

WRITTEN COMMENTS

of the European Roma Rights Centre, Concerning Hungary

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CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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ARTICLES 2, 23 (1), 24 (1)– RIGHT TO FAMILY AND NON-DISCRIMINATION: ROMANI CHILDREN IN STATE CARE

Disaggregated data based on ethnicity is not available in Hungary, however research conducted by the ERRC in 2007 revealed that Romani children are overrepresented in state care. ERRC Research conducted in 2010 covering 24 children's homes in Hungary, confirmed that approximately 65.9% of the children were of Romani origin.¹ The most recent ERRC commissioned research reveals that in one county where Roma account for 20% of the total population, 80% of the children in care are of Romani origin.

The ERRC together with the Hungarian Civil Liberties Union (TASZ) revealed several cases of Romani newborn babies being unlawfully removed from their parents shortly (a few days) after birth and taken to foster care in 2013 and 2014. The decisions were justified mainly by circumstances related to poverty and negligence of the parents. The NGOs provided legal aid for Romani parents who tried to get their children back, and represented the parents in three court cases out of which one has so far successfully ended with a court ruling that ordered the reintegration of the children with their family.

The overrepresentation of Romani children in institutional care appears to be the result of indirect discrimination against Roma, a lack of clear guidance in the child protection law and policy 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. School absenteeism, especially among Romani teenagers, is a frequent reason for their perceived endangerment that may lead to removal from their family. 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.

The most recent research conducted for the ERRC by The Chance for Children Public Benefit Association (Gyerekesély Közhasznú Egyesület) in Nógrád County once again confirmed that Romani children are vastly overrepresented in the care system.² 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 include the following:

- Although they make up under 20% of the 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 State 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.

¹ Details of that research can be found at: <http://www.errc.org/article/life-sentence-errc-research-finds-romani-children-overrepresented-in-state-care/3902>.

² The English language summary of that research is available here: <http://www.errc.org/cms/upload/file/romani-children-in-state-care-in-nograd-county-hungary.pdf>.

- The system is officially colourblind, 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.

Hungarian law and European Union law make it unlawful to discriminate based on race or ethnicity when it comes to social protection. Discrimination and taking children into care unlawfully is also a breach of a number of international treaties, including the ICCPR and the European Convention on Human Rights. The system clearly results in less favourable treatment of Romani families, whose children are more frequently taken away from them and placed in care. This is clear evidence of indirect discrimination. It also does not seem that this less favourable treatment can be justified: poverty (which disproportionately affects Roma) clearly plays a fundamental role in a large number of decisions, and the authorities in Nógrád County are not taking significant steps to provide support to families to stay together.

ARTICLES 2, 26, 27: RIGHT TO EQUAL EDUCATION: SCHOOL SEGREGATION OF ROMANI PUPILS

The Hungarian National Social Inclusion Strategy was adopted in 2011 in order to fulfil the requirement from European Union member states to adopt National Roma Inclusion strategies. An updated Strategy was published in 2014. 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.

PERSISTENT SCHOOL SEGREGATION OF ROMANI CHILDREN

School segregation of Romani children shows no signs of abating in Hungary. 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. The Government has not targeted any of these schools by desegregation measures. The central authority responsible for schools (Klebelsberg School Maintainer Centre (KLIK)) has since 2013 had the opportunity and means to take measures, but so far it has failed to map the situation of Roma children and to address school segregation. The Centre expressed its position towards integration in a lawsuit on 17 February 2014, maintaining that it is not its duty to promote integration in a proactive manner and to monitor segregation in schools. There are eight pending segregation lawsuits in which the Centre was invoked after the nationalisation of the schools. The Centre did not take action in any of the pending cases to settle the case out of court and to end segregation.

