation for three well-defined reasons: (1) they focus only on the segregated school (rather, institutional development plans), they do not address the distribution of students between institutions; (2) the plan affects several schools, sometimes including school closures, but the measures are weak and do not significantly affect the distribution of pupils between schools; (3) several schools are affected by the plan, it also includes school closures, but due to the effect of church-maintained schools on middle-class students, segregation is not expected to decrease.

Although the fact of segregation was established by the courts and the maintainer was obliged to prepare and implement desegregation plans, no criteria were formulated by the court regarding the content of the plans. Consequently, desegregation plans and measures based on them cannot be accounted for. In other words, the reduction of segregation in the given settlements currently depends on the discretion of the maintainer, but according to the plans there is no willingness to do so.

**Lawsuit concerning violence against Romani children:** On March 4, 2020, the ERRC reported that the director of the Nekcsei Demeter Primary School in Gyöngyöspata was under investigation by the Heves County Police Department for "battery against a person incapable of defending himself." The ERRC is representing the Romani boy at police interviews and hearings which his family are attending in cooperation with the criminal investigation. The director of the school has since stood down from his position, but is still teaching at another school in a nearby village.

Adél Kegye, the lawyer representing the family on behalf of the ERRC said: *"This case is representative of the climate in which Roma in this country are forced to attend education: segregated from their non-Roma peers, with an inferior quality education, and now from time to time they are also subjected to physical brutality and verbal abuse, as has happened here in Gyöngyöspata."*<sup>29</sup>

**Establishment of school guards in Roma-only schools:** From the academic year of 2020/2021, school guards were set up in certain primary, special and secondary schools.<sup>30</sup> A school guard is employed by the police and is tasked with maintaining order within the school and is entitled to use physical coercion, handcuffs, police stick and chemical means. The idea of school guards is strictly connected to the *Gyöngyöspata case for damages* and thus targeted mainly Roma children. The first list of primary schools where school guards started on 1 September 2020 mostly consists of schools with Roma majority, meaning segregated schools. This is based on information provided by the Educational Authority.<sup>31</sup> The introduction of school guards was criticized by non-governmental

27 See the judgement of the Metropolitan Court No. 40. P. 23.675/2015/84., 18 April 2018.

28 See the judgement of the Metropolitan Appeals Court No. 2.Pf.21.145/2018/6/I., 14 February 2019.

29 Available at: <http://www.errc.org/press-releases/errc-representing-romani-boy-assaulted-by-director-of-segregated-hungarian-school>.

30 See No. Act LXXIV of 2020 on the elimination of school violence and on certain amendments to the law.

31 The list of schools with school guards were shared by the Ministry of Human Resources on the Governmental website at: <https://2015-2019.kormany.hu/hu/emberi-eroforrasok-miniszteriuma/oktatasert-felelos-allamtitkarsag/hirek/iden-osszel-491-helyszinen-kezdhetik-meg-munkajukat-az-iskolaorok>; while data on schools with Roma majority provided by the Educational Authority is accessible for anyone at the following link: [https://kimitud.atlatszoz.hu/request/roma\\_tanulok\\_aranya\\_az\\_altalanos](https://kimitud.atlatszoz.hu/request/roma_tanulok_aranya_az_altalanos).

organizations through the Child Rights Coalition for violating the UN Convention on the Rights of the Child<sup>32</sup> and by Roma and pro-Roma organizations for stigmatizing Roma children by targeting Roma only schools.

## SEGREGATION, VIKTOR ORBÁN, AND THE GYÖNGYÖSPATA RULING

Immediately prior to the COVID-19 crisis, Prime Minister Orbán waged an overtly racist propaganda campaign against Roma in Hungary, with the primary objective being to obstruct the implementation of a ruling on school segregation by the Debrecen Court of Appeal in favour of Romani families in the town of Gyöngyöspata (see above).

