

HUNGARY - Submission to the UN Universal Periodic Review

11th session of the UPR Working Group of the Human Rights Council
November 2010

Contributed by: Chance for Children Foundation (CCF), European Roma Rights Centre (ERRC), Foundation for the Women of Hungary (MONA), Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ), Hungarian Civil Liberties Union (HCLU), Hungarian Helsinki Committee (HHC), Legal Defence Bureau for National and Ethnic Minorities (NEKI), Minority Rights Group International (MRG), People Opposing Patriarchy (PATENT), The City is For All (AVM)



1. INTRODUCTION & EXECUTIVE SUMMARY

1.1 As this report is being written, the Government is working on a new Constitution in Hungary, whose enactment seems assured as the Government maintains an absolute majority in Parliament. We as representatives of civil society are concerned that the changes in the Constitutional system may undermine the proper functioning of a democratic system which respects human rights and the rule of law. In our opinion, the current Constitution facilitates the proper functioning of a democratic government system which respects human rights and the rule of law for the first time in Hungary's modern history. Because the changes to the Constitution have not been enacted as of the drafting of this report, we are not addressing them further in this report but would hope for the opportunity to do so at the Council session in May when the exact nature of these changes becomes clearer.

1.2 **This submission will focus on six areas:** equality and non-discrimination, right to liberty and security of the person, administration of justice and the rule of law, freedom of association and peaceful assembly and the right to participate in public and political life, right to social security and to an adequate standard of living, and the right of the child. **The submission will highlight violations of rights against the following group of people:** Roma people and other national and ethnic minorities, religious minorities, people with disabilities, women, children, asylum seekers and LGBT persons.

1.3 Submitting organizations raise concerns that Roma people and people with disabilities are not provided with equal opportunities regarding **employment, education and health care**. Detainees still suffer **ill-treatment** by law enforcement officials and Roma prisoners are more likely to be affected. Asylum seekers are often **unlawfully detained** and the principle of non-refoulement has been witnessed to be violated. There is no adequate legal protection against the exploitation of women in **human trafficking, gender-based violence and domestic violence**, in which cases children living in childcare institutions, Roma children and women are highly vulnerable. As a result of the **lack of proper administration of justice and the rule of law**, the Roma minority and people with intellectual disabilities still face discrimination by the police, in judicial procedures and in prosecution.

1.4 There is a tendency in Hungary to classify crimes as “common” crimes rather than **hate crimes** with bias motive. As a result of this, there are no reliable statistics on the real number of racially motivated crimes in Hungary. The bias of motivation is also ignored when it comes to LGBT persons or Jewish people. The Hungarian legal system prohibits incitement against a community but dangerous and **malicious speeches** are not prosecuted despite the increasing

number of anti-Roma statements, even from public authorities and politicians. At the same time, the new media legislation jeopardizes editorial freedom and the operation of the **independent press**.

1.5 People with disabilities' **right to association, to participate and their right to vote** are violated. **Political participation** on a parliamentary level is not ensured for national and ethnic minorities and their right to participate needs to be strengthened on a local governmental level as well. There is no enforceable obligation of the state to provide **adequate standard of living** to people living in substandard, unsanitary conditions including homeless people and mostly Roma people living in segregated settlements. People with disabilities are often not provided with appropriate **social protection**. Roma **children** are still overrepresented in the Hungarian child protection system. The situation of foreign unaccompanied minors and juveniles in detention are also dissatisfactory. *Submitting organisations included recommendations in Annex 1.*

2. EQUALITY AND NON-DISCRIMINATION

A) Employment

2.1 The Hungarian law is contradictory on whether a person under full guardianship could be party to a labour relationship and whether the signature of his or her guardian on the work contract can be accepted. Moreover, despite its international obligations, the Government fails to require reasonable accommodation which constitutes discrimination on the basis of disability.

2.2 The Roma minority is four to five times as likely to be affected by unemployment as the majority of the population. With the majority of the Roma living in economically disadvantaged regions, the low level of education and training and discrimination in the labour market are aggravating factors. Based on the case-practice of the Legal Defence Bureau for National and Ethnic Minorities (NEKI), local municipalities often discriminate against the Roma in hiring for community service work.