Since 2011 the Hungarian Supreme Court (Curia) has ruled in five Roma education cases that Romani children were unlawfully segregated and two municipalities have been convicted by the Equal Treatment Authority for segregation. For years, Hungarian courts neglected to order the desegregation of any of the schools, and effective remedy against systematic discrimination of Roma children has not been provided. In the Nyíregyháza re-segregation case, the Curia justified segregation of Roma children based on religious education. This interpretation casts a shadow over compliance of the current legislation and wording of the Equal Treatment Act (ETA) with relevant provisions of international and EU law pertaining to the prohibition of discrimination. The emblematic case of Nyíregyháza made it clear that the current government does not have political intentions to address segregation in the Hungarian education system. Moreover, its decisions and communications reassure the segregating schools. Minister Balog (Ministry of Human Resources) testified in favour of the Greek Catholic Church which reopened the segregated Roma school in Nyíregyháza in 2010. The Minister repeatedly assured the segregated church-run primary school in Nyíregyháza of his support during the judicial proceedings. Despite protests and an anti-segregation campaign by several civil society organisations (CSOs) and professionals and the resignation of several CSOs from the antidiscrimination roundtable of the government, the modification was passed by the parliament in December 2014. The draft of the Ministerial Decree was leaked from the Ministry in 2015 causing indignation by human rights defenders as it was a clear attempt to create legal opportunity for racial segregation by religious schools. In January 2016 a prominent member of the Government's anti-segregation round table resigned also because of the planned legal changes and the current government policies.

KAPOSVÁR COURT RULING TO DESEGREGATE

In 2017, in a breakthrough ruling, the Curia upheld a lower court's ruling that ordered the closure and desegregation of the Pécsi Street Elementary School in Kaposvár. According to the Curia's ruling, the school is forbidden from starting new classes, and Roma children from the nearby, segregated neighborhood of Szentjakab who have been attending the school must be transferred to other schools in Kaposvár. The Chance For Children Foundation (CFCF) filed a lawsuit against the Kaposvár council back in 2013, and won the lawsuit in 2016. Nothing was done subsequently to remedy the situation, and CFCF prevailed in the Curia in October 2017. The Curia's ruling is a unique decision for Europe in that orders the complex desegregation of a school. Complex desegregation goes beyond simply mixing students of different backgrounds; it also aims to mentor Roma children and prepare the students of host schools, their parents and teachers for the arrival of the Roma students.³

MISDIAGNOSIS AND CHANNELLING OF ROMA CHILDREN IN SPECIAL EDUCATION AS A WAY OF SEGREGATION

Testing procedures to assess the mental ability of children are contributing to segregation as culturally biased testing results in misdiagnosis of Roma children. This has been affirmed in 2013 by the European Court of Human Rights (ECtHR) in the Horváth and Kiss v. Hungary case.⁴ The Court noted that Romani children had overall been overrepresented in the past in remedial schools in Hungary due to the systematic misdiagnosis of mental disability.

The Committee of Ministers has called on Hungary to provide data on the impact of new diagnostic procedures on Romani students. No data has been provided yet. The ERRC together with the Chance for Children Foundation (CFCF) reported their concerns in a Rule 9 submission to the Committee of Ministers based on evidence gathered for an ongoing court case in Heves County that culturally biased diagnostic protocols (e.g. the Budapest-Binet test) leading to the misdiagnosis of Romani children are still in use nationwide despite of the alleged governmental efforts.⁵

In its official response, the Government reiterated its position that the channelling of Roma children into the special educational system is not a result of structural discrimination on ethnic grounds, but the inevitable consequence of poverty among Roma, although the ECtHR established racial discrimination against the two applicants Horváth and Kiss.

The Committee of Ministers (CoM) issued its latest recommendations to the Hungarian Government in December 2017, reinforcing the major concerns raised by the ERRC and the CFCF.⁶ The Committee reiterated that it was still not sufficiently clear whether the new testing method and the reformed standards of the examination process are applied comprehensively and effectively by all expert committees across the country and whether they have entirely replaced the old methods, which led to misdiagnosis and misplacement of Roma children. Once again, the Committee requested that the authorities submit statistics and information on the conduct and outcomes of the examination process.

The Committee again dismissed the government's argument concerning the high occurrence of disadvantaged social background among the Roma population and insisted that this "cannot exempt the authorities from the obligation to take effective measures to avoid the misdiagnosis of learning abilities in Roma children and to demonstrate their impact regarding the statistical overrepresentation of Roma children in special schools."

The Committee repeatedly identified the lack of disaggregated ethnic data as a barrier to any measures aimed at the integration of Roma children into mainstream education, or to measuring the systematic discrimination against them in mainstream and special education; and further, insisted that the lack of such data precludes any possibility of assessing whether the measures taken have had an impact and are capable of preventing similar violations. Thus the Committee renewed its call for updated statistical information in this regard.

³ For more on this story see: <https://budapestbeacon.com/curia-upholds-ruling-abolishing-school-segregation-kaposvar/>.

⁴ See: <http://hudoc.echr.coe.int/eng?i=001-116124>.

⁵ See: Submission from CFCF and ERRC, DH-DD(2015)1292, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804a82d3.