In reaction to the court ruled that the Hungarian state should pay 80 million HUF in compensation to Romani children for the school segregation they suffered, the Prime Minister, in a succession of provocative broadcasts to the nation through state-controlled media, declared that the court's decision “violated the people's sense of justice”, stigmatized the local Roma as workshy, their children as violent, unruly and un-educatable, and asserted that what went on in Gyöngyöspata was not segregation but “catching up”. Orbán dismissed “the whole thing as a provocation”, fomented by Soros organizations, and stated that “there is a boundary that a Hungarian will never cross, or believes cannot be crossed. That boundary is giving people money for nothing.”

The government announced a new ‘national consultation’ on the Gyöngyöspata case, and declared “we take the side of the 80 percent who are decent, working Hungarians who demand a suitable education for their child.” The government stated that it already has clear answers to questions that have provoked social debates, “however, it needs a robust social mandate in order to represent them in the international arena as well as within Hungary.”

Orbán's plans to hold a national consultation on the issue were sidetracked by the pandemic. However, by the time the state of emergency was introduced, the Prime Minister had succeeded in putting anti-Roma racism centre-stage in Hungarian politics through a series of polarizing broadcasts to the nation, further amplified by government-loyal media outlets. All of this was advantageous and a source of encouragement to those even further to the right of the regime, for whom antigypsyism is almost a founding principle.

Following a fatal double stabbing in Budapest, the neo-Nazi “Mi Hazánk Mozgalom” called on its supporters to gather outside the offices of the National Roma Self-Government for a rally against “gypsy crime” on 28 May. In defiance of regulations banning protest gatherings, the Mi Hazánk supporters converged with thousands of far-right ultras in the city centre streets, chanting racist anti-Roma slogans, with many giving fascist salutes.

On the 15th May, Hungary's Supreme Court (Kuria) upheld the earlier ruling that pecuniary damages must be paid to the families of the Romani schoolchildren. In response, Viktor Orbán said, “It's unacceptable for a majority to feel ill at ease in their own towns, or country, and it won't happen while I am premier. This is a country of natives, after all, this is our country.” He asserted that such cases are funded and used by Soros-funded rights groups to “grab money and attack the majority”; that the ruling was unfair, and that legislation was being prepared to prevent any such cases coming to court in the future.<sup>33</sup>

In a press conference in July 2020, when the prime minister's commissioner, László Horváth confirmed that compensation had finally been paid to the families, he declared that “the lesson has been learnt” and “this cannot be repeated anywhere else in Hungary in the future”. *The ‘lesson learnt’ was not to end racial segregation, but rather to ensure that there would be no further financial compensation for this abuse of human rights.* Horváth confirmed that a recent legal amendment supported by ‘a great majority in parliament’ will guarantee that courts do not order financial compensation in similar cases, he added. If anybody suffers disadvantage in education, it will have to be compensated by extra training and “no more money-making segregation lawsuits will be possible”.<sup>34</sup>

32 Opinion on school guards, Child Rights Coalition, available at: <https://unicef.hu/ezt-tesszuk-itthon/gyermekjogi-koalicio/iskolaorsegrol-szolo-allasfoglalas>.

33 Bernard Rorke, *Antigypsyism in Hungary: The Gyöngyöspata case versus ‘the people's sense of justice’* From Ryder A et al. (eds) *Romani Communities and Transformative Change: A New Social Europe*. Bristol University Press, 2021. Available at: [https://www.jstor.org/stable/j.ctv18gfz6v.10?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/j.ctv18gfz6v.10?seq=1#metadata_info_tab_contents).

34 About Hungary, News in Brief, *Roma compensation paid out for school segregation*. 27 July 2020, Available at: <http://abouthungary.hu/news-in-brief/roma-compensation-paid-out-for-school-segregation/>.

## **RACIAL PROFILING, DISCRIMINATORY FINING PRACTICES, HARASSMENT AND FORCED EVICTIONS OF ROMA: ARTICLES 2, 20, 26**

According to the reports of NGOs, including the Legal Defence Bureau for National and Ethnic Minorities (NEKI, [www.neki.hu](http://www.neki.hu)), the Hungarian Civil Liberties Union (<http://jogtalanul.blog.hu/>) and the Hungarian Helsinki Committee (HHC), the local police apply a discriminatory fining practice in numerous settlements – mainly in north-eastern Hungary – with respect to local petty offences. Reports state that local police are imposing fines primarily on Roma when they are committing petty offences, mostly relating to riding bicycles (lack of bicycle accessories required by law such as a bicycle bell, front light and rear reflector). Paying the fines requires a considerable effort from the perpetrators, most of whom are unemployed and living on social benefits.