B) Education

2.3 An increasing number of Roma children are deprived of equal education due to school segregation.¹ According to sociological research available on the website of the Ministry for Education, about 30% of all primary schools in Hungary deny access to quality education for Roma children by some kind of segregation practice.² As a direct result, while 80% of the majority population will leave the school system with a secondary school diploma, only 10% of Roma children do so.³ Roma children are also overrepresented in schools for children with intellectual disabilities due to discrimination. There is no legal obligation which would make inclusive education mandatory. Although the Equal Treatment Act (ETA) and the Public Education Act ban segregation in Hungary, in practice the lack of special training for teachers

¹ In 1992 7.1%; in 2000 18.1% and in 2004 20–25% of Roma children attended a primary school in which the proportion of Roma was over 40%, and every sixth Roma child attended a school in which more than half of the student population was Roma. See: Havas, Gábor, and Ilona Liskó. Szegregáció a roma tanulók általános iskolai oktatásában, Kutatási zárótanulmány, (Segregation in the Education of Roma Students in Primary Schools, Final Research Report), September 2004, Research Institute of Higher Education (Felsőoktatási Kutatóintézet, kézirat).

² <http://www.nefmi.gov.hu/kozoktatas/orszagos-oktatasi/beszamolo-ooih-2005-evi-090803-1>.

³ Liskó Ilona - Havas Gábor: Szegregáció a roma tanulók általános iskolai oktatásában/2004, http://www.biztoskezdet.hu/uploads/attachments/havas_lisko_szegregacio_altalanos.pdf.

and the low level of social awareness all hinder the spread of inclusive education, and equal recognition of children with intellectual disabilities.

2.4 A Chance for Children Foundation (CFCF) started public interest litigation in the Courts. The High Court and in one case the Supreme Court found the practices of the Municipal Education Authorities illegal in Miskolc, Hajdúhadház, Kaposvár, and Győr; the case of Nyíregyháza was settled out of court. The Court banned the Municipalities from their segregating practices in all cases, and schools exclusively for Roma children have been closed. CFCF is presently in a process against the Ministry of Education, requesting the High Court to instruct the Ministry to actively enforce current legislation concerning school segregation.

C) Health care: disability and forced sterilization

2.5 In general, the equal access to health care services is not ensured for persons with intellectual disabilities in regard to quality, fees, infrastructure and geographical accessibility. The representatives of persons under guardianship need to give their consent only to invasive interventions.

2.6 Coercive sterilisation remains a concern for Roma 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 the basis of medical indication and the reversibility of sterilisation procedures; monitoring of hospitals that perform sterilisation is not performed. The European Roma Rights Centre (ERRC) and its partner are providing legal representation to a client who was coercively sterilised in a public hospital in 2008.

2.7 Women's reproductive health care services are often limited on the basis of the argument that mothers' right to self-determination is in conflict with the right to life of the foetus. The recognition of independent midwives as a professional group is still missing, just as the creation of legal framework of homebirth in Hungary. As a result, independent midwives get criminalised in any cases of birth complications and latest, one of the midwives was taken into custody after a rapid birth where the infant needed to be brought into hospital.

3. RIGHT TO LIBERTY, AND SECURITY OF THE PERSON

D) Torture or ill-treatment of detainees

3.1 Hungary is one of the few European countries where actual life imprisonment without the possibility of parole exists, constituting a violation of human dignity and amounting to inhuman treatment. In addition, the Penal Code recently passed an amendment making it mandatory for the courts to sentence suspects to life imprisonment if certain conditions are met. Hungary has still not signed and ratified the Optional Protocol to the UN Convention against Torture. Furthermore, the independent medical examination of persons who claim to have been ill-treated by officials is still not guaranteed, since physicians employed by the police or the penitentiary institution examine detainees before their placement in the respective detention facilities and record their health status, including potential injuries.

3.2 Regarding the judicial practice in ill-treatment cases according to available statistics, we can conclude that judges are more lenient vis-à-vis police officers ill-treating civilians than the other

way round.⁴ A survey focusing on the situation of pre-trial detainees in police jails and penitentiary institutions showed that Roma prisoners in pre-trial detention were more likely to suffer ill-treatment than non-Roma prisoners.⁵

E) Unlawful detention

3.3 The practice of keeping asylum seekers in detention beyond the period of pre-assessment procedure of maximum 15 days continued in 2009-2010, clearly in violation of the national law. As it is described in the US Department of State's annual human rights report (released on 12 March 2010), the Office of Immigration and Nationality (OIN) ignored the position of the Chief Public Prosecutor, who called on the OIN to terminate immediately this unlawful practice.⁶

3.4 Detention conditions of irregular migrants are worrisome and in violation of international standards. Recreational activities, proper hygienic conditions, access to health care and psychosocial assistance are not provided at all. In most of the alien policing jails the detention regime is extremely strict. Detainees are locked up in their cells all day and all night long, except for a few hours that allow them to have a shower and spend some time in community areas.

