

# Minority Protection in Hungary

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# Minority Protection in Hungary

## I. Executive Summary

Hungary's efforts to provide a legal and institutional framework for minority protection predate its EU accession negotiations. Further steps have been taken since negotiations began, culminating most recently in the adoption of a comprehensive policy to improve the situation for Roma. Nevertheless, Hungarian Roma are subjected to persistent and debilitating patterns of racial discrimination as well as unremedied acts of harassment and violence. The recent decision by the French government to grant asylum to a group of Hungarian Roma illustrates dramatically that existing protections remain far from adequate.

Hungary's 1993 Minorities Act promises thirteen recognised minorities a considerable degree of cultural autonomy as well as a wide range of educational and linguistic rights through a system of local and national "minority self-governments."<sup>1</sup> In addition, Hungary has established an independent institution to monitor the implementation of minority rights and investigate complaints of violations – the Parliamentary Commissioner on the Rights of National and Ethnic Minorities (the "Ombudsman"). An active non-governmental sector, including minority and human rights organisations as well as a nascent public interest law movement, frequently challenges discrimination.

Yet research by these bodies has consistently indicated that Roma, Hungary's largest minority,<sup>2</sup> continue to experience widespread discrimination in education, employment, the criminal justice system and access to public services<sup>3</sup> – findings that are supported

<sup>1</sup> The guidelines for the establishment of minority self-governments are set forth in Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (hereafter "Minorities Act").

<sup>2</sup> The 1990 census counted 142,683 Roma, about 1.4 percent of the total population of approximately ten million. Estimates based on 1992 and 1993 educational statistics and regarded as reliable by experts put the number of Roma in Hungary at about 461,000, or 4.2 percent of the population (Kertesi, Kezdi, *A cigany nepesseg Magyarorszagon* ("The Gypsy Population in Hungary"), Socio-typo, Budapest, 1998). For more on demography see Appendix A.

<sup>3</sup> *1998, 1999 and 2000 Reports on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities*, Office of the Ombudsman, Budapest, 1999, 2000, 2001 (hereafter "*Ombudsman 1998; 1999; 2000*").

by both domestic NGOs and international organisations.<sup>4</sup> The well-documented practice of placing Roma children into separate schools for the mentally handicapped and/or segregating them into classes with inferior curricula and lower teaching standards ultimately contributes to high levels of unemployment and dependence upon local authorities for the distribution of welfare and other forms of social protection. Yet here, too, Roma experience discrimination: approximately 48 percent of complaints submitted to the Ombudsman in 2000 were filed by Roma against local governments.<sup>5</sup>

As yet, the Hungarian system does not provide effective remedies for racial discrimination. Hungary's anti-discrimination legislation is fragmented, lacks a consistent framework for imposing sanctions, and does not meet the standards required by the EU's Race Equality Directive.<sup>6</sup> Neither the Ombudsman nor the minority self-governments are empowered to raise direct legal challenges to discrimination, and state bodies are either unwilling or unprepared to act. In consequence, the task of enforcing anti-discrimination provisions is left to civil society organisations, who lack the institutional capacity to do so systematically.<sup>7</sup> The Ombudsman has explicitly supported the development of discrete comprehensive anti-discrimination legislation. Following initial opposition to this initiative, in 2001 the Ministry of Justice finally established an ad hoc committee to review the possibility of further steps in this direction.

The government's "Middle-term package of measures for the improvement of the living conditions and social situation of the Roma," (the "Mid-term Package")<sup>8</sup> outlines measures to be taken in the spheres of education, culture, employment, housing, health, anti-discrimination, and communication. Although a first version of the programme was adopted in 1997, it has yet to show effective results in addressing the central problems confronting Roma.

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<sup>4</sup> See, e.g. 1999 *Regular Report from the European Commission on Hungary's Progress Towards Accession*, 1999, stating *inter alia* that "Roma continue to suffer widespread prejudice and discrimination in their daily lives. They face discrimination in access to education, employment, public institutions and services. Their health and housing situation remain well below those of the rest of the population."

<sup>5</sup> *Ombudsman 2000*, p. 142.

<sup>6</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The directive is part of the *acquis communautaire*.

<sup>7</sup> Commenting on domestic remedies available to Roma victims in a recent high profile case, the government noted: "The families of Zámoly [...] could have turned to NGOs representing human rights, which also undertake the representation of the interests of the Roma minorities." *Hungarian Mirror*, official newsletter of the Prime Minister's Office, 2000/1, p. 5. No other legal remedies were mentioned.

<sup>8</sup> Government Resolution 1047/1999, amending Government Resolution 1093/1997, <<http://www.meh.hu/nekh/Angol/6-1999-1047.htm>> (accessed 16 May 2001).

Implementation of the Package has been hampered by several factors. First, official bodies tasked with coordinating implementation have not been invested with sufficient authority to oblige ministries to fulfil – or even report consistently on – their obligations.<sup>9</sup> A lack of coordination between implementing bodies has allowed certain of the Mid-term Package's goals to be subordinated to other, sometimes inconsistent, social policy initiatives. For example, new amendments facilitating evictions appear in practice to affect Roma families disproportionately,<sup>10</sup> thus undermining the government's commitment to find a "solution of the housing problems of the socially disadvantaged classes, including the Roma."<sup>11</sup>

Second, neither the Mid-term Package itself nor the relevant ministerial budgets specify amounts for implementation, thus complicating monitoring and evaluation. In part because of inadequate review of public expenditure on education, state funds intended to support Roma minority education have instead been used to fund segregated and poor quality "catch-up" classes. In the absence of accurate public information, officials have sometimes exaggerated the amount and efficacy of spending on assistance for Roma or blurred the distinction between policies targeting Roma and those addressing general poverty. This ambiguity has reinforced prevailing stereotypes of Roma as "parasites", who consume a disproportionate share of public expenditure, and diminished the prospects for improved relations between Roma and majority society.<sup>12</sup>

Third, the impact of EU Phare funding earmarked to support implementation of the Mid-term Package has been limited by ineffective governmental planning. A € five million Phare grant earmarked in 1999 to support education programmes was not disbursed until May 2001 due to delays in the development and submission of a practicable government proposal. Moreover, critics maintain that the "pilot projects" to be funded under the proposal, largely in the field of education, do not reflect a coherent government policy to address entrenched discrimination against Roma in the educational system.

The Commission has repeatedly drawn attention to discrimination against Roma in Hungary.<sup>13</sup> The 2000 report continues this trend, evaluating continued Roma over-

<sup>9</sup> Open Society Institute Roundtable, Budapest, 3 April 2001. *Explanatory Note: OSI held a roundtable meeting in Budapest on 3 April 2001, to invite critique of the present report in draft form. Experts present included representatives of the government, the Commission Delegation, and civil organisations.*

<sup>10</sup> A list of evictions in 2000 are detailed in European Roma Rights Center (ERRC), *Roma Rights*, No. 4, 2000, <[http://errc.org/rr\\_nr4\\_2000/snap17.shtml](http://errc.org/rr_nr4_2000/snap17.shtml)> (accessed 5 June 2001).

<sup>11</sup> Mid-term Package, para. 4.4.

<sup>12</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>13</sup> See, e.g. *Commission Opinion on Hungary's Application for Membership of the European Union*, 1997. See also *1999 Regular Report from the Commission on Hungary's Progress Towards Accession*, 1999; *1998 Regular Report from the Commission on Hungary's Progress Towards Accession*, 1998.

representation in special schools as “a sign of institutional prejudice and the failure of the public education system.” Strangely, the same report concludes that Hungary has fulfilled its short-term political priorities, *inter alia*, to “implement measures aimed at fighting discrimination [...] and increase access to education.”<sup>14</sup> Some Hungarian experts question whether the specific initiatives praised in the report – scholarships for Roma students, and the recruitment of Roma into the police forces – are sufficient to address institutional discrimination.

Nonetheless, existing conditions in Hungary provide a foundation for significantly improving the situation for the minorities, provided that public authorities demonstrate the political will to carry through necessary measures. These include providing effective support for civil society organisations, including Roma rights groups; expeditiously transposing the Race Equality Directive into Hungarian law; making clear in public statements by senior government officials that racism is unacceptable in Hungary; and implementing the Mid-term Package effectively, with provision for an authoritative implementing body, transparent accounting methods and credible monitoring and evaluation mechanisms.

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<sup>14</sup> DG Enlargement, *Hungary: 1999 Accession Partnership*, p. 4.

## II. Background

The extent of anti-Roma sentiment in Hungary today was well illustrated in the recent highly publicised case involving six Roma families who fled the country and applied successfully for refugee status in France. French recognition of their claim was particularly striking given that country's traditionally narrow interpretation of the Geneva Convention.<sup>15</sup> The families had experienced repeated efforts by the local government of Zamoly (Fejér county) to expel them from their hometown as well as a number of racially motivated attacks directed at their person and property. Following unlawful demolition of their homes by the Zamoly local government in 1997,<sup>16</sup> the families were moved to various temporary locations where they were universally made unwelcome, before choosing to leave the country.