Perpetrators who are unable to pay the fines are sent to prison. Although the individual measures by the police were arguably lawful (as the law did require that bicycles be equipped with certain accessories), the sanctioning practice of the police indicates ethnic disproportionality that could not be reasonably justified and was based on ethnic profiling, a form of racial discrimination.<sup>35</sup>

The Equal Treatment Authority examined the fining practice of the Rimóc Police after a report by a local official and the procedure ended in a settlement between the Nógrád County Police Headquarters and the Hungarian Helsinki Committee, the NGO that joined the proceedings.

In another case, in its first instance decision the Court of Eger on 17 September 2015 settled that the police directly discriminated against local Roma in Gyöngyöspata between May and December 2011 by failing to protect them from massed groups of far-right activists (who were illegally marching in the town), as well as by fining Roma in the settlement for petty offences.

Despite the above case and the dozens of complaints gathered by NGOs and media reports by the Roma Press Center, the National Police refused to examine the fining practice of the concerned police departments or to hold consultations with NGOs.

NEKI also reported in its common submission to the UN Universal Periodic Review on Hungary that law enforcement units of the Council of Miskolc, the fourth biggest city in Hungary, has been conducting inspections with other local authorities since 2013 in areas of the city where there is a considerable Roma population. During the inspections a group of 10-15 representatives of various local authorities entered apartments, inspected the rooms, bathrooms and toilets. According to the Council of Miskolc the purpose of the inspections was to observe and protect the property of the council (especially with regards to social housing), to review whether inhabitants are registered at their addresses, whether they are collecting rubbish according to the local rules and maintaining order around the house and whether rules for keeping pets are being respected.

The inspections were clearly targeting apartments rented or owned by Roma. According to the inhabitants, although fines were imposed only in few cases, the inspections were frequent and very humiliating, so that the inhabitants felt harassed and intimidated when representatives of the local government entered into private homes and checked the families. The Commissioner of Fundamental Rights (hereinafter referred to as: the Ombudsman) conducted an investigation in relation to these inspections and identified several violations of fundamental rights, and established that the investigations constituted harassment and they were discriminatory. In addition, the Ombudsman issued several recommendations to the Council of Miskolc, the most important of which is to discontinue the inspections in their present form.

Alongside the inspections mentioned above, since 2014 the Municipality of Miskolc issued evictions orders to evict mostly Roma from the so-called “Numbered streets”, a social housing area in Miskolc. The authorities’ intention was to clear out the area from Roma in the process of renovating a nearby football stadium.<sup>36</sup> About half of the inhabitants left the settlement by 2015, and a number of houses have been destroyed by the authorities. In spring 2017, the destruction has continued, another 80 houses were destroyed by the authorities. The Miskolc local government’s aim is to demolish the whole settlement, despite the decision by the Equality

<sup>35</sup> ERRC, Written Comments of the European Roma Rights Centre, Concerning Hungary For Consideration by the Human Rights Committee 122nd session (12 March – 6 April 2018). Available at: [http://www.errc.org/uploads/upload\\_en/file/hungary-hrc-12-february-2018.pdf](http://www.errc.org/uploads/upload_en/file/hungary-hrc-12-february-2018.pdf).

<sup>36</sup> Available at: <http://www.errc.org/news/miskolc-mayor-remains-defiant-on-roma-evictions-despite-latest-court-ruling>.



Body and the fine imposed on the local government to stop the evictions and adopt a plan to provide adequate alternative accommodation to the inhabitants.<sup>37</sup>

*Forced eviction in the time of Covid-19:* On October 6, 2020, the eviction of five Romani families from their apartments, marked a definitive end to the moratorium on evictions during the pandemic. The eviction of five Romani families in the northeastern town of Nyíregyháza, which has left a total of 17 people homeless, was challenged by dozens of protestors. Vice-president of the local Roma minority self-government, László Glonczy, condemned the evictions, criticized the municipality for its failure to engage in constructive dialogue on debt repayment, and described putting families with young children out on the streets during a pandemic as ‘outrageous’.<sup>38</sup>

<sup>37</sup> Available at: [https://hvg.hu/itthon/20160125\\_Szamoszott\\_utcak\\_Miskolcnak\\_lepnie\\_kell\\_a](https://hvg.hu/itthon/20160125_Szamoszott_utcak_Miskolcnak_lepnie_kell_a).