F) Right to asylum

3.5 According to the Hungarian Helsinki Committee's (HHC) experience, police officers sometimes fail to identify asylum seekers in border procedures (e.g. references to the war in the country of origin and the wish not to return home may not be considered as an asylum claim, not even in the case of a Somali citizen).

3.6 In spite of the legal provisions in effect, the HHC has witnessed several practices that may constitute a breach of the principle of *non-refoulement* on the entry and residence of third-country nationals e.g. a) alleged cases of forced return of asylum-seekers or foreigners probably in need of international protection to Ukraine. Or b) the forced return of asylum-seekers, even persons who are particularly vulnerable, to Greece on a regular basis.

G) Human trafficking

3.7 The definition of trafficking in human beings (THB) in the criminal code is difficult to prove and does not refer to sexual exploitation as a purpose. Responsible authorities do not receive adequate trainings and the police do not treat human trafficking and sexual exploitation as priorities. Transparent social, healthcare, legal and psychological assistance of adequate quality and properly monitored does not exist. Efforts and resources focus mainly on international trafficking, therefore, there is even less prevention, assistance and prosecution as concerns internal trafficking, leaving such victims and potential victims even more vulnerable and unassisted. Victims – even if they are minors – are treated rather as criminals. The majority of identified cases are for sexual exploitation and most victims are women.

3.8 Women living in poorer regions, young women, children, those living in childcare institutions and Roma are highly vulnerable to become victims of trafficking. ERRC research

⁴ http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HelsinkiCommittee_Hungary_HRC100.pdf, pp. 9-10

⁵ András Kádár: Presumption of Guilt. Injurious Treatment and the Activity of Defense Counsels in Criminal Proceedings against Pretrial Detainees. Hungarian Helsinki Committee, Budapest, 2004, http://helsinki.hu/dokumentum/Presumption_of_Guilt.pdf.

⁶ The full report is available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136035.htm>

found that Roma women and youth are perceived to represent between 40 and 80% of victims of THB in Hungary.⁷

H) Violence against women

3.9 Gender based violence is officially considered as a social problem. The Penal Code still treats sexual crimes as crimes against decency and the definition of rape is based on the use of force rather than lack of consent. There is no specific law on domestic violence against women and both legislations on restraining and preventive protection orders cannot provide effective protection to victims of domestic violence. No protocols or systematic trainings are available for law enforcement personnel.

3.10 ERRC research indicates that gender based violence is an acute problem for Roma women and showed that Roma women, who suffer violence, face multiple discrimination and further victimisation when seeking justice or redress from the police. The distrust of the police results in a great reluctance by Roma women to report incidents of violence.⁸

4. ADMINISTRATION OF JUSTICE AND THE RULE OF LAW

I) Police

4.1 The Roma minority still experiences discrimination from the police. Because of their ethnic origin, they usually face immediate detention if they are accused of having committed a crime; they do not have access to the necessary information regarding their rights, as laid down in the Criminal Code. The free defence attorneys for disadvantaged persons provided by the state are a further source of discrimination. The attorneys usually do not take efforts in these underpaid cases, especially when Roma persons are involved. Besides discrimination, police brutality during investigation (especially during interrogation) still exists. Unfortunately, according to the experiences of NEKI, it is almost impossible for the victims to prove these crimes even if they have medical certificates about the injuries.

J) Justice

4.2 Access to justice and other procedural rights of persons with intellectual disabilities are very restricted. People who are under guardianship, with very few exceptions, are deprived of their right to participate and act directly in civil procedures, since it is the guardian who acts on behalf of them. Persons under guardianship are excluded from participation in public administration procedures as well. In criminal procedures, involving private prosecution, the guardian decides whether or not to go to court.

K) Prosecution

4.3 While the Hungarian legal system provides all the guarantees regarding criminal procedures that are required by international standards, the practice shows that the prejudice against Roma persons in the police often results in openly biased behaviour which can influence their work when Roma are concerned either as victims or as perpetrators. The lack of information regarding their

⁷ ERRC. Trafficking Roma youth and women in Eastern and Central Europe: Analysing the effectiveness of the national laws and policies in prevention, prosecution and victim support: Internal working document.

⁸ ERRC. Written Comments of the European Roma Rights Centre Concerning Hungary For Consideration by the United Nations Committee on the Elimination of Discrimination against Women, available at: <http://www.errc.org/cms/upload/media/03/7A/m0000037A.pdf>.

rights, reluctance, omissions and negligence from officers often results in their restricted enjoyment of their right to a fair procedure.