The Zamoly case provoked a blanket denial of responsibility on the part of local and national public officials. The Zamoly mayor wrote that "they should have been working day and night for their own benefit, for their own future, but they failed to do so."<sup>17</sup> The mayor of Csor (a town where the group had been temporarily lodged) announced on national television that "the Roma of Zamoly have no place in this country. Just as in the animal world, parasites must be expelled."<sup>18</sup> One minister suggested that "some were going abroad to discredit Hungary, not only demanding compensation but making groundless allegations against the state and government."<sup>19</sup> And the Prime Minister, far from refuting these charges, remarked instead that Hungarian Roma should "try to study and work more."<sup>20</sup> After the March 2001 announcement that asylum had been granted to several families,<sup>21</sup> a spokesperson from the Prime Minister's

<sup>15</sup> UN Convention relating to the Status of Refugees of 28 July 1951, Art. 1. A(2) ("Geneva Convention"). A refugee is defined as a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country..."

<sup>16</sup> Ombudsman 1998, pp. 74–77. The Ombudsman noted that procedural and administrative laws were breached by the action.

<sup>17</sup> Letter in the *Fejér County Newspaper*, 26 January 2000.

<sup>18</sup> *Magyar Hírlap*, "Botranyriport a zamolyi romakról" ("Scandalous report on the Zamoly Roma"), 5 May 2000.

<sup>19</sup> Statement of 5 August 2000, cited in ERRC, *Roma Rights*, No. 3, 2000.

<sup>20</sup> Statement of 9 August 2000, cited in ERRC, *Roma Rights*, No. 3, 2000.

<sup>21</sup> A total of 35 Roma from Zamoly requested asylum; of this group, as of May 2001, 24 had been granted asylum; six had been rejected and were awaiting a decision on appeal by the French Office for the Protection of Refugees (OFPRA) and five were waiting for an initial decision. Information from NEKH, May 2001.

Office described the decision as “without grounds, inequitable and unfair” and warned that “this French decision may prompt the strengthening of an anti-Gypsy atmosphere.”<sup>22</sup>

The Zamoly events also illustrated the increasing willingness of some sectors of the Hungarian public to confront prejudice and recognise anti-Roma discrimination. A number of major newspapers published a diversity of opinions,<sup>23</sup> and a group of Hungarian intellectuals submitted an open letter to the French Prime Minister in support of the positive asylum decision.<sup>24</sup> Efforts such as these have yet to attract the public support of the government.

To the contrary, the propensity to stereotype Roma extends to the highest official levels. In a January 2001 radio broadcast, the Prime Minister introduced a public housing scheme to assist destitute Roma, declaring that “the real issue was whether we could find a way to ensure that the flats will not end up as decrepit as the last time, [where] Roma families moved in and [...] within less than a year the flats had fallen to pieces, the parquet floors were ripped up, and the doors and windows destroyed. In other words, people felt cheated that the state had provided support from their taxes to those in need...”<sup>25</sup>

Many of the decisions which affect the lives of Roma most directly are taken at the local governmental level, where discriminatory attitudes against Roma are reportedly strong. One report on local government attitudes towards “foreigners” devoted considerable space to an examination of prevailing “anti-Gypsy” sentiment.<sup>26</sup> The study revealed an increasingly open expression of racist views among local authorities: 43 percent of respondents in 1998 said they would not allow Roma to enter their communities, compared to 23 percent in 1997.<sup>27</sup> Such attitudes sometimes translate

<sup>22</sup> *Hungarian Mirror*, official newsletter of the Prime Minister’s Office, 2001/3, p. 3.  
See <[http://www.hungarianmirror.hu/issues/HM\\_2001\\_3.pdf](http://www.hungarianmirror.hu/issues/HM_2001_3.pdf)> (accessed 9 May 2001).

<sup>23</sup> See e.g., articles by A. Biro, *Népszabadság*, 24 August 2000; J. Nyiri, *Magyar Nemzet*, 17 August 2000; O. Neumann, *Magyar Hírlap*, 17 August 2000; J. Orsos, *Népszabadság*, 16 August 2000; G. Csepeli, *Nepszava*, 12 August 2000; and I. Szasz, *Nepszava*, 14 August 2000.

<sup>24</sup> *Népszabadság*, 10 March 2001. The letter drew a comparison with the welcome received in France of Hungarians fleeing after the failed 1956 revolution.

<sup>25</sup> *Kossuth Radio*, regular Wednesday morning radio interview with Prime Minister Viktor Orban, 17 January 2001.

<sup>26</sup> The choice to include Roma in a study on foreigners illustrates the high level of marginalisation experienced by this group within Hungarian society.

<sup>27</sup> E. Sik, *Kulfoldiek Magyarországon és a velük kapcsolatos nevezetek a helyi önkormányzatokban* (“Foreigners in Hungary and how they are viewed by local governments”), 1999, p. 15, <<http://www.tarki.hu/kiadvany-h/soco/soco11.html>>, (accessed 12 June 2001).



into directly discriminatory actions, such as forcing Roma out of, or preventing their entry into, certain communities, as described below.<sup>28</sup>

Despite increasing recognition of discrimination against Roma as a pervasive problem in Hungary, as yet there has been no comprehensive effort to document such violations on a countrywide basis<sup>29</sup> and few attempts to counter racism by high-ranking public officials. The Mid-term Package includes several “communication” tasks, including the development of a strategy to establish “a more realistic image of the Gypsies in majority society,” but to date the sole result has been the publication of a foreign language report to inform international opinion about government activities.<sup>30</sup>

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<sup>28</sup> For a list of cases, see Roma Press Center and Hungarian Helsinki Committee, *Chronicle of Everyday Events 1997*, Budapest, 1998.

<sup>29</sup> Governmental officials and independent experts assert that the main obstacle to research is the regulation set forth by the Hungarian Data Protection Act, which protects racial origin, national affiliation, nationality and ethnic status as “special personal data.” Act. LXIII of 1992 on the Protection of Personal Data and the Disclosure of Data of Public Interest, Art. 2. (Hereafter “Data Protection Act”). Although the Act does not preclude gathering such data on a the basis of voluntary submission, state bodies do not do so.

<sup>30</sup> *Measures Taken by the State to Promote the Social Integration of Roma Living in Hungary*. Ministry of Foreign Affairs, Budapest, 2000.

### III. Minority Protection: Law and Practice

Hungary has ratified all the major international instruments combating discrimination,<sup>31</sup> as well as the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages.

#### A. Protection from Discrimination

Hungary's legislation is not yet in line with the EU Race Equality Directive of June 2000.<sup>32</sup> The Constitution includes a general prohibition on discrimination<sup>33</sup> and anti-discrimination clauses exist in several different acts.<sup>34</sup> However, these provisions fail to establish a consistent system of sanctions for violations, and are not effectively enforced. Although legislation provides for reversal of the burden of proof in employment-related cases, this has never been tested.<sup>35</sup> As yet there is no legislation addressing indirect discrimination.<sup>36</sup>

The Civil Code prohibits discrimination against private persons on a number of grounds including race and national origin.<sup>37</sup> In the absence of a system of anti-discrimination

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<sup>31</sup> See Appendix A to Overview Report. Hungary accepted the competence of the CERD monitoring committee to receive individual complaints under Article 14 in 1990, but no complaints have been lodged to date.

<sup>32</sup> In 2000, the Commission noted that "[l]egislation transposing the EC Directive based on Article 13 of the Treaty relative to discrimination on the grounds of race or ethnic origin will have to be introduced and implemented." *2000 Regular Report*, p. 59.

<sup>33</sup> Constitution, Article 70/A: (1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever;  
(2) The law shall provide for strict punishment of discrimination on the basis of Paragraph (1);  
(3) The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.

<sup>34</sup> NEKH has produced a full list of laws containing anti-discrimination clauses, <<http://www.meh.hu/nekx/angol/6.htm>>, (accessed 18 June 2001).

<sup>35</sup> Council Directive 2000/43/EC, Art. 8(1).

<sup>36</sup> Council Directive 2000/43/EC, Art. 2(2b).