<sup>38</sup> Available at: <http://www.errc.org/news/hungary-forced-evictions-of-roma-mark-the-end-of-the-covid-19-moratorium>.

## HATE SPEECH AND INTIMIDATION OF ROMA AND OTHER MINORITIES

In its 2019 report on Hungary, UNCERD called on the authorities to prohibit organisations that promote and incite racial hatred.<sup>39</sup> The same week came the announcement of the formation of a fascist militia called the National Legion (*Nemzeti Légión*).

Laszlo Toroczka, head of the far right Our Homeland Movement (*Mi Hazánk*), said the new paramilitary group would primarily focus on the “preservation of traditions”, self-defense and teaching basic military skills. Toroczka added that while his new gang “is not the legal successor to the Magyar Gárda”, it “wants to continue its idealism and altruism”.

The intent is clear, this militia aims to harass and intimidate Roma under the pretext of fighting ‘Gypsy crime’. It seeks to revive the climate of fear in Roma communities that peaked during the serial killings by neo-Nazis in 2008-2009 and continued with the riotous assemblies by the Magyar Gárda and other far-right paramilitary groups in town such as *Gyöngyöspata* and *Devecser* up until 2012.

Toroczka's party (*Mi Hazánk*) broke away from Jobbik, disenchanted with Jobbik's attempts to rebrand itself as a patriotic party by outwardly shedding the racism, fascism and homophobia that resonated strongly with 20%-plus of Hungarian voters. *Mi Hazánk* adheres to such core values and ran candidates in the European elections. Their manifesto was a mix of anti-migrant Islamophobia, hostility to the ‘mixing’ that dilutes Christian culture, and nonsense about “preserving values and glorious spiritedness inherited from the ancient Hungarians of the steppes” and the new notion of the Northern Civilization, stretching from Kamchatka to Reykjavik.

As for the racist take on the so-called ‘Gypsy Question’, the *Mi Hazánk* manifesto stated, “It has to be declared that the integration of Gypsies, as old immigrants, has not been successful and their baby booming threatens the national budget.” Drastic interventions promised include “the need to fight against all aspects of Gypsy delinquency and the problem should be settled by strengthening the police and supporting voluntary self-defense associations ... Limiting childbearing for only subsistence purposes is of key importance to the future of Hungary.”<sup>40</sup>

UNCERD was concerned by the persistence of violent racist hate crimes, in particular against the Roma. CERD called on the government to take immediate action to prevent racist hate crimes and protect vulnerable groups. The committee called on the government to stop racist hate speech and incitement to violence and to “publicly condemn and distance itself, including in the media and on the internet, from racist hate speech by public figures, including politicians, and take measures to protect vulnerable affected groups.”

**Litigation concerning far-right intimidation of Roma:** In a judgment in the case of *Király and Dömötör v. Hungary* issued on 17 January 2017, the European Court of Human Rights (ECtHR) found that the Hungarian State violated Article 8 of the Convention in the wake of violent incidents in the village of Devecser, during an anti-Roma demonstration attended by nine far-right groups and members of *Jobbik*. The applicants were awarded EUR 10,700 each in damages.

The demonstrators marched on the Roma neighbourhood chanting “Gypsy criminality”, “Gypsies, you will die”, and “We will burn your house down and you will die inside”, “We will come back when the police are gone”, and other obscenities. According to the court report “Sporadically, quasi-military demonstrations of force occurred, involving military-style uniforms, formations, commands and salutes.” Some demonstrators, equipped with sticks and whips, covered their faces and dismantled the police cordon between the mob and the Roma houses. Then they threw pieces of concrete, stones and plastic bottles into the gardens egged on by the baying mob.