4.4 The rights of persons with intellectual disabilities barely prevail in penal procedures since there are no coherence between the Disability Act and the Criminal Procedure Act. The Office of the Ombudsman also states that their situation is even worse in case of detention. Besides the violation of rights, there are no compulsory protocols for the actors, and the special needs of persons with intellectual disabilities are not represented in the legislation and practice.

L) Investigation of hate crime

4.5 The ERRC registered at least 48 violent attacks against Roma resulting in 9 fatalities since 2008. The attacks left dozens of people with injuries, 10 of which were life-threatening; in at least 12 cases Molotov cocktails were used, in 2 cases hand grenades; in at least 12 cases shots were fired; and in at least 9 cases Roma property was vandalised. ERRC has been closely monitoring 13 of these attacks, of which only 1 perpetrator has been found guilty to date.⁹ According to available information, racist motivation was not established in any of these cases. In Hungary, there is no systematic monitoring of racist violence or collection of data disaggregated by ethnicity, including in criminal justice matters.

4.6 There are no reliable statistics on the real number of racially motivated crimes in Hungary. The reason for the very low number of registered hate crimes is that the police often fail to classify violent crimes as hate crimes, and even prosecutors and the courts are reluctant to recognize bias motivation. There is a tendency to rather classify crimes as “common” crimes than hate crime as stipulated by the Criminal Code thus ignoring the bias motive. Moreover, there are no records on crimes where the hate motivation was considered as an aggravating circumstance.

4.7 According to NGOs, Roma victims face very often discriminatory treatment by the police: officers are reluctant to register their reports and especially the racial motivation of a crime reported. Severe omissions and negligence on the part of state authorities in handling the series of violent attacks have been revealed.¹⁰

4.8 The bias of motivation is not only ignored by the authorities in case of crimes committed against Roma: several incidents against LGBT persons and Jews were classified by the police in the past few years as “common” crimes instead of hate crimes without any investigation into what appeared to be a bias motive.

4.9 Despite these problems and the analyses of international and Hungarian human rights organizations, no professional trainings and capacity-building activities for law-enforcement officers dealing with international standards of investigating hate crimes have been introduced, and there is no protocol on the investigation of hate crimes available for policemen and prosecutors.

⁹ ERRC. Attacks against Roma in Hungary, available at: <http://www.errc.org/cikk.php?cikk=3042>

¹⁰ NGOs report on the circumstances of the double murder committed at Tatárszentgyörgy on 23 February 2009 and conduct of the acting authorities (the police, ambulance and fire services), available at: <http://errc.org/cms/upload/media/03/DA/m000003DA.pdf>

5. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY AND THE RIGHT TO PARTICIPATE IN PUBLIC AND POLITICAL LIFE

M) Hate speech

5.1 The Hungarian legal system prohibits incitement against a community. In the era of hate speech, any law restricting freedom of speech should require that there be an imminent danger. Therefore, the incitement of hatred (as well as hate-inspired violence) is a crime, but simple outrageous hate speech is not. It is of crucial importance to underline that it is forbidden to coerce a captive audience (usually minorities) to listen to hate speech. This captive audience doctrine is neglected by responsible authorities. Courts frequently fall short of adequately assessing a 'clear present danger', because of their inability to properly determine the immanency of the danger. Hence dangerous hate speeches, such as incitement to hatred are not prosecuted at all.

5.2 The ERRC has recorded many instances of anti-Roma statements by public authorities and politicians and statements advocating hatred towards the Roma. Apart from two decisions from the Equal Treatment Authority, Hungarian government authorities have not taken sufficient steps to ensure effective implementation of legislation against public authorities in relation to prohibiting incitement to racial discrimination. The reluctance of high-ranking Hungarian authorities to condemn anti-Roma statements creates a climate in which such statements are tolerated and in which ordinary citizens feel emboldened to act violently towards Roma.

5.3 The latest modifications concerning criminal regulations added the denial of crimes committed during the National Socialist or Communist regimes as criminal acts. This new law is too vague and consequentially dangerous, because it can be used to create a chilling effect on all free speech.

N) Media

5.4 New media legislation was passed in October 2010. The basic approach was to put all media in the same regulatory basket, to apply the same rules to print, internet, television and radio. The development of digital technology makes the media regulation package unreasonable. The Bill makes source protection and investigative journalism impossible. The mandatory content requirements, compulsory pre-registration, and standards regarding "public morality", a term referring to a vague set of moral and ethical standards with the danger of arbitrary interpretation, jeopardize the editorial freedom and through this, the operation of the independent press. The impact that this legislative package would have on the restriction of free speech is considerable and does not serve the needs of a free, democratic and plural society.

