

LIST OF CRITICAL ISSUES

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING HUNGARY

For Consideration by the Committee on the Elimination of Discrimination against Women at its 52nd session. (9 to 27 July 2012).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

This list of critical issues is presented by the European Roma Rights Centre (ERRC)¹ to assist the Pre-Session Working Group with country specific information on issues affecting Romani women in relation to Hungary's combined seventh and eighth Periodic Report (the State Report). Roma is the largest minority group in Hungary: according to generally accepted estimates approximately 700 000 Roma live in the country, equivalent to about 7% of the country's total population.

Article 2, 3: Discrimination

Romani women continue to suffer multiple discrimination on the basis of their gender and ethnicity. As victims of multiple forms of discrimination, Romani women experience barriers in accessing equal education, healthcare and adequate housing, employment and in accessing justice through administrative or institutional channels.² Major policy documents adopted by the Hungarian State to improve the situation of Roma have not yet resulted in substantive improvements in the situation of most Romani women or have failed to address the particular situation of Romani women.³

Suggested questions to the Government:

- What specific measures has the government implemented or planned to significantly improve the situation of Romani women in access to equal education, employment, housing, health care and justice?
- Is the impact of any such measures being monitored through the collection and analysis of disaggregated data?

Violence against Roma

The ERRC registered at least 50 violent attacks against Roma resulting in nine fatalities and dozens of people with injuries since 2008.⁴ Victims included Romani women and girls. The Hungarian government does not systematically monitor racist violence. Police, prosecutors and court officials are reluctant to consider racial bias motivation as an aggravating circumstance to crimes: it is not explicitly included in the Criminal Code (only "base" motivation is included). Hate crimes are dealt with as a separate legal provision but are not linked to other crimes.⁵ Hungarian law and practice is not in line with international standards on investigating and prosecuting hate crimes.⁶ Ill-treatment of Roma by law enforcement is a problem in Hungary. Indicative of this is a case litigated by the ERRC now pending before the European Court of Human Rights in which excessive force was used by law enforcement agents against a Romani woman which Hungarian authorities failed adequately to investigate.⁷

In spring 2011 paramilitary groups marched through Hungarian villages harassing and intimidating Romani communities. Human rights NGOs raised concerns and called State authorities for immediate action.⁸ During these unlawful actions Romani women and children were relocated due to fear of violence.⁹ As a result of racial harassment, a pregnant Romani woman delivered her baby early and needed to be hospitalised.¹⁰

1 The European Roma Rights Centre is an 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. See: www.errc.org.

2 Written Comments of the European Roma Rights Centre Concerning Hungary For Consideration by the United Nations Committee on the Elimination of Discrimination against Women at its 39th Session. (23 July-10 August 2007), available at: <http://www.errc.org/db/03/7A/m0000037A.pdf>.

3 In December 2011, the Hungarian Government adopted the Hungarian National Social Inclusion Strategy. However the Action Plan for 2012-2014 implementing the Strategy (1430/2011 (XII.13) Government Resolution) failed to address the multiple disadvantages of Romani women. The Government also adopted a Resolution on Promotion on Gender Equality. The first action plan (2010-2011) to implement it did reference the situation of Romani women situation but no programme was launched or implemented to tackle the disadvantaged situation of Romani women.

4 See: <http://www.errc.org/article/attacks-against-roma-in-hungary-the-czech-republic-and-the-slovak-republic/3042>.

5 Base motivation is only included in relation to homicide, battery/assault, defamation, unlawful detention and insulting a subordinate. This provision would not allow for the tracking of racially-motivated crimes because other motivations may also be included. In addition, the current hate crime law does not protect property against racially motivated damage as it would not constitute hate crime. Similarly racially motivated harassment would not constitute a hate crime under Hungarian law.

6 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Hate Crime Laws - A Practical Guide, 2009 OSCE/ODIHR*, available at: <http://www.osce.org/odihr/36426?download=true>.

7 See: <http://www.errc.org/article/errc-seeks-justice-for-romani-victims-of-police-violence-before-european-court/3931> and <http://cmiskp.echr.coe.int/tkp197/viewhbk.asp?sessionId=99817815&skin=hudoc-en&action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=99030>.

8 See: <http://www.errc.org/article/rights-groups-demand-protection-for-hungarian-roma/3816>.

9 Hungarian Civil Liberties Union, <http://tasz.hu/en/news/shadow-report-about-events-gyongyospata>.

10 Hungarian Civil Liberties Union, <http://tasz.hu/romaprogram/megis-nyomoznak-maszkosok-altal-megfelemlített-gyongyospatai-kismama-ugyeben>.

Suggested questions to the Government:

- Does the Hungarian Government keep detailed data on the number and type of racially motivated crimes committed against Roma, and in particular Romani women, as well as information on prosecutions? Please supply detailed information to the Committee.
- What measures have been adopted to bring the Hungarian criminal legislation in line with international standards on investigating and prosecuting hate crimes?
- What professional training and capacity-building activities have been implemented for law-enforcement, prosecution and judicial officials dealing with hate crimes?
- What measures have been adopted to ensure that victims of hate crimes access to counseling, legal assistance and justice is explored in co-operation with relevant actors?