The ECtHR found that the cumulative effect of shortcomings in the investigations, especially the lack of a comprehensive law enforcement approach into the events, was that an openly racist demonstration, with sporadic acts of violence remained virtually without legal consequences and the applicants were not provided with the required protection of their right to psychological integrity.

The court found that the applicants were left without effective legal protection against an openly anti-Roma demonstration, the aim of which was no less than the organised intimidation of the Roma community, including the

<sup>39</sup> Available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/CERD\\_C\\_HUN\\_CO\\_18-25\\_34867\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/HUN/CERD_C_HUN_CO_18-25_34867_E.pdf).

<sup>40</sup> Available at: <http://www.errc.org/news/un-deep-alarm-over-racism-in-hungary-as-new-fascist-militia-targets-roma>.

applicants, by means of a paramilitary parade, verbal threats and speeches advocating a policy of racial segregation. And in a particularly damning final sentence: “The Court is concerned that the general public might have perceived such practice as legitimisation and/or tolerance of such events by the State.”<sup>41</sup>

The UN report also expressed deep alarm at the prevalence of hate speech against Roma, migrants, refugees and other minorities from public figures, and “is especially deeply alarmed at reports that public figures in the State party, including at the highest levels have made statements that may promote racial hatred, in particular as part of the Government’s anti-immigrant and anti-refugee campaign started in 2015.”

ERRC remains especially concerned at the direct role played by the Prime Minister, since the last UN Periodic Review, in making statements that ‘may promote racial hatred’, most recently in response to the court rulings awarding damages to the families of in Gyöngyöspata (see above), but consistently over the years, reaching its nadir in 2018, and targeting many minority groups.

## HATE SPEECH FROM THE PRIME MINISTER

In its fifth monitoring cycle Report on Hungary, ECRI expressed concerns that “by not responding to intolerant discourse, the authorities are complicit in legitimising it and aggravating intolerance towards vulnerable groups in the general population.” This, ECRI claimed, has resulted in a climate of impunity, where “derogatory remarks about Roma, Jews, LGBT persons, asylum seekers and refugees have become commonplace.” ECRI called on the Hungarian authorities to address these alarming trends as a matter of urgency.<sup>42</sup>

Suffice to remark, this call went unheeded, and to such an extent that UN High Commissioner for Human Rights, Zeid Ra’ad al-Hussein, was moved to later denounce Viktor Orbán as one of Europe’s xenophobes and racists who have “cast off any sense of embarrassment”.<sup>43</sup>

Repudiating objections from the Hungarian government, the Commissioner reiterated his damning verdict of Orbán, and described a recent speech by the prime minister, where he spoke of not wanting “our” colour mixed with others, as “a clear-cut statement of racism ... an insult to every African, Asian, Middle Eastern or Latin American woman, man and child.”

Commissioner Zeid Ra’ad al-Hussein described Orbán’s racist rhetoric as “increasingly delusional”, explaining that he has “managed to portray Muslims and Africans as an existential menace to Hungarian culture – a threat he alleges is masterminded by the Hungarian-American financier George Soros.” Further he described the cultivation of a siege mentality among majority populations as a marker of today’s ethno-populism: “It creates a sense of overwhelming grievance, with an indicated outlet for that rage. And it shores up power.”<sup>44</sup>

Days later, on the 2018 election campaign trail in the city of Miskolc, in a speech the Prime Minister attacking migrants and refugees turned his fire on Roma. A video was uploaded to Orbán’s own Facebook page where he said the following:

*“There was a time when people from the outside en masse immigrated into this city. And you remember what happened. The people of Miskolc experienced what happened then. ... Yet those people who moved to Miskolc came from the territory of Hungary. Now you imagine what will happen when people who in their culture, customs, and views are completely different from us arrive from outside of the country.”<sup>45</sup>*

Officials confirmed that the prime minister was indeed referring to Miskolc’s Roma community, which has long endured segregation, discrimination and forced evictions. Two years earlier, in another speech the prime minister

41 ERRC News, 20 January 2017. Available at: <http://www.errc.org/news/far-right-violence-against-roma-in-hungary-victory-in-strasbourg-for-the-helsinki-committee>.