5.5 According to the new legislation, the Public Service Broadcasting Television and Radio and the National Media and Telecommunication Authority are not independent from the government with respect to the nomination process and financing. Head of the Media Council is appointed by the Prime Minister, members of the Media Council are elected for 9 years and all of them are re-electable.

O) Freedom of association

5.6 With respect to participation in public life and political organisations, the Hungarian law does not exclude persons with disabilities from membership of social organisations. In spite of

this, there are numerous legal provisions barring persons under plenary or partial guardianship from attaining certain positions or memberships.¹¹

P) Freedom of assembly

5.7 The Hungarian Act on the Right to Assembly requires all demonstrations to be announced three days before the demonstration. The legal grounds for this restriction is in the Act on Assembly, however, European Court of Human Rights in *Bukta v. Hungary* (2007) decision and the Constitutional Court of the Republic of Hungary 75/2008 (V. 29) decided that the three day rule is not applicable in all matters. Therefore, the lack of compliance with the three-day-requirement does not result in the obligation from police to disband an assembly. Prior to 2010, the annual LGBT demonstrations were attacked by right-wing extremists and the police fell short in protecting the demonstrators. Some people were beaten up and even hospitalized due to these attacks.

R) Right to participate and incapacity

5.8 The number of persons under guardianship is extremely high, as compared to the population of Hungary and the number of persons under guardianship in other countries of the world. According to the statistics, there are approximately 80 000 persons¹² under guardianship in Hungary. The domestic legislation does not satisfy the legal principle of necessity and proportionality as it does not contain alternatives to guardianship, i.e. legal solutions which support the exercise of legal capacity without restricting or denying it. Several other provisions related to guardianship do not correspond to international obligations (review of guardianship, expert opinions, conflict of interests etc.) On the other hand, due to placement under full guardianship, the person is automatically deprived of exercising numerous other fundamental human rights.

S) Right to vote

5.9 Due to one article in the Hungarian Constitution citizens under guardianship lose their right to vote, regardless of their actual abilities without discretion as soon as the decision of the court on placing them under guardianship comes into force. The European Court of Human Rights stated in May, 2010 that the automatic disenfranchisement constitutes a violation of the Article 3 of Protocol No. 1 to the European Convention.¹³ Since the resolution, there has been no official communication from the new Government.

5.10 There are serious deficiencies in the legislation and in practice in relation of exercising the right to vote for people with disabilities: the polling establishments are not accessible for persons with disabilities, the election materials are not available in easy-to-read format, and the ballot counting committee cannot communicate properly with persons with disabilities.

T) Rights of minorities to political participation on a local governmental and a national level

5.11 Hungary declared the right of its 13 national and ethnic minorities to be represented in the National Assembly in 1993. Despite this, only recently was a bill proposed, which encourages

¹¹ Article 1 (4) d) of Act IV of 2006 on Business Associations; Article 30 b) of Act X of 2006 on Co-operatives; Article 27 (5) a) of Act CXXI of 1999 on Chambers of Commerce; Article 18, Article 46 (1) of Act XXII of 1992 on the Labour Code

¹² The number of persons under guardianship in 2010, according to the register of voters, is 75,415 people.

¹³ Case of *Kiss v. Hungary* (application no. 38832/06)

their parliamentary representation through a maximum of 13 reserved seats. The number of votes needed to be collected to gain a mandate are, however, too high. Recommendations contributed by the national minority self-governments on how to ensure parliamentary representation for numerically smaller minorities were neglected.

5.12 Enhancing political participation of minority representatives at all levels can play a key role in the social and economic integration of the Roma. In the last few years, more and more municipal governments have issued or threatened with issuing decrees arbitrarily imposing a sanction on the provisions of social benefits. Minorities' right to give an opinion and to be consulted through the minority self-government system is ensured in law. However, it is in many cases ignored in practice when it comes to issues related to minorities' social and economic rights. The wording of the law leaves a wide margin for municipal governments to manoeuvre.

6. RIGHT TO SOCIAL SECURITY AND TO AN ADEQUATE STANDARD OF LIVING

U) People with disabilities

6.1 The Hungarian social protection system provides a variety of services to persons with disabilities, yet some of these services and the conditions of their availability fail to provide appropriate social protection. In Hungary, the placement of persons with intellectual and multiple disabilities in large residential institutions is typically favoured over services that support the participation of persons with disabilities in the community.¹⁴ Despite international obligations, there are no overall legal regulation and governmental strategy for deinstitutionalization. There are still many public buildings which are not accessible for people with disabilities.