<sup>37</sup> Act IV of 1959 on the Civil Code, Art. 76; Art. 84.

sanctions, Article 84 on general sanctions has been used to punish racial discrimination.<sup>38</sup> This solution is generally considered insufficient, however, since the Civil Code does not allow for reversal of the burden of proof and sanctions are not specific to the offence.<sup>39</sup>

A debate over the introduction of a general anti-discrimination law has progressed since the previous government convened a committee to draft a 1997 package “to improve the living standards [...] of the Roma population.”<sup>40</sup> Experts on the committee argued that the current system is, *inter alia*, inconsistent, arbitrary and incomprehensive, and that it inhibits application.<sup>41</sup> It was suggested that the introduction of general anti-discrimination legislation, together with consistent sanctions and specialised investigative and prosecutorial bodies, would allow for the development of judicial expertise and jurisprudence in the field.<sup>42</sup>

In 2000, the Minister of Justice explicitly stated that the government would not draft legislation specifically addressing discrimination.<sup>43</sup> Nevertheless, the Ombudsman’s office presented a draft anti-discrimination act in October 2000.<sup>44</sup> Two months later, the Constitutional Court, ruled that although “it is not *per se* unconstitutional if a certain aspect of life is regulated in several different acts or decrees, instead of being regulated in a single legal norm [...] scattered regulation may lack provisions pertaining to certain

<sup>38</sup> For example, Act XXVI of 1998 on the Rights and Equal Opportunities of Disabled Persons does not explicitly prohibit. Article 27 reads as follows: “If an unlawful detriment is imposed on someone because of his/her disability, he or she may be entitled to exercise all the rights applicable in the case of the violation of the inherent rights of the individual.” This refers to the remedies enumerated under Article 84 of the Civil Code.

<sup>39</sup> See Legal Defence Bureau for National and Ethnic Minorities (NEKI), *White Booklets, 1997–2000*.

<sup>40</sup> Government Resolution 1093/1997, <<http://www.meh.hu/nekh/Angol/6-1999-1047.htm>>, (accessed 18 June 2001).

<sup>41</sup> See studies by G. Kardos, B. Tóth and I. Furmann in *A hatranyos megkülönböztetés tilálatol a pozitív diszkriminációig* (“From the ban on discrimination to affirmative action”), AduPrint – INDOK, Budapest, 1998. See also NEKI submission to the Constitutional Court, *White Booklet 1999*, p. 68.

<sup>42</sup> See J. Sandor, “A szabalyozas csapdai es dilemmái” (“The traps and dilemmas of regulation”), in Kardos 1998, p. 54.

<sup>43</sup> RFE-RL Newline, 18 April 2000, <<http://www.rferl.org/newsline/2000/04/180400.html>> (last accessed 5 June 2001).

<sup>44</sup> Provisionally entitled “Act No. .... of 2001 on Action against Racism and Xenophobia and on Assuring Equal Treatment”, 2 October 2000.

forms of discrimination.” Therefore the introduction of general anti-discrimination legislation would “not be unconstitutional.”<sup>45</sup>

In 2001, on the initiative of the Ombudsman, the Parliamentary Committee of Human Rights requested that the government include the adoption of an anti-discrimination act into its legislative programme. In response, the Ministry of Justice established an *ad hoc* “Codification Committee” to review the issue. Critics point out that since the Committee was not established by decree or resolution, its composition, mandate and powers are not transparent.<sup>46</sup> At the Committee’s first meeting on 29 March 2001, it was decided to compile an overview of existing legislation.<sup>47</sup>

In practise, Hungary’s anti-discrimination legal framework is largely inoperative. The Ombudsman has reported cases of discrimination against Roma in a number of areas, including education, access to public goods and services, and employment.<sup>48</sup>

However, attempts to establish patterns of discrimination have been limited by the refusal of governmental institutions to collect ethnic data,<sup>49</sup> and the task of challenging cases of discrimination in the courts is shouldered by NGOs.

## 1. Education

Discrimination in public education on the grounds of, *inter alia*, ethnic origin, is prohibited by the 1993 Act on Public Education, although the law provides no sanctions

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<sup>45</sup> Constitutional Court Decision 45/2000. The Court further commented: “The Constitution itself contains fundamental anti-discrimination provisions. The details and safeguards of these provisions are contained in legal norms inferior to the Constitution [...] The Constitution and closely related legal norms contain provisions that – if taken together – add up to a comprehensive regulation of the prohibition of anti-discrimination. [...] One can conclude that effective legal regulations operate as a multifaceted defence system to eliminate discrimination, thus the Parliament has in this manner complied with its legislative obligation.”

<sup>46</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>47</sup> The Ombudsman notes that a number of overviews have already been compiled, most recently by NEKH in 1999. OSI Roundtable, Budapest 3 April 2001.

<sup>48</sup> The government Mid-term Package calls for “constant monitoring” of the acts containing the prohibition of negative discrimination by the Inter-Department Committee on Roma Affairs. The first report was to have been prepared by 31 December 1999, but as of June 2001, no public report had been issued.

<sup>49</sup> The Minister of Education has stated that he is “not authorised to commence a nation-wide inquiry to eliminate discrimination from the public education organisation practice, only to order a *professional* survey.” Ombudsman Report, 1999, Section 6.1.

in the event of breach.<sup>50</sup> Noting that systematic discrimination is difficult to prove in the absence of statistical data,<sup>51</sup> the Ombudsman has proposed that the Act should “define discrimination in education, and methods for uncovering cases of discrimination, proving discriminative action and employing necessary sanctions.” However, the proposals were dismissed by the Minister of Education, who claimed that “the regulation of these questions [does] not belong to the issue of public education[...] existing procedures provide sufficient guarantee for the elimination of abuse.”<sup>52</sup>

Schools throughout Hungary are increasingly ethnically segregated, beginning in kindergarten.<sup>53</sup> As one recent study demonstrated, in schools with a significant number of Romani children, the proportion of Roma to non-Roma children has grown significantly from 1989–1999 (see Table 1).<sup>54</sup> Country-wide, 44 percent of Roma pupils now study in schools where they constitute more than 25 percent of the student body.

*Table 1*  
**The numbers and proportion of Roma children in 192 surveyed schools**

Year	Total Number of Students	Non-Roma Students	Roma Students	Proportion of Roma Students [%]
1989	65,906	49,385	16,521	25.1
1992	59,368	41,945	17,423	29.9
1999	55,875	33,255	22,623	40.5

SOURCE: *Institute for Educational Research*<sup>55</sup>

The development of “Roma schools” is related to segregation in housing; school populations tend to reflect local ethnic divisions. Nevertheless, distribution tends to be skewed even

<sup>50</sup> Act LXXIX of 1993 on Education, Art. 4(7).

<sup>51</sup> Ombudsman 1999. Prior to 1993, when the Data Protection Act came into force, comprehensive data on Roma school attendance was maintained at the Ministry for Culture and Education. See I. Kemeny in *Educatio* 1996/1, pp. 71–83.

<sup>52</sup> Ombudsman 1999, Section 6.1.

<sup>53</sup> P. Rado, “A kisebbségi oktatás fejlesztése – Az MKM stratégiai munkabizottság számára készített háttér tanulmány” (“The development of minority education – A background-study prepared for the strategic working group of the Ministry of Culture and Education”), in *Új katedra*, 1995/11 (Appendix). Also I. Lisko, “Kudarok középfokon” (“Mid-level failures”), in *Chrestomathy for the study of social inequalities*, K. Havas, I. Somorjai (eds).

<sup>54</sup> G. Havas, “Kitoresi pont: az iskola” (“Breaking point: the school”), *Beszelo*, November 2000, pp. 50–65.

<sup>55</sup> Havas 2000, pp. 50–65.

in urban centres such as Budapest, where a choice of schools exists; there are indications that non-Romani parents simply take their children out of certain schools, which then gradually become “Roma schools.” In one Budapest school, the proportion of Roma pupils increased from 40 to 100 percent between 1989 and 1999.<sup>56</sup>

Segregation appears to contribute to an alarmingly high dropout rate among Romani children.<sup>57</sup> ECRI has noted that “the percentage of the Roma population in elementary schools corresponds to their percentage in the population (around five percent), but decreases at secondary school level to less than one percent and at university level to around 0.1 percent.”<sup>58</sup>

### *Special Schools*

“Special schools” are intended for the physically or mentally disabled, and offer a limited curriculum with lower educational requirements. Where doubts exist about the ability of children to cope with normal school in Hungary, they may be “tested” with a view to attendance at a special school instead. Roma children are reportedly over-represented at both the referral and selection stages.<sup>59</sup> The percentage of Roma children attending special schools grew from about 25 percent in 1974–75 to 42 percent in 1992;<sup>60</sup> a 1998 survey in Borsod county showed over 90 percent of students attending special schools in that county to be Roma.<sup>61</sup> ECRI reports that “such channelling, which in principle is carried out by an independent board, is often quasi-automatic in the case of Roma/Gypsy children.”<sup>62</sup> Children assigned to special schools are rarely transferred to “normal” primary schools, receive the lowest standard of education, and stand little chance of continuing to secondary or even vocational school.

### *“Roma Minority Programmes”*

Roma students are frequently segregated into substandard classes within normal schools also, a practice which is in part institutionalised by the misuse of state funding for the

<sup>56</sup> Havas 2000, p. 58.