42 ECRI REPORT ON HUNGARY (fifth monitoring cycle). Adopted on 19 March 2015 Published on 9 June 2015. Available at: <https://rm.coe.int/fifth-report-on-hungary/16808b57e8>.

43 37th session of the Human Rights Council, Opening statement by UN High Commissioner for Human Rights, 26 February 2018. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22702>.

44 UNHR Office of the High Commission, Hungary: Opinion Editorial by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22765&LangID=E>.

45 Available at: <https://www.facebook.com/watch/?v=10155997579216093>.

ter equated Hungary's Romani population with the Syrian refugees, likening his fellow citizens to a "historically inherited burden":

*"Hungary's historical given is that we live together with a few hundred thousands of Roma. This was decided by someone, somewhere. This is what we inherited. This is our situation, this is our predetermined condition ... We are the ones who have to live with this, but we don't demand from anyone, especially not in the direction of the west, that they should live together with a large Roma minority".<sup>46</sup>*

In his address to the nation on the 15 March national holiday in 2018, Orbán declared that Hungary and Europe stand at the "epicentre of a civilisational struggle" because the continent faces an invasion where "Africa wants to kick down our door". He told his followers that one single error is enough, "if the dam bursts and the water floods in," he said, "the cultural conquest will become irreversible." Echoing the 'replacement theory' of white supremacists, Orbán spoke of the threat posed by "Strangers from other parts of the world who do not speak our language, do not respect our culture, our laws and our ways of life. People who want to replace what is ours with what is theirs."<sup>47</sup>

In the same speech, Orbán promised to exact moral, political and legal revenge against enemies who are "different to us", who are covert, base and crafty. In terms widely interpreted as antisemitic, he claimed Hungarians now face an enemy that is "not national but international; does not believe in working but speculates with money; does not have its own homeland but feels it owns the whole world."<sup>48</sup>

<sup>46</sup> Available at: <http://www.errc.org/news/10-things-they-said-about-roma-in-hungary>.

<sup>47</sup> Available at: <https://visegradpost.com/en/2018/03/16/orban-we-must-fight-against-an-organized-international-network/>.

<sup>48</sup> Available at: <https://visegradpost.com/en/2018/03/19/viktor-orbans-ceremonial-speech-on-the-170th-anniversary-of-the-hungarian-revolution-of-1848-full-speech/>.

## STIGMATIZING AND INTIMIDATING HUMAN RIGHTS DEFENDERS

A recent FRA report found that within the EU, the main challenges to ensuring a safe space for civil society are acts of intimidation and violence by non-state actors and smear campaigns. In some EU member states, such non-state actors have been actively encouraged by inflammatory rhetoric from prominent politicians, even prime ministers who attempt to frame human rights defenders as ‘mercenaries’, and ‘enemies of the people’.<sup>49</sup>

Hungary remains the prime example of what FRA described, the decade-long attacks on civil society organisations in Hungary by the Orbán regime has been exhaustively documented and widely condemned.<sup>50</sup>

Back in February 2016, the UN Special Rapporteur on the situation of human rights defenders pointed out in his end of mission statement issued on 16 February 2016, after his visit to Hungary, that human rights defenders in the country “are increasingly working in a rather polarised and politicised environment,” while criticising attempts to de-legitimize defenders and undermine their peaceful and legitimate activities through criminal defamation and excessive administrative and financial pressure. The UN independent expert called on the Government of Hungary to refrain from stigmatising and intimidating human rights defenders, and ensure that they can conduct their work in an enabling legal and administrative environment.<sup>51</sup>

From that moment, the government accelerated its campaign to stigmatize and intimidate human rights defenders. The following timeline, excerpted from a Hungarian Helsinki Committee (HHC) report, provides a sense of how ‘politicized and polarized’ the environment became in the run up to the legislative assault on civil organizations:

- **20 May 2016**, Orbán stated that organizations sponsored by Hungarian-American business executive George Soros are a “background power,” who were not elected by anyone, but “they still constantly aim to gain political influence”.
- **In June 2016**, final judgement ruling that the ruling Fidesz had violated the HHC’s right to a good reputation. The lawsuit was launched by the HHC in 2015, after Fidesz had stated that it is a “fake” NGO, which “executes the political orders” of international actors and tampers with data concerning asylum-seekers. The court obliged the Fidesz to refrain from such rights violations in the future, issue an apology and pay damages in the amount of HUF 1 million.
- **26 September 2016**: MP Szilárd Németh, Vice President of the Fidesz and of the Parliament’s National Security Committee that he requested the National Security Committee and the national security services to inspect the organizations “cooperating with the Soros-network”. The MP stated that he identified 22 such organizations, and claimed that these organizations openly violate Hungarian and European laws, and participate in politics unlawfully, with “black money”.
- **10 January 2017**: Szilárd Németh stated that “the Soros empire’s fake civil organizations are maintained so that global capital and the world of political correctness can be imposed on national governments. These organizations have to be rolled back with every means, and I think they have to be swept out of here.”
- **11 January 2017**: Szilárd Németh specifically named the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, and Transparency International Hungary as the NGOs that have to be “rolled back” and “swept out”
- **13 January 2017**: Government spokesperson Zoltán Kovács suggested in a television interview in relation to NGOs funded by George Soros that people calling themselves human rights defenders and civills fraternize or cooperate with terrorist and human trafficking organizations, willingly or unwillingly.
- **10 February 2017**: In his annual state of the nation speech, Orbán said the following: “in 2017 we will also need to take up the struggle against international organizations’ increasingly strong activists. [...] It is a problem that foreign funding is being secretly used to influence Hungarian politics.
- **21 February 2017**: by the media that at the parliamentary group meeting of Fidesz the NGOs supported by the Open Society Foundations and specifically the Hungarian Civil Liberties Union, the Hungarian

<sup>49</sup> Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-challenges-facing-civil-society\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf).

<sup>50</sup> Available at: [https://tasz.hu/files/tasz/imce/timeline\\_of\\_gov\\_attacks\\_against\\_hu\\_ngos\\_22022017\\_1.pdf](https://tasz.hu/files/tasz/imce/timeline_of_gov_attacks_against_hu_ngos_22022017_1.pdf).

<sup>51</sup> Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17037&LangID=E>.

Helsinki Committee, and Transparency International Hungary were named as the target group of the envisaged Bill on the foreign funding of NGOs.<sup>52</sup>

On 7 April 2017, governing party MPs submitted to the Hungarian Parliament Bill T/14967 on the Transparency of Organizations Receiving Foreign Funds. The Bill was adopted on 13 June 2017. In June 2020, the Court of Justice of the European Union (CJEU) ruled that the 2017 Hungarian law requiring non-governmental organisations receiving at least HUF 9 million in grants from outside Hungary to register in a special registry and label themselves as a “foreign-funded organisation” on their website and publications are stigmatizing, harmful, and in breach of EU law.

In February 2021, the EU sent formal notice to Hungary giving it two months to comply with the ruling or face fines.<sup>53</sup> There remains considerable scepticism that this will herald any change in the attitude or behavior of the ruling party, especially in light of the continued failure of the EU to take any effective action to defend NGOs against these authoritarian excesses over the past ten years. The failure of the European Commission to function effectively as ‘guardian of the treaties’, has only served to embolden leaders of EU Member States who openly champion the notion of ‘illiberal democracy’.

<sup>52</sup> The Hungarian Helsinki Committee, *Timeline of the series of governmental attacks against Hungarian NGOs, which constitute another step in the process aimed at establishing an “illiberal state” in Hungary*.

<sup>53</sup> Available at: <https://www.reuters.com/article/uk-eu-hungary-ngo-idUKKBN2A11H9>.