⁶ See: <http://hudoc.exec.coe.int/eng?i=004-10905>.

EU INFRINGEMENT PROCEDURE

On 26 May 2016, the European Commission launched an infringement procedure against Hungary over the segregation of Roma children in schools. The Commission sent a warning letter to Hungary calling on the government to bring Hungarian legislation on equal treatment and education in line with EU directives on racial equality. The commission has expressed concern over Hungarian legislation and administrative practices on several counts, as it found that based on these regulations Romani children are placed in segregated special needs classes in disproportionately high numbers in Hungary. The statement said that the aim of the procedure was to ensure that Roma children can take part in high-quality education under the same conditions as other children, as this determines their participation in work opportunities which is necessary for the full social integration of the Roma population.⁷

The Minister for Human Resources, Zoltán Balog who is responsible for education has made his views on segregation clear, and just last year he stated: *“In the case of the Roma, the decision must be made, we have to think about the education system we build from Budapest.... It’s necessary to decide whether an integrated school is good or whether there should be separate schools for Romani children, with a separate educational program for them.”* As mentioned above in late 2014, when he testified in court on behalf of the Greek Catholic Church Roma-only school in Nyíregyháza, he called it as a “citadel of convergence” where Romani children can “catch up”, and described *school segregation as a “tender loving attainment process.”* In light of the ongoing infringement proceedings and the current status with regards to implementation of the Horvath and Kiss vs. Hungary, such statements from the senior minister responsible, fundamentally call into question the Hungarian government’s basic attitude to the rule of law, and to the EU’s Race Equality Directive.

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

A Romani woman who gave birth to her baby daughter in February 2016 was alone in the ward at a public hospital and was intimidated by staff who subjected her to verbal harassment and racial slurs, with one doctor telling her “you Gypsies give birth only for the money!” After a legal procedure challenging the treatment, the Hungarian Equal Treatment Authority found that her treatment was discriminatory and constituted harassment based on her ethnicity and imposed a public fine on the hospital.⁸

In 2017, the ERRC launched a public interest litigation against the same hospital for directly discriminating against women in poverty and indirectly discriminating against Romani women in childbirth. Fact-finding research showed that should a pregnant women wish to have someone to accompany her while in labour (which is guaranteed by the Health Care Act) the person must wear a special garment otherwise they are not allowed to enter the ward. The price of this garment is around 18 USD which is a financial burden on those who live in poverty. The case is pending before the court of first instance.

ARTICLES 2, 20, 26: RACIAL PROFILING OF ROMA: DISCRIMINATORY FINING PRACTICES, DISCRIMINATORY INSPECTIONS AND HARASSMENT OF ROMA BY THE HUNGARIAN AUTHORITIES

According to the reports of NGOs, including the Legal Defence Bureau for National and Ethnic Minorities (NEKI, www.neki.hu), the Hungarian Civil Liberties Union (<http://jogtalanul.blog.hu/>) and the Hungarian Helsinki Committee (HHC), the local police are applying a discriminatory fining practice in numerous settlements – mainly in north

⁷ See: <https://dailynewshungary.com/ec-launches-infringement-procedure-against-hungary-over-segregation-of-roma-children-in-schools/>.

⁸ See: <http://www.errc.org/article/romani-woman-harassed-by-racist-hospital-staff-during-childbirth-wins-case/4543>.

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.

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.⁹

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 is to clear out the area from Roma in the process of renovating a nearby football stadium. About half of the inhabitants left the settlement by 2015, and a number of houses have been destroyed by the authorities.¹⁰ In spring 2017, the destruction has continued, another 80 houses were destroyed by the authorities.¹¹ The Miskolc local government’s aim is to demolish the whole settlement, despite the decision by the Equality 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.¹²

⁹ See in Hungarian at: <https://www.ajbh.hu/-/az-ombudsman-es-nemzetisegi-biztoshelyettese-a-miskolci-kozos-hatosagi-ellenorzesekrol-a-lakhatasi-felteteleket-erinto-intezkedesekrol>.

¹⁰ See: <http://www.osce.org/odihr/262051> and <http://www.osce.org/odihr/262066>.

¹¹ See: <http://nepszava.hu/cikk/1124790-szamazott-utcak---nincstelensegbol-a-nyomorba-vezet-az-ut>.

¹² See: http://hvg.hu/itthon/20160125_Szamazott_utcak_Miskolcnak_lepnie_kell_a.