<sup>57</sup> According to data gathered by the Educational District Centres in 1995, the number of dropouts from separated ROMA classes and special schools was higher than elsewhere. E. Harsanyi, P. Rado, “Cigany tanulok a magyar iskolákban” (“Gypsy students in Hungarian schools”), in *Educatio* 1997.

<sup>58</sup> European Commission against Racism and Intolerance (ECRI), CRI (2000) 5, “Second Report on Hungary”, adopted on 18 June 1999, para. 33. (Hereafter “CRI (2000) 5”).

<sup>59</sup> Information from the Office of the Ministerial Commissioner for Educational Rights, November 2000.

<sup>60</sup> Data of the Ministry for Culture and Education, 1993.

<sup>61</sup> S. Loss, *Szakertői és Rehabilitációs Bizottságok hatásvizsgálata Borsod-Abaúj-Zemplén megyében* (“Survey on the Rehabilitation and Expert Committees in Borsod-Abaúj-Zemplén county”), manuscript, 1998.

<sup>62</sup> CRI (2000) 5, para. 31.

organisation of “minority education programmes.” The Minorities Act provides for minority education, and makes special allowances for Roma students, whereby a “catch-up” element can be combined with the requisite “minority culture and identity” curriculum.<sup>63</sup> Since 1993, “Roma minority programmes” have proliferated in Hungary, and significant amounts of state funding are distributed on an “ethnic quota” basis. In 2001, support for minority programmes was HUF 27,500 (c. € 105) per child per year, transferred directly to the “school maintainer” – the local government or other authority responsible for maintaining the school.<sup>64</sup>

According to one study, the system perpetuates educational disadvantages, rather than eliminating them.<sup>65</sup> Roma minority classes are generally segregated and substandard; they have inferior curricula and rarely if ever include teaching of Romani culture or language.<sup>66</sup> Parents rarely initiate the programmes and, according to the Ombudsman, are often uninformed as to their content. Roma children are frequently assigned involuntarily to these classes on grounds that parents do not find acceptable.<sup>67</sup>

Roma organisations and others have raised serious doubts as to the use of funds allocated to support Roma minority programmes.<sup>68</sup> The Ombudsman concludes in his 2000 report that “in several cases local governments – in cooperation with the schools – only organise Roma minority education to obtain supplementary normative support and exploit this form of education to segregate Roma pupils in a manner that is, apparently, lawful.”<sup>69</sup> According to one commentator, “given the lack of controls over the use of state funding, several local governments simply ‘gobble up’ the supplemental support intended for Roma students.”<sup>70</sup>

<sup>63</sup> Minorities Act, Art. 45(2): “[t]o relieve the disadvantages of the Gypsy minority in the field of education, specific educational conditions may be introduced.” These conditions have not been defined in eight years since the Act’s adoption. See Human Rights Watch, *Rights Denied: The Roma of Hungary*, 1996, pp. 69–72.

<sup>64</sup> See Ombudsman 2000, pp. 47–52.

<sup>65</sup> P. Radó, *Jelentes a cigany tanulok oktatásáról* (“Report on the education of Roma students in Hungary”), NEKH, 1997.

<sup>66</sup> Ombudsman 2000, pp. 47–52.

<sup>67</sup> In one recent case, Roma parents demonstrated against the placement of their children in a “catch-up” class as a result of their “hyperactivity”. Roma Press Center, “Tiltakoznak a romák a felzárkóztató osztály miatt” (“Roma demonstrate against catch-up class”), *Népszava*, 4 September 2000.

<sup>68</sup> Ombudsman 1998; Kertesi 1996. See also Human Rights Watch 1996, p. 72.

<sup>69</sup> Ombudsman 2000, pp. 47–52.

<sup>70</sup> J. Oppelt, “Cigany felzárkóztató programok elemzése” (“An analysis of Gypsy ‘catch-up’ programmes”), in A. Molnar (ed.), *A brief on minority education*, Expanzio Human Tanácsadó, Budapest 1997. Cited in Ombudsman 1998.

*Segregated Classes within Normal Schools*

Segregated classes also predominate in schools that do not operate minority programmes. Numerous reasons are offered for the persistent separation of Roma from non-Roma pupils. According to one analysis “[t]he formation of Gypsy classes which institutionalise a variant degree of progress is often justified by the language difficulties of non-Hungarian native speaking Gypsies”,<sup>71</sup> although it has long been recognised that integrated education is more successful in eliminating language disadvantages.<sup>72</sup>

Hygiene has also been cited as justification for the formation of separate classes. In August 2000, the Ombudsman appealed to the mayor of Bogacs, in Borsod-Abaúj-Zemplén county,<sup>73</sup> concerning the local school where Roma children were required to use separate toilets (in the same building), ate from wax-covered tables, and were referred to as “bushmen” by their majority peers.<sup>74</sup> The school was in receipt of supplementary funding of 1.5 million HUF (c. € 5,837) for “catch-up” and minority programmes. Similarly, the Tiszavasvári elementary school in Szabolcs-Szatmár county cited sanitation as the justification for barring Roma students from using the school gymnasium and cafeteria, and ultimately for holding the 1997 graduation ceremonies of Roma and non-Roma students on separate days. The Roma Civil Rights Foundation (RPA) filed a lawsuit against the school on the behalf of fourteen children, requesting compensation and an end to the school’s discriminatory and segregatory practices. The local government was ordered to pay compensation in late 1999, but allegedly the school still operates “Gypsy classes.”<sup>75</sup>

Roma are further frequently shunted into ordinary (non-minority) “catch-up” (*felzárkoztatás*) classes, funded by the state for students with “integrational, academic or behavioural” difficulties. Patterns of attendance in these classes reflect a high degree of segregation: Roma make up 84.2 percent of students in catch-up classes in 192 schools surveyed by the Institute for Education Research.<sup>76</sup>

<sup>71</sup> See Rado 1998.

<sup>72</sup> Z. Reger, “Cigany gyermekek nyelvi problémái és iskolai esélyei” (“Language problems and educational prospects of Gypsy children”), in *Iskolakultúra*, 1995, p. 24. Language difference was the basis of a 1962 provision by the cultural minister establishing separated Roma studying groups. See also Harsanyi, Rado 1997: “[v]iewed from the point of language disadvantages, the Hungarian school provides for neither assimilation nor for integration without assimilation for Roma students.”

<sup>73</sup> Roma Press Center, 27 August 2000, published in *Nepszava* and *Magyar Hírlap*, 28 August 2000.

<sup>74</sup> *Fókusz*, television programme, RTL Klub, 8 June 2000.

<sup>75</sup> Roma Press Center, “Effective Court Decision in the Tiszavasvári Segregated Graduation Case”, 22 April 1999; “Segregated Graduation Ceremony Renewed?” 4 May 2001. See <[www.romapage.c3.hu/engrsk.htm](http://www.romapage.c3.hu/engrsk.htm)> (accessed 18 June 2001).

<sup>76</sup> Havas 2000, p. 63.



Finally, separate classes are often set up to prevent the “emigration” of non-Roma children. Non-Roma parents have been known openly to demand separate classes, as in Hajduhadhaz, where a great number of Roma students attend catch-up classes in the town’s two elementary schools.<sup>77</sup> Principals at both schools say the special pedagogical programme is designed to help Roma students catch up, and is working well. However, there have been virtually no transitions from special to regular classes. The principals admit to prejudice among their teachers, but claim that majority parents support segregation of Roma children – on one occasion actively demonstrating for the removal of a class to a different school altogether.<sup>78</sup>

### *Tolerance within the School Curriculum*

Teacher training does not address prejudice in schools or the specific learning needs of Roma children, and there is a lack of appropriate teaching materials, textbooks and teacher aids. A 1997 survey of 4,248 final year elementary students nation-wide revealed extreme bias with respect to Roma.<sup>79</sup> A 1995 survey of 31 primary school textbooks used from grades five to eight, found only one reference to the Roma as an ethnic group in Hungary, and only one book which mentioned the Roma holocaust.<sup>80</sup> On the other hand, the survey found that a significant number of the textbooks contained prejudicial or incorrect information about Roma. In August 2000, following complaints by the Ministerial Commissioner for Education Rights, the Minister for Education asked for the withdrawal from the curriculum of a 1998 textbook which contained factual errors in a chapter devoted to Hungarian Roma, including the statement that “a significant portion of the Roma [...] were not willing or able to adapt to the European civil lifestyle” and “the life of many gypsies is marked by crime.”<sup>81</sup>

<sup>77</sup> J. Giran, L. Kardos, “Iskolapelda – egy Hajduhadhazon elkezdett kutatás tapasztalatainak osszegzése” (“School example, a summary of the experiences of a study begun in Hajduhadhaz”) in *Roma Civil-rights Leaflets 1.*, Roma Civil-rights Foundation, 2000.