## COVID-19 EMERGENCY: THE IMPACT OF SCHOOL CLOSURES ON DISADVANTAGED ROMANI CHILDREN

School closures and the sudden switch to online learning brought additional hardship, and exacerbated disadvantages for Romani children. Data collected by the Roma Education Fund (REF) indicated that most Romani children and their families living in rural areas and in settlements have no access to internet, do not have computers and/or other electronic devices, and, in some cases, even electricity is not available.<sup>54</sup> The Hungarian educational system, long condemned for its failure to address systemic racial segregation and social inequities, had made no provisions for children from disadvantaged backgrounds in the sudden transition to online schooling. In addition to the challenges of limited food supplies and poor access to clean water and sanitation that marginalized communities face across Europe, Roma in Hungary faced the added burden that receipt of social aid is dependent on school attendance. Since the lack of internet access and electronic devices is higher in regions where significant numbers of Roma reside, most Romani children cannot attend online classes.<sup>55</sup> As REF pointed out, in addition to the detrimental effect this is likely to have on educational attainment and drop-out rates for Romani youngsters, failure to take part in online classes can lead to even more hardship if families are penalized and denied vital social services and family allowances as a result.

These social differences result in significant territorial differences, as shown in Figure 3 for 6th grade. In Szabolcs-Szatmár-Bereg and Borsod-Abaúj-Zemplén counties, one third of the students have no or only very limited access to online distance learning, in Budapest and Győr-Moson-Sopron counties this proportion is one tenth. The pattern of territorial differences is similar in grades 8 and 10. Overall, a significant proportion of students - almost one in five students in primary school - have no or very limited access to online education. Many of them have already had difficulty meeting school requirements; their partial or complete drop-out from online education is expected to exacerbate these problems, which, moreover, may be exacerbated by parental unemployment.<sup>56</sup>

<sup>54</sup> Available at: <https://www.romaeducationfund.org/wp-content/uploads/2020/04/Roma-Education-Fund-Statement-on-COVID-19-pandemic.pdf>.

<sup>55</sup> Hermann Zoltán, *Hány diákhöz nem jut el az online távoktatás?*, KRTK KTI. April 2, 2020. Available at: <https://www.mtaki.hu/koronavirus/hany-diakhoz-nem-jut-el-az-online-tavoktatas/12769/?fbclid=IwAR1Jq0XvQEaE6PM8vivDUGPYZMYaZp2omvJHQnWn9yfu70JoEzK5OJDNUao>.

<sup>56</sup> Op cit.

## COVID-19 EMERGENCY AND THE RULE OF LAW

As far as human rights and the rule of law is concerned in the time of pandemic, the raft of emergency measures adopted by the Hungarian government proved to be the most controversial in Europe, and a textbook example of the warning issued by UN Special Rapporteur Fionnuala Ní Aoláin of the dangers of executive overreach in a state of exception; how extraordinary powers made available to government under emergency legislation can become part of the ordinary, normal legal system, rendering the protection of rights “increasingly fraught and difficult.”<sup>57</sup>

In a special debate on the 14th May, prompted by Orbán’s Enabling Act, the European Parliament adopted a statement describing Hungary’s measures as “incompatible with European values.”<sup>58</sup> Provisions in the bill included an attack on the rights of transgender people; and the Hungarian government issued more than 100 decrees, most of which were unrelated to the pandemic, including the imposition of sectoral taxes and the removal of significant financial resources from local communities that partially fell in the hands of the opposition in the 2019 municipal elections.

In mid-June, Orbán’s government announced its intention to rescind the extraordinary measures. Critics condemned the move as a political sleight of hand, claiming that the legislation will cement into everyday use the sweeping powers claimed by Orbán to fight the virus, and “create a legal basis for the use of newer extraordinary and unlimited government powers.” In a rapid analysis published by the Helsinki Committee, the Hungarian Civil Liberties Union and Amnesty International, this move by the government was described as “nothing but an optical illusion: if the Bills are adopted in their present form, that will allow the government to again rule by decree for an indefinite period of time, this time without even the minimal constitutional safeguards.”<sup>59</sup>

57 Fionnuala Ní Aoláin, *My Priorities As UN Special Rapporteur on Counter Terrorism: The Problem of Permanent Emergencies*, PSRP, 10 October 2017. Available at: <https://www.politicalsettlements.org/2017/10/10/my-priorities-as-un-special-rapporteur-on-counter-terrorism-the-problem-of-permanent-emergencies/>.

58 Available at: <https://www.rferl.org/a/european-parliament-to-debate-hungary-s-coronavirus-laws-amid-detentions/30611439.html>.

59 Available at: <https://www.helsinki.hu/en/never-ending-story/>.