6.2 People living with disabilities have significantly lower education and a high proportion of them are unemployed. The Hungarian system of social employment does not support sufficiently the integration of people with disabilities and altered workability to the open market. People with disabilities who belong to the Roma minority are in a specifically defenceless situation: their indexes of education are dramatically lower in comparison to any other population group.

6.3 For children with severe and multiple disabilities, the right to participate in the public school system is not guaranteed. It is not obligatory for regular schools to set up classes for children with severe and multiple disabilities.

X) Right to housing

6.4 Hundreds of thousands of citizens live in evidently inadequate, substandard, unsanitary conditions, including around 130 thousand (mostly Roma) people who live in segregated settlements.¹⁵ The state has no enforceable obligation to provide adequate housing for at least the most vulnerable groups of homeless people. Because of a lack of adequate legal framework, the lack of permanent address often leads to discrimination in the areas of voting, employment and social provision. Approximately 6 thousand people are sleeping rough.¹⁶

¹⁴ According to the Central Statistical Office in 2008, a total of 24, 658 persons with intellectual and mental disabilities lived in residential institutions.

¹⁵ Dr. Kósa Karolina: A DE-OEC Népegészségügyi Kar telepelmérésének adatai az Északkelet Magyarországi Egészség Obszervatórium számára

¹⁶ <http://beszelo.c3.hu/cikkek/hajlektalanok-a-szavak-es-szamok-halojaban>. For the whole country, estimations consider double the value for Budapest.

6.5 Local governments offering social housing often evict families in deep poverty, because they cannot pay even the lowest rent. Roma are overrepresented amongst these families. They also face discrimination when applying for housing (both social and private housing).

7. RIGHT OF THE CHILD

Y) Overrepresentation of Roma children in children's homes

7.1 ERRC research reveals that Roma children are over-represented in the Hungarian child protection system: in the sample of children in professional care institutions interviewed by ERRC, 40% were of Roma origin and 18% were half-Roma; 58% in total. Roma children account for only around 13% of the child population in Hungary.¹⁷ There is no official data disaggregated by ethnicity meaning it is difficult to access the full extent of this problem. The removal of children from their families for purely economic reasons is banned by the law, but Roma children appear to be removed more frequently for economic reasons than non-Roma children.

7.2 Research found that in every age group those children who were considered Roma have a higher probability of being placed in a children's home than those who were not considered as Roma. A bigger proportion of the children who were not considered as Roma were placed into family-like care or community settings than those who were considered as Roma.

7.3 Due to an amendment to the Penal Code in 2005, children of divorced couples are forced to keep contact with their parents living separately. Refusal of the contact by the child is considered as a crime committed by the primary caregiver parent (typically, the mother): "endangering a minor by hindering the visitation right of the other parent".

V) Juvenile justice

7.4 The new Government introduced extremely strict regulations on petty offences against the property, which have become punishable with confinement (before they were only punishable with a fine). Moreover, the previously existing ban on sanctioning juveniles with a confinement was abolished. Alternative sanctions (e.g. labour in the public interest or mediation) are not applicable in these proceedings, which violates the best interests of the child.

7.5 Regarding the detention of convicted juveniles or those under pre-trial detention the Ombudsman expressed grave concerns over the conditions in Tököl and Szirmabesenyő, and voiced criticism with regard to the high number of violent acts among inmates in these institutions. The atmosphere of the juvenile penitentiary in Tököl was the worst experienced during the entire investigation, also the lack of daily warm showers and the quality of food was severely criticized.

Z) Foreign unaccompanied minors

7.6 The Government uses the transposition of the EU Return Directive to lower standards or to introduce restrictions on fundamental rights related to the rights of asylum seeking children in Hungary. Proposed restrictions include the max 30 days detention for unaccompanied minors and families with children. This is unjustified and inadequate for children that are often traumatized, fleeing persecution or serious human rights violations.

¹⁷ ERRC. 2008. Dis-Interest of the Child: Roma Children in the Hungarian Child Protection System, available at: <http://www.errc.org/cikk.php?cikk=2960>.

Annex 1

RECOMMENDATIONS

HUNGARY - Submission to the UN Universal Periodic Review

11th session of the UPR Working Group of the Human Rights Council
November 2010

Submitting organisations encourage the Human Rights Council to recommend in its concluding observations that Hungary:

Employment

- Introduces the rules of reasonable accommodation into the legal environment by the amendment of the Act on Equal Treatment and the Promotion of Equal Opportunities;
- Changes the regulation of legal capacity, which is closely linked to the guardianship system, in general as well as in connection with employment.