<sup>78</sup> See G. Bernath, V. Mohacs, “A hajduhadhazi roma oktatasi helyzet” (“The Roma educational situation in Hajduhadhaz”), in *Roma programmes in Hungary after the transition*, Budapest Regional Office of the World Bank, manuscript, 2000.

<sup>79</sup> I. Szabo, A. Orkeny, *A 14–15 évesek interkulturalis vilagkepe* (“The intercultural world-view of 14–15 year olds”), Periferian – Roma szociologiai tanulmányok., ed. I. Vajda, Ariadne Cultural Foundation, Budapest, 1997.

<sup>80</sup> M. Laszlo, “Interkulturalis ismeretek az altalanos iskolai tankonyvekben” (“Intercultural knowledge in elementary school textbooks”), manuscript, 1995.

<sup>81</sup> Roma Press Center, “Eloiteletes tananyag otodikesekeknek” (“Prejudiced material for fifth-graders”), 23 August 2000, published in *Nepszabadsag*, *Nepszava*, and *Magyar Hirlap*, and broadcast on Magyar Radio news 23–24 August 2000. The Apaczai Publishing House eventually removed the book from circulation. See also ERRC, *Roma Rights*, No. 3, 2000, <[http://errc.org/rr\\_nr3\\_2000/snap13.shtml](http://errc.org/rr_nr3_2000/snap13.shtml)> (accessed 16 May 2001).

*Government Measures*

Government measures are generally ad hoc and entirely inadequate to the scale of the problems raised above – racial discrimination, the root cause that underlies each of the above areas of concern, is not addressed directly by the government.

A recent decree from the Ministry for Education includes requirements for written parental consent before testing a child's mental abilities and written communication of the expert committee's opinion to parents, who are entitled to appeal a decision to send their child to a special school.<sup>82</sup> Parental consent is not, however, the core issue – many parents are under-informed about the difference in educational standards between classes, and willing to trust the authority of school figures about their children's welfare. Measures could directly address the discriminatory practices of mass-assignment of Roma to these schools, and confront the cultural or linguistic bias that often prejudices the selection process.

The Ministry of Education has also ordered an investigation into the functioning of Roma minority programmes: local governments are to submit reports to the Ministry as to whether the programmes function efficiently and in accordance with their stated objectives.<sup>83</sup> Systematic monitoring and positive efforts will be required to correct or eliminate both the misuse of funds and the relegation of many Roma to substandard segregated education.

The Mid-term Package does not address discrimination in education explicitly, aiming to “raise the standard of education for members of socially-disadvantaged groups, focusing on the Roma.” The Hungarian government was promised € 5 million for this purpose from the European Commission's 1999 Phare budget,<sup>84</sup> to be complemented by € 3.6 million from the Ministry of Education and € 1 million from the Ministry of Social Affairs.<sup>85</sup> However, as of May 2001, none of the Phare money had been spent. Reportedly, the principal reason for the long delay was the low standard of the project

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<sup>82</sup> Decree 4/2001 of the Ministry of Education.

<sup>83</sup> The local governments' reports are to be assessed by the National Educational Centre for Assessment and Examinations and by the competent offices of public and administration. Interview with Maria Herceg, National Educational Centre for Assessment and Examinations (OKEV), 22 May 2001.

<sup>84</sup> The funding was to be divided as follows: € 2m for reduction of the primary school drop-out rate, € 0.8m for secondary education with remedial schooling, € 2m for social promotion and integration of the Roma, and € 0.2m on technical assistance and dissemination of the results. Operational programmes: Hungary: Programme on social integration of disadvantaged youth, with emphasis on the Roma.

<sup>85</sup> “Egyetlen aláírásra vár a Roma Phare program” (“Roma Phare programme awaiting one signature”), *Magyar Hírlap*, 4 September 2000.

proposals submitted by the Ministry for Education. According to the original agreement with Phare, the funding, the great majority of which has been allocated to NGOs, must be spent by September 2001. Critics point out that funding is thus likely to be spent on pilot projects, and fail to reflect or support the development of a broader state educational policy to address in a systematic manner the problems of segregation into sub-standard classes and schools and subsequent high drop-out rates. According to one Hungarian education expert, “there is no [state] policy to prepare Hungarian schools for integrated education.”<sup>86</sup>

The government has widely publicised the award of 8,000 scholarships for Roma students for the year 2000/2001, and the move has been praised by the European Commission. However, the scholarship scheme promises more than it delivers. Forty-four percent of the 8,000 scholarships amount to an allocation of HUF 3–4,000 (c. € 12–15) per month, a bare gratuity even for the poorest families.<sup>87</sup> The scheme, like others in the Package and government policy generally, targets “socially disadvantaged groups.”<sup>88</sup> The scholarships have nevertheless received wide publicisation in Hungary, as an example of state generosity towards Roma.<sup>89</sup> This approach, observers point out, tends to fuel popular prejudice against Roma as absorbing taxpayers’ money, without in any way addressing systematic prejudice against Roma in schools. The scholarship system could be greatly enhanced by the introduction of tutorial systems for disadvantaged children.<sup>90</sup>

## 2. *Health Care and Other Forms of Social Protection*

The Constitution guarantees all Hungarian citizens the right to social security (Art. 70/E). Declaratory anti-discrimination provisions in the Act on Health Care outline the principle of non-discrimination in access to health care, but fail to specify sanctions

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<sup>86</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>87</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>88</sup> Mid-term Package, para. 1.1, for example, aims “to encourage the regular attendance of socially disadvantaged school-age children at nursery schools, and the decrease of school absenteeism.”

<sup>89</sup> *Hungarian Mirror*, official newsletter of the Prime Minister’s Office, 2001/2, p. 2: In his “State of the Nation” address, the Prime Minister “was applauded when he added that while in 1998 a total of 300 Roma children were learning on scholarship, this has increased to 8,000. This means that, ‘today there is no longer even a single Roma child who cannot not go to school if he or she wants to and has the talent, only because he or she is not granted a scholarship.’”

<sup>90</sup> OSI Roundtable, Budapest, 3 April 2001.

sufficient to deter health service providers from discriminative practices.<sup>91</sup> The Act entitles individuals to file complaints with either health service providers or their regulating bodies, which are obliged to respond within ten days.<sup>92</sup> However, in the absence of a system of sanctions to be applied in case of discrimination, the patient's right to file complaints is not an effective remedy.

### *Health Care*

According to a 1999 study, health conditions are considerably worse for Roma than for the non-Roma population, although not dissimilar from the health conditions of poor non-Roma communities living in equivalent economic and social deprivation.<sup>93</sup> According to the report, despite their health problems, Roma tend to avoid physicians as long as possible. Most are not able to pay the requisite gratuity to obtain treatment. Roma who do not speak Hungarian are at an added disadvantage in approaching the health authorities.<sup>94</sup> Moreover, staff at health centres have been known to treat Roma patients in an openly biased, rude and discriminatory manner.<sup>95</sup>

### *Government Measures*

The government has acknowledged the existence of "practices bringing about negative discrimination which occur during the use of medical services."<sup>96</sup> Nevertheless, few complaints are filed with the Ombudsman against health service providers. In 1998 and 1999 there were no such complaints, while there was only one complaint against a health service provider in the year 2000.<sup>97</sup> Absent systematic monitoring the extent of the gap between formal complaints and actual experience of discrimination is difficult to determine.

Government proposals have sometimes reflected a prejudicial attitude towards Roma. In March 2000, the government proposed that free contraceptives be distributed to

<sup>91</sup> Act. CLIV of 1997, Art. 7(1): "All patients shall be entitled – within the framework prescribed by law – to receive [...] non-discriminative health services." Paragraph (4) of the same article stipulates that health services may be regarded as non-discriminative if "in the course of providing the given service the patients are not discriminated against on the basis of their social situation, political views, origin, nationality, religion, sex, sexual orientation, age, family status, mental or physical disabilities, qualifications or any other grounds not related to their health conditions."

<sup>92</sup> Act CLIV of 1997, Art. 29.

<sup>93</sup> Z. Zadori, L. Puporka, *A magyarországi romák egészségi állapota* ("The Health Situation of the Roma in Hungary"), Roma Press Center, Budapest, 1999.

<sup>94</sup> Zadori 1999, pp. 59–62.

<sup>95</sup> Zadori 1999, p. 60.

<sup>96</sup> Mid-Term Programme, Section 4.1.

<sup>97</sup> *Ombudsman 2000*, p. 142.

Roma, because “the growth of the Romani population is too high compared to their living circumstances.” The plan was subsequently rejected following criticism by Roma organisations.<sup>98</sup>

### *Social Protection*

A minimum level of social protection is provided through central budget support,<sup>99</sup> with supplementary funding provided by local governments. Sometimes, however, the latter adopt local decrees or engage in practices that are clearly unlawful or unconstitutional.