Child Protection

ERRC research reveals that Romani children are overrepresented in the Hungarian child protection system: among a sample of children in State care institutions interviewed by ERRC approximately 65.9% were Romani.¹¹ At the same time Romani children are estimated to account for only around 13% of the child population in Hungary.¹² The removal of children from their families for purely economic reasons is banned by law, but Romani children appear to be removed more frequently for economic reasons than non-Roma children. ERRC research¹³ also indicated that girls brought up in State care are more vulnerable to become victims of trafficking; given the overrepresentation of Romani children in State care, Romani girls are highly vulnerable to this phenomenon.

Suggested questions to the Government:

- Does the Government collect data on the number of Romani children in State care and the reasons for their removal from their families?
- What concrete measures have been adopted to prevent a disproportionately high number of Romani children being removed from their families and placed in State care?
- Has the Government adopted a set of objective criteria against which the competent authorities can make objective recommendations and decisions regarding the removal of children from their families?

Article 6: Appropriate measures, including legislation, to suppress all forms of trafficking and exploitation of Romani women

Trafficking in human beings

According to ERRC research,¹⁴ human trafficking affects Romani women disproportionately in Hungary. Although relevant official data still does not exist, ERRC research in 2010 indicated that Roma represent at least 40% of victims of trafficking.¹⁵ The ERRC study indicated the high vulnerability of Romani women and girls to internal and external trafficking for the purpose of sexual exploitation.¹⁶

The definition of trafficking in human beings in the Hungarian Criminal Code is not in compliance with the Palermo protocol. The requirement of proving an exchange or trade creates an obstacle to prosecution. The law does not refer to sexual exploitation as a purpose of trafficking. Responsible authorities do not receive adequate training and police do not treat human trafficking and sexual exploitation with priority. There is a lack of social, healthcare, legal and psychological assistance for victims of trafficking which are of adequate quality and properly monitored. Trafficking victims – even if they are minors – are treated as criminals.¹⁷ Although Hungary adopted a

11 ERRC, *Life Sentence: Romani children in state care in Hungary*, available at: <http://www.errc.org/reports-and-advocacy-submissions/life-sentence-romani-children-in-state-care-in-hungary/3953>.

12 ERRC, *Dis-Interest of the Child: Roma Children in the Hungarian Child Protection System* (2008), available at: <http://www.errc.org/article/dis-interest-of-the-child-romani-children-in-the-hungarian-child-protection-system/2960>.

13 ERRC, *Breaking the Silence: Trafficking in Romani Communities* (2011), available at: <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>.

14 ERRC, *Breaking the Silence: Trafficking in Romani Communities* (2011), available at: <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>.

15 *Ibid*, p 34.

16 *Ibid*, p 38.

17 *Ibid*, p 59.

National Strategy on Combating Trafficking in Human Beings (2008 – 2012), it has yet to adopt a national action plan for implementing this strategy.¹⁸

Suggested questions to the Government:

- Does the Government gather data on the number of women and girls trafficked, within, from and through Hungary disaggregated by gender, age, location of origin, ethnicity and the form of trafficking, or keep records concerning the level of prosecution and conviction? Please provide relevant data.
- When and how does Hungary plan to amend criminal legislation according to the standards set forth in the Palermo Protocol, including by listing sexual exploitation as a purpose of trafficking?
- What measures have been taken or planned to develop an institutional system that is adequately prepared to provide unconditional, immediate and effective help to victims of trafficking and provide sustainable shelter?
- What measures have been taken or planned to implement targeted prevention programmes in socially and economically disadvantaged areas, and specifically targeting Romani women and youth?

Article 12: Enjoyment of human rights, in particular in accessing to health care services

Coercive sterilisation

Coercive sterilisation remains a concern for Romani women in Hungary. To date, Hungary has failed to fully implement the recommendations by the CEDAW Committee in its 2006 decision in the case of A.S. Hungarian legal provisions regulating sterilisation do not comply with international standards on medical indication as a basis for sterilisation and the reversibility of sterilisation procedures.¹⁹ The ERRC is involved in a case pending in the domestic courts in which a woman was coercively sterilised without her fully informed consent in a public hospital in 2008.²⁰

Suggested questions to the Government:

- What specific measures has the Government taken to ensure that sterilisations are not performed on grounds of medical emergency in Hungary?
- How does the Government guarantee that fully informed consent is ensured with regards to the sterilisation procedures?

¹⁸ Hungary National Strategy to Combat Trafficking (2008 - 2012), Government Decree No. 1018/2008.

¹⁹ ERRC Submission to the Joint CEDAW-CRC General Recommendation / Comment on Harmful Practices: Child Marriages among Roma, September 2011, available at: <http://www.errc.org/reports-and-advocacy-submissions/errc-submission-to-the-joint-cedaw-crc-general-recommendationcomment-on-harmful-practices-september-2011/3929>.

²⁰ On ERRC case file.