Education

- Ensures the enactment in national legislation of an enforceable statutory duty to desegregate education requiring public authorities to take action to eliminate segregated education within a fixed period of time;
- Introduce an immediate moratorium on admissions of Romani children to special schools;
- Promotes the breaking down of prejudices against the social equality of genders in the educational system;
- Drafts a strategy for the introduction of an inclusive education and provide financial assistance for it;
- Provides appropriate training for teachers.

Health care: disability and forced sterilization

- Reviews legislation on the concept of sterilization for medical indications and remove the paragraph on sterilization for medical indication from the Hungarian Public Health Act;
- Amends the Hungarian Public Health Act by saying that “patient has to be informed about the permanent nature of the operation” rather than “chances of reinstalling fertility”;
- Regularly monitors public and private health centres which perform sterilisation procedures to ensure that patient has given fully informed consent before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach;
- Creates the legal framework for homebirth in accordance with respective international norms;
- Provides disability training for health care professionals, with special regard to women with disabilities;
- Implements existing legislative measures regarding the procurement of necessary instruments and the access to health care services to persons with intellectual disabilities:

provide services on an equal basis and with respect to primary (paediatric) care, dental care, as well as specialist medical services.

Torture or ill-treatment of detainees

- Eliminates ‘actual life imprisonment’ (i.e. life long sentence without the possibility of parole), thus, make conditional release available to all sentenced prisoners;
- Signs and ratifies the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and designate the National Preventive Mechanism;
- Ensures that persons deprived of their liberty who claim to have been ill-treated by officials have access to independent medical examination;
- Ensures effective remedy provided to victims of ill-treatment by officials.

Unlawful detention

- Stops the practice of arbitrarily detaining asylum seekers in immigration detention beyond the period prescribed by the law;
- If detention of migrants is deemed necessary, provides adequate detention conditions with sufficient space, recreational activities, outdoor stay and psychosocial assistance for people in need;
- Takes effective steps that police personnel guarding immigration jails undergo systematic intercultural, basic human rights and conflict resolution trainings.

Right to asylum

- Takes effective steps that police provide adequate mechanisms to identify potential asylum seekers in border procedures to better respect the principle of *non-refoulement*;

Human trafficking

- Amends criminal legislation according to the standards set forth in the Palermo Protocol, with adequate attention paid to internal trafficking and its victims; include sexual exploitation as a purpose;
- Develops institutional system that is adequately prepared to provide unconditional immediate and effective help to victims of trafficking and provide sustainable shelter;
- Collects and analyses data on victims of trafficking, including data disaggregated by gender, age, ethnicity and place of origin (also in cases of internal trafficking);
- Provides targeted prevention programmes in child care institutions and in socially and economically disadvantaged areas and develops prevention programs targeted to specifically Roma women and youth as well as children exposed to domestic violence;
- Provides trainings to law enforcement authorities, childcare, educational workers, social workers and NGOs in order to ensure effective identification of the victims.

Violence against women

- Provides a clear definition of domestic violence in a legally binding document based on international definitions;
- Introduces domestic violence as a *sui generis* crime in the Penal Code of Hungary;

- Reforms the Penal Code to define sexual crimes as crimes violating women's rights to bodily integrity and that the law defines rape as sexual intercourse without consent;
- Amends the regulations on the restraining orders, and any other law failing or hindering to provide effective protection against domestic violence in a separate piece of legislation on domestic violence;
- Makes gender-disaggregated statistical data collection an obligation;
- Introduces training courses for public officials with the involvement of NGOs having worked in the field of combating violence against women;
- Trains law enforcement officials and other relevant state actors to adequately and sensitively act in cases of violence against women;
- Provides financial support for existing services (telephone line and personal legal and psychological counseling) provided by NGOs;
- Recognises multiple discrimination in current and future policies and take concrete and effective steps to prevent and counter the effects of multiple discrimination faced by Roma women;
- Provides law enforcement officials and other state actors which assist victims of violence with anti-racism and anti-discrimination training in order to effectively assist Roma women, and other women from disadvantaged groups who are experiencing violence;
- Organises education programs for young Roma women on the protection against domestic violence.