In his 1999 report, the Ombudsman expressed concern over the high number of Roma complaints relating to the constitutional right to social security. Applicants in desperate financial and housing conditions, complained of the negligence of local governments in treating their concerns. The Ombudsman has uncovered numerous unconstitutional practices in connection with the disbursement of social benefits such as child support.<sup>100</sup> In 2000, the Ombudsman found that a moratorium on the payment of temporary social support in one village inhabited by Roma was unconstitutional.<sup>101</sup>

Lacking powers of prosecution, the Ombudsman cannot address such practices directly. Between 1992 and 1996, for example, the local government of Karcag (Jász-Nagykun-Szolnok county) required that applicants for social support perform “voluntary social work,” that should have been paid for by the town’s Maintenance Bureau. Following investigation, the Ombudsman recommended that the local government should pay salaries to these individuals. The mayor refused to comply, however, so the Ombudsman turned to an NGO, the Legal Defence Bureau for National and Ethnic Minorities (NEKI), for assistance. According to NEKI, who subsequently brought the case to court, the practice had a disproportionate impact on Roma.<sup>102</sup> On 15 February 2001 the Supreme Court ruled in favour of the applicants, but the local government has thus far refused to pay and requested that the case be reviewed.

<sup>98</sup> G. Bernath, “Roma protest against governmental plans of contraception”, Roma Press Center, 17 March 2000.

<sup>99</sup> See Act No. 3 of 1993 on social administration and Act. No. 31 of 1997 on child protection.

<sup>100</sup> Ombudsman 1999, Section 4.

<sup>101</sup> Ombudsman 2000, p. 120. The local government withheld payments during January and February 2000, arguing that the local budget had not yet been approved. Later, however, they continued to refuse payments.

<sup>102</sup> *White Booklet 1998*, p. 40.

### 3. *Housing and Other Goods and Services*

#### *Housing*

No Hungarian laws address discrimination in access to housing. Yet Roma frequently live in segregated areas in sub-standard conditions, and are disproportionately vulnerable to measures impacting the socially disadvantaged, particularly eviction. Discriminatory practices have been documented on the part of local governments and residents, who have protested against the settlement of Roma families or actively demanded their removal.

It is estimated that “about one third of Roma/Gypsies live in neighbourhoods with exclusively or almost exclusively Roma/Gypsy residents.”<sup>103</sup> A great part of these – up to 16 percent of all Hungarian Roma – live in rural “settlements”, which were created during the Communist era as part of a governmental programme.<sup>104</sup> The living conditions in settlements are widely regarded as unacceptable, with no electricity in 44 percent of households, and running water in only eight percent, according to the most recent (1994) survey.<sup>105</sup>

Recently, continuing concern over poor housing conditions has been augmented by the increasing vulnerability of many Roma to eviction as a result of anti-squatting amendments adopted in May 2000.<sup>106</sup> The amendments, which gave notaries the power to order eviction from council housing within eight days, notwithstanding the outcome of legal or other appeals that may be underway, have triggered a wave of evictions.<sup>107</sup> A judge in Pest County has noted that the proportion of Roma defendants in eviction suits grew significantly in 2000.<sup>108</sup> This coincides with estimates by NGOs of a steady increase in Roma evictions – the Roma Civil Rights Foundation (RPA) reports an increase

<sup>103</sup> CRI (2000) 5, para. 22. According to one study, in 1994 60 percent of Roma lived in segregated neighbourhoods, while territorial segregation stood at 5.9 percent in Budapest, 36 percent in towns and 30.5 percent in villages. G. Havas, I. Kemeny, G. Kertesi, *Beszamolo a Magyar Tudomanyos Akademia Szociologiai Intezete altal 1993/94-ben vegzett reprezentativ ciganykutatasrol* (“Report on representative Roma research conducted by the Institute of Sociology of the Hungarian Academy of Sciences in 1993–94”), 1994.

<sup>104</sup> According to a ministerial spokesperson there are 538 such settlements. B. Berkes, “Luxusgettok putrisorok helyett?” (“Luxury ghettos instead of rows of hovels?”), *Napszabadsag*, 5 June 2001, p. 4. According to Havas 1994, the number of Roma living in settlements fell from 65.1 percent in 1970 to 13.9 percent by 1994.

<sup>105</sup> Havas 1994.

<sup>106</sup> Act No LXI of 2000.

<sup>107</sup> See Constitutional Court submission from constitutional lawyer G. Halmai. See also L. Bihary, “Szocialis biztonsagi orok” (“Social security guards”), *Fundamentum*, 2000/3, p. 59.

<sup>108</sup> Information from Pest County judge, Budapest, October 2000.

from 2–3 per month in 1999 to 3–4 per week in 2000; NEKI received 17 eviction complaints in 2000 as against three in 1999.<sup>109</sup> NGOs charge that local governments have seized the opportunity to repossess and sell council properties. In his 2000 report the Ombudsman noted that local governments had failed to adopt policies that could have enabled vulnerable groups to move or legally retain occupied flats. The Ombudsman noted that a majority of eviction cases to date have concerned Roma.<sup>110</sup>

The facilitation of eviction is likely to have a disastrous effect on aspiring house owners unable to pay off outstanding loans. Defaulting debtors, an estimated 40–50 percent of whom are Roma,<sup>111</sup> are increasingly liable to having their houses auctioned while still resident.<sup>112</sup> From 1995 on, Hungarian courts, including the Supreme Court, have supported the right of debtors to remain as quasi-tenants after auction, paying rent to the new owners. However, the May 2000 amendments put defaulters at a significantly increased risk of eviction, allowing notaries to conduct evictions before appeals to the courts have been ruled upon. Reportedly a number of Roma in such situations have already been evicted.<sup>113</sup>

In addition there is anecdotal evidence that the number of Roma homeless is rising – interviewed social workers claim that the traditional myth of Roma security due to “strong family ties” no longer holds true. One organisation which runs a help desk for homeless, estimated the proportion of Roma among their clients to have risen from five percent in the early 90s to 20–30 percent today, with the sharpest increase in the last two years.<sup>114</sup> To compound the problem, the Constitutional Court ruled in 2000 that the right to housing is not covered by Section 70/E of the Constitution (guaranteeing the right to social security), given the present capacity of the national economy.<sup>115</sup>

<sup>109</sup> Information from RPA lawyer and social worker with NEKI, Budapest, October 2000. The Roma Civil Rights Foundation (RPA), estimates that the 50,000 Roma who make up 40–50 percent of those unable to pay back housing loans are uniquely vulnerable.

<sup>110</sup> *Ombudsman 2000*, p. 118.

<sup>111</sup> Information from RPA lawyer, Budapest, October 2000. RPA further criticises the practice of many local governments of barring owners of mortgaged houses from social support eligibility.

<sup>112</sup> The problem has its origins in a 1991 Constitutional Court Decision (No. 32/1991 (VI.6.)), upholding a governmental decision to raise fixed interest rates on housing loans, previously guaranteed by the state through an agreement with the main state-owned bank (OTP). A submission to the Court on the constitutionality of the decision was undertaken by 1,796 persons, including attorneys and many NGOs. The Court’s ruling in favour of the government was widely criticised.

<sup>113</sup> Information with judges, Budapest, June 2001.

<sup>114</sup> Information from Menhely, Budapest, October 2000.

<sup>115</sup> Constitutional Court Decision No. 42/2000 (XI.8.). The ruling followed an application lodged jointly by the Civil Rights and the Minorities Ombudsmen.

Prejudice by local governments towards Roma aggravates the effects of economic disparity. In violation of the Constitution, local governments have prevented Roma families from moving into certain areas or, more frequently, forced them out of villages or towns.<sup>116</sup> The high profile Zamoly case of 2000/2001 is the latest in a long series of dramatic expulsions of Roma from towns and cities throughout Hungary – thirty since 1989, according to the Ombudsman.<sup>117</sup> Expulsions and evictions of Roma families in the towns of Szekesfehervar, Ozd, and Satoraljaujhely were front-page news in Hungary in 1997. In the latter case, high-ranking municipal officials joined with the local police to threaten Roma residents with expulsion.<sup>118</sup>

### *Government Measures*

In January 2001, the government launched new housing programmes that have been promoted as providing support to “each and every family.”<sup>119</sup> However, the central government budget for social housing has not increased for the period 1999–2002, and it is unclear how the programme is to be funded.<sup>120</sup> A component of the programme exempts Roma from the requirement of proving a steady income, by allowing them to pay in kind through labour in housing construction. This scheme will be administered by the National Roma Self-government and is to be accorded HUF 311 million (€ 1,265,000) in funding.<sup>121</sup> New initiatives notwithstanding, no social housing has been constructed since 1989, while the number of council flats has decreased rapidly due to privatisation.