Investigating hate crime

- Consistently, clearly and strongly states that attacks against Roma and other minorities are not acceptable in Hungary, each time an incident occurs;
- Investigates promptly and impartially incidents of violence against Roma and other minorities and prosecute perpetrators of such crimes to the fullest extent of the law, whether they are committed by law enforcement officers or by private parties;
- Makes guidelines and protocols to law enforcement and judicial authorities on identifying and investigating racially-motivated crime;
- Publishes detailed statistics in a format readily available and understandable to a lay person – at minimum yearly – the number of racially-motivated crimes occurring and prosecuted, including disaggregated data on the specific victim groups;
- Introduces professional training and capacity-building activities for law-enforcement, prosecution and judicial officials dealing with hate crimes;
- Provide ways to victims of hate crimes with access to counseling, legal assistance as well as effective access to justice should be explored in co-operation with relevant actors;
- Ensure co-operation at the national and international levels, including with relevant international bodies and between police forces, to combat violent organized hate crimes.

Prosecution

- Ensures that the Code on Criminal Procedure defines the procedural rights of persons with intellectual and psycho-social disabilities by introducing their special needs (such as the presence of a supporter at any procedural act) into the regulation of the Codex;

- Incorporates the special needs of persons with intellectual and psycho-social disabilities into the protocol and the training of the police, with special attention to the right to dignity of these persons.

Hate speech

- Adopts and implements policy for expressions of racial animosity in the police force or other branches of law enforcement and public administration, with swift and public punishment, including dismissal of offenders;
- Adopts effective measures to prevent, identify and, where relevant, punish manifestations of racial bias in the judicial system.

Media

- Modifies media legislation to ensure independent press in Hungary;
- Modifies the election of Member of the Media Council to ensure impartial and independent Authority in the field of media.

Freedom of Assembly

- Modifies the act on freedom of assembly to be in line with the European Court of Human Right's decisions.

Right to participate and incapacity

- Revokes plenary guardianship and guardianship with general limitations, and present alternatives, such as supported decision-making, that do not involve the restriction of the capacity to act. The restriction of the capacity to act must be a last resort.

Right to vote

- Amends Article 70(5) of Hungary's Constitution, on the deprivation of the right to vote of persons under guardianship to ensure the right to vote for persons under guardianship.
- Incorporates the requirement of complex accessibility into the law on electoral procedure, thus electoral procedures in general would become barrier-free and accessible to persons with disabilities.

Rights of minorities to political participation on a local governmental and a national level

- Takes effective steps to complete the legislative process on the parliamentary representation of national and ethnic minorities in cooperation with and with the consent of the national minority self-governments of the 13 national and ethnic minorities;
- Takes effective steps to ensure the parliamentary representation of numerically smaller minorities; it should utilize the concept note put forward by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities regarding the issue;
- Takes more specific measures to improve the level of participatory decision-making and implementation in municipal governments with regard to minority.

Persons with disabilities

- Aligns the Hungarian social policy with the objectives of international obligations, and prepares a strategy for the replacement of large residential institutions, alongside with the

introduction of community based services. Even in the case of persons with the most serious disabilities, the right to live as part of a community should be recognized.

Right to housing

- Guarantees the enforceable right to housing first for the most vulnerable groups (families with dependent children, pregnant women, the elderly, the disabled, and the long term sick), and eventually for everyone in need.
- Radically improves the services and conditions of homeless shelters, increasing the social housing stock and increasing housing assistance.

Overrepresentation of Roma children in children's homes

- Ensures that all child welfare workers and professional child protection workers undergo anti-discrimination, cultural awareness and tolerance training on a continuous basis;
- Develops a set of objective criteria against which the competent authorities can make objective recommendations and decisions regarding the removal of children from their families;
- Develops and adopts a system of incentives for child protection services and agencies with demonstrated results in improving preventative services and reducing the levels of children actually in need of/moved into temporary, short-term and long-term professional care;

Juvenile justice

- Eliminates the possibility of sanctioning juveniles with a confinement in case of petty offences and ensure that alternative sanctions (e.g. labor in the public interest or mediation) are applicable also in petty offence proceedings against juveniles;
- Improves the conditions in juvenile penitentiary institutions and take effective steps in order to reduce the number of violent acts among inmates in these institutions.

Foreign unaccompanied minors

- Ensures that migrants or asylum seekers under 18 years of age are never detained in immigration jails for committing a petty offence (illegal entry or stay in the country);
- Finds alternatives to detention in order to ensure that e.g. the right to education of migrant children is respected.

Contributed by: Chance for Children Foundation (CFCF), European Roma Rights Centre (ERRC), Foundation for the Women of Hungary (MONA), Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ), Hungarian Civil Liberties Union (HCLU), Hungarian Helsinki Committee (HHC), Legal Defence Bureau for National and Ethnic Minorities (NEKI), Minority Rights Group International (MRG), People Opposing Patriarchy (PATENT), The City is For All (AVM)