The Mid-term Package obliges the Ministry of Agriculture and Regional Development to prepare a programme for phasing out settlements, but no action had been taken as of June 2001, largely as a result of internal ministerial conflict.<sup>122</sup> The five-year programme is expected to cost 50 billion HUF (c. € 200 m.), but no money has been budgeted for either 2001 or 2002. Fears have been expressed that local governments could use housing funds to reinforce territorial segregation, or even sabotage construction in order

<sup>116</sup> *Ombudsman 1999*, pp. 129–134; See the case of “Muhi” in *White Booklet 1997*; CRI (2000) 5, para. 21.

<sup>117</sup> Cited in ERRC, *Roma Rights*, Summer 1997, <[http://www.errc.org/rr\\_sum1997/snap9.shtml](http://www.errc.org/rr_sum1997/snap9.shtml)>, (accessed 18 June 2001).

<sup>118</sup> *White Booklet 1997*, p. 42.

<sup>119</sup> Government Decree 12/2001.

<sup>120</sup> Z. Ferge, *A koltsegetes szive* (“The heart of the budget”), 2001.

<sup>121</sup> MTI, “Berlakasprogramra idán 13 milliárd forint” (“13 billion for council flats this year”), 17 January 2001.

<sup>122</sup> The Mid-term Package acknowledges “factors, which threaten the environment and the health of the inhabitants of slums and slum-like neighbourhoods and residential areas.”



to avoid tension with non-Roma locals.<sup>123</sup> A July 2001 initiative of the same ministry to relocate unemployed and homeless Roma families to deserted villages in the economically depressed north-east of the country, drew fire from the National Roma self-government, who described it as a “reservation” policy. A Justice Ministry spokesman claimed the plan was designed to give a chance to those “looking for a home, work, and independence.”<sup>124</sup>

### *Other Goods and Services*

Roma are frequently victims of discrimination by private bodies in providing access to goods and services. However, such cases are increasingly recognised and prosecuted as a result of both increased action by the Consumer Protection Authority (CPA), and successful prosecution of court cases on the basis of the prohibition on discrimination in the Civil Code.<sup>125</sup>

A number of proposals by the Ombudsman to the CPA aimed at improving investigations into claims of discrimination have been adopted, and the CPA’s capacity and willingness to respond to cases of discrimination have thus improved.<sup>126</sup> In the town of Szikszó in 1999, for example, the CPA investigated and fined a pub owner for discriminating against Roma.<sup>127</sup>

Increased interest and success in litigation to challenge discrimination in access to bars, restaurants, and other public establishments was partly prompted by the Goman case.<sup>128</sup> On 19 September 1995 Gyula Goman took his wife to the hairdresser’s and waited for her in a nearby pub. He ordered a coffee and a coke and asked for change for the game machines. The waitress refused to serve him. He appealed to the owner, who replied: “no Gypsy is allowed to eat, drink or enjoy himself in my pub.” Mr. Goman initiated both criminal and civil proceedings against the owner. The court of second instance approved the decision of the court of first instance, authorising Goman to publish an apology from the bar owner at the latter’s expense in a leading Hungarian daily, and ordering that Goman receive compensation of 150,000 HUF (c. € 584).

<sup>123</sup> Berkes 2001.

<sup>124</sup> *Nepszabadság*, “Romákat koltoztetnek a Cserehatra?” (“Roma to be moved to Cserehat?”), 14 July 2001, p. 5. See also RFE/RL Newline, “Hungarian Government to Relocate Roma to Remote Villages”, 16 July 2001.

<sup>125</sup> Civil Code, Art. 76.

<sup>126</sup> *Ombudsman 1999*, pp. 125–129.

<sup>127</sup> *White Booklet 1999*, p. 13.

<sup>128</sup> *White Booklet 1999*.

The Criminal Court ruled separately, in January 1997, that the owner had committed the misdemeanour of slander and sentenced him to one year on probation. The court of second instance upheld the decision.<sup>129</sup>

In 1999, NEKI introduced a “test” method to uncover discrimination, and a number of cases are currently before the courts on this basis. One case, that of a Romani man who was refused access to a dance club, is shortly to be decided.<sup>130</sup>

Despite isolated instances of judicial redress for discrimination, denial of access for Roma to goods and services remains a persistent problem in Hungary and has been recorded in several settlements of Borsod-Abaúj-Zemplén and Békés County including in Békéscsaba, the administrative centre of the county.<sup>131</sup> Most instances of discrimination do not give rise to formal complaints, and for those which do the prospects remain far from certain.

#### 4. *Employment*

The most extensive system of discrimination-related provisions and sanctions is provided in the Labour Code. The burden of proof in claims of discrimination is shifted to the alleged perpetrator, and the law provides a possible basis for affirmative action.<sup>132</sup> Although the legislation is relatively comprehensive, it is not put to effective use in practice, and does not define indirect discrimination.<sup>133</sup>

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<sup>129</sup> *White Booklet 1999*.

<sup>130</sup> *White Booklet 1999*, pp. 3–16. Testing is a method used to demonstrate discrimination in employment, housing and access to public services. Two or more “testers”, differing only in ethnic origin, visit the establishment in question, to investigate the existence of discriminatory treatment. *White Booklet 2000*, p. 60.

<sup>131</sup> See *White Booklet 1999*. Also Roma Press Center, “Closed-Door Event for Whites”, *Nepszabadsag*, 10 November 1999, <<http://www.romapage.c3.hu/rsk/engrs124.htm>> (accessed 24 May 2001).

<sup>132</sup> Act XXII of 1992, Art. 5(2): “In the event of any dispute related to a violation of the prohibition on discrimination, the employer shall be required to prove that his actions did not violate the provisions of Paragraph (1)”; Art. 5(4): “In respect of a specific group of employees the obligation of priority may be prescribed in employment-related regulations, in connection with an employment relationship and under the same *conditions*.” One case has been brought under para. 2, and is currently pending at the Budapest City Court. However, no measures have been taken under para. 4 to date, and one commentator notes that although “[t]he fourth paragraph raises the possibility of affirmative action...we can only guess at the scope and instruments with which positive discrimination may be realised.” See J. Sandor in Kardos 1998, p. 54.

<sup>133</sup> T. Gyulavari, “A férfiak és nők közötti esélyegyenlőség a jogharmonizáció tükrében” (“Legal Harmonization and the Equality of Opportunities between Men and Women”) in *Végyszavaltó*, 1999, p. 104.

There are two main flaws in the operation of Hungarian anti-discrimination provisions regarding employment. The first is that the Labour Code applies no sanctions where there is no established employment relationship between parties – i.e. it is powerless to address refusal to hire on the basis of ethnicity, the most prevalent discriminatory practice in employment. Legal experts have suggested amending the Code to impose compensation in such cases, either on the basis of missed wages or as a general fine<sup>134</sup> (the latter sanction exists in the law, but is not applicable in the Labour Courts).<sup>135</sup> Thus, in the only known case to have been brought to the courts concerning discrimination on the grounds of ethnicity under the Code's anti-discrimination clause, the Labour Inspectorate decided on 24 November 2000 that it lacked competence, because no employment contract had been concluded between the parties.<sup>136</sup>

Second, as a result of a 1995 restriction,<sup>137</sup> complaints may only be lodged by victims of discrimination – although these individuals are frequently unaware of their rights under the law. In the words of one government ministry, Labour Inspectorates “may only act in cases of discrimination upon the complaint of the victim, and very few discrimination complaints have been submitted by Roma employees in past years.”<sup>138</sup> In an *ex officio* investigation in 1998, the Ombudsman found that only 16 sanctions were imposed on employers for discriminatory practices on grounds other than race or ethnicity, and no employer has ever been fined for denying recruitment to a person because of Roma origin. He concluded that Labour Inspectorates “do not proceed *ex officio* in cases of discrimination and in general are reluctant to take action in such cases.”<sup>139</sup> His recommendations that Inspectorates be authorised to conduct *ex officio* investigations, and that Labour

<sup>134</sup> B. Nacsa, “A hatranyos megkülönböztetés tilalma a magyar munkajogi gyakorlatban” (“The Prohibition of Negative Discrimination in the Practice of Hungarian Labour Law”) in *Végyesvalto*, 1999, pp. 131–132; Z. Peszlen, “Probáper a diszkrimináció ellen” (“Test Trial against Discrimination”) in *Végyesvalto*, 1999, p. 149.

<sup>135</sup> Government Decree 218/1999 on Petty Offences, Art. 93.

<sup>136</sup> *White Booklet 2000*, pp. 29–31. The case is currently pending before the Metropolitan Labour Court.

<sup>137</sup> Act LXXV of 1996 on the Supervision of Labour Affairs, Art. 3 states that “if the labour authority discovers discriminatory practices the employer shall be punished with a fine between HUF 50,000 (c. € 195) and 3,000,000 (c. € 11,673).” According to Article 3 (2) investigations may be conducted upon the request of the concerned person(s), in connection with trade unions and in order to prohibit discrimination. Until 1995 prosecutors were entitled to initiate procedures for reasons of “important social or state interest” (*actio popularis*), however, the Constitutional Court deemed this unconstitutional, because it infringes the individuals’ right to self-determination. As a result the above sanction is generally unused, since most concerned individuals are not aware of possible legal remedies and are often in desperate need of employment opportunities.

<sup>138</sup> Comments of the Ministry for Social and Family Affairs, NEKH, p. 1.

<sup>139</sup> *Ombudsman 1998*, pp. 210–230; see also *Ombudsman 2000*; *Ombudsman 1999*.

Centres be obliged to notify Inspectorates of cases of discrimination, had not been heeded a year later.<sup>140</sup>

Further inadequacies of the system have been noted by the Ombudsman, including inadequate information flow from and to labour centres regarding labour discrimination. The Ombudsman further criticises the Labour Inspectorate's delegation procedure, whereby labour supervisors must personally detect discrimination in order to launch petty offences procedures, whereas if a report is filed by an employee, only the notary has competence.<sup>141</sup>

By 1994, when figures were last available, employment among Roma men stood at 26.2 percent compared to 63.4 percent among non-Roma, whereas the respective figures for women were 16.9 percent (Roma) and 63.1 percent (non-Roma).<sup>142</sup> Typically Roma today are less well educated than the majority population, and live in economically depressed areas of the country. From the mid-1980s, however, when disparities were not as great,<sup>143</sup> Roma began to drop out of the labour market, a process that accelerated after the political changeover, due partly to external economic factors, such as privatisation and the agricultural crisis, but also to flagrant discriminatory practices, as reported by Roma themselves.<sup>144</sup>

According to one source, for example, employers in Csongrad County refused to hire Roma, notwithstanding extra financial support from the government.<sup>145</sup> The case currently before the Hungarian courts is illustrative. In April 2000 a woman waiting for job interview, arranged over the telephone, for a position as a chambermaid, overheard the manager telling the hotel receptionist, "I do not hire Gypsies here. I hate them all." Minutes later she was told there were no more vacancies, although the post was not filled for another month.<sup>146</sup>

### *Government Measures*

The government's Mid-term Package sketches 14 areas of action with regard to employment, including co-operation between Roma minority self-governments and labour centres;

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<sup>140</sup> Follow-up report of the Ombudsman in 1999, pp. 147–153.

<sup>141</sup> *Ombudsman 1998*, pp. 210–230.

<sup>142</sup> Kemeny 1994.

<sup>143</sup> As a result of the Communist commitment to full employment, Roma employment figures were barely distinguishable from those of non-Roma, at 85.2 percent and 87.7 percent respectively. See Kemeny, Havas, 1971.

<sup>144</sup> Kemeny in Kardos 1998.

<sup>145</sup> Unpublished interim report on the implementation of the Mid-term Package.

<sup>146</sup> *White Booklet 2000*, p. 29.

preferential treatment in employment policies; the initiation and continuation of public work programmes; and the promotion of entrepreneurship in land programmes. The government claims that a total of 7.2 billion HUF was spent on employment programmes for Roma in 2000. Of this, 4.86 billion HUF (c. € 19 million) explicitly covered issues outlined in the Mid-term Package, none of which are budgeted, with the rest allocated for implementation of rights under the Minorities Act. It is in fact impossible to assess how much was spent on Roma employment issues, in part because a number of programmes specified in the Package aim at the unemployed generally.<sup>147</sup> In this area, as elsewhere in the Package, the absence of a well-developed, independent institutional structure to administer the allocation of budgetary support makes it difficult to assess the efficacy of spending.

In practice, the government has not shown enthusiasm to date for the implementation of positive measures to promote employment of Roma. For example, programmes supporting small and medium-sized businesses do not contain measures to require or even encourage support of Roma businesses.<sup>148</sup> An affirmative action proposal to promote vulnerable groups in Budapest, drafted by a Roma representative in 1997, has not been finalised by the municipality in the intervening four years.<sup>149</sup> In the private sphere, by contrast, certain initiatives have been successful: an “Integrity Programme”, aimed at the equal treatment of employees, has been implemented at a foreign owned factory in Ozd, which now employs a substantial number of Roma.<sup>150</sup>

The Ombudsman has assisted in preparing a new draft of the Labour Code to incorporate EU equal opportunity directives for women and men, provide a definition of indirect discrimination, and enhance the protection of the Roma.

## 5. *Criminal Justice*

Research indicates that Roma are more likely than non-Roma to be remanded in pre-trial detention or ill-treated by the police,<sup>151</sup> and tend not to have legal representation

<sup>147</sup> See NEKH information at <[http://www.meh.hu/nekx/Magyar/cigany\\_of.htm](http://www.meh.hu/nekx/Magyar/cigany_of.htm)> (accessed 18 June 2001).

<sup>148</sup> See for example, the programme supporting SMEs, Act No. 95 of 1999.

<sup>149</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>150</sup> For another example of an affirmative action employment programme implemented by an international corporation, see the description of the Levi’s factory in Kiskunhalas in HCNM 2000.

<sup>151</sup> Hungarian Helsinki Committee and OSI-COLPI, *Punished Before Sentence*, Budapest, 1997. See also UN Committee Against Torture, *Conclusions and recommendations concerning Hungary’s third periodic report*, November 1998: “The Committee is also concerned about the persistent reports that [...] a disproportionate number of detainees and/or prisoners serving their sentences are Roma.”

during investigation.<sup>152</sup> ECRI has expressed concern “at evidence that severe problems in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community [...]. There are authoritative reports that Roma/Gypsies are kept in pre-trial detention for longer periods and more frequently than non-Roma, although the prohibition of the recording of the ethnic origin of suspects makes it difficult to evaluate the extent of such discrimination.”<sup>153</sup>

Anti-Roma sentiments are pervasive among policemen. A 1997 survey of 1,530 police officers,<sup>154</sup> initiated and financed by the Ministry of Interior, found that 54 percent believed criminality to be a key element of the Roma identity – of whom all but four percent considered this trait to be genetic. 64 percent of officers believed that incest was characteristic of Roma; and 74 percent believed that the population expects police to be hard on Roma. There are a number of ongoing efforts to eliminate anti-Roma bias within the police forces, although it is too early to judge their effect.<sup>155</sup>

Policemen have given accounts of specific investigative methods used against Roma suspects.<sup>156</sup> One policeman serving in Gyula (Bekes county) stated that if “the circumstances of the crime indicate that a Roma might have been involved, detectives go straight to the neighbouring Gypsy settlement to try and arrest suspects.”<sup>157</sup>

### *Legal Aid*

Discrimination in the criminal justice system is compounded by the inadequacy of provisions to secure adequate legal representation for Roma defendants. Given that Roma in prisons are 12 percent less likely than other prisoners to be able to afford legal defence, legal aid is of special importance to Roma defendants.<sup>158</sup>

<sup>152</sup> *A kirendelt vedovel rendelkezo fogvatartott személyek védelemhez való jogának ervényesulese a buntetoeljaras nyomozasi szakaszaban* (“Realising the right to defense of detained persons with appointed defense counsels in the investigative phase of the criminal procedure”), Office of the Ombudsmen, 1996.

<sup>153</sup> CRI (2000) 5, para. 14.

<sup>154</sup> G. Csepeli, A. Orkeny, M. Szekelyi, “Szertelen modszerek” (“Insustantial methods”) in *Szovegygyujtemeny a kisebbségi ügyek rendorsegi kezelesenek tanulmanyozasahoz* (“Collection for the examination of how the police handle cases involving minorities”), K. Csányi (ed.), OSI-COLPI, Budapest, 1997, pp. 130–173.

<sup>155</sup> Examples of such programmes include a cooperation agreement between the National Police Headquarters and the National Roma minority self-government; the introduction of Romology into the curriculum of police training, and an effort to recruit Roma policemen. Comments from the Office for National and Ethnic Minorities on a draft of the present report, on file with the EU Accession Monitoring Program, (hereafter “NEKH comments”), p. 21.

<sup>156</sup> Csepeli 1997, pp. 130–173.

<sup>157</sup> Hungarian Helsinki Committee and OSI-COLPI, 1997.

<sup>158</sup> L. Huszar, *Roma fogvatartottak a buntetes-vegrehajtasban* (“Roma detainees in the correctional system”), in *Belugyi Szemle*, 1999.

All criminal defendants are granted the right to legal representation and authorities must guarantee defence for the accused.<sup>159</sup> Court appointment of counsel is compulsory if the defendant is in detention or handicapped, or if the offence is punishable by imprisonment for more than five years. If the defendant does not retain counsel in such cases, the court must appoint one. However, the fee for appointed defence counsel is only *advanced* by the state.<sup>160</sup> If the defendant is ultimately found guilty, the state reclaims the fee as “criminal expenses” as well as any expenses incurred by the appointed counsel, such as travel or accommodation.<sup>161</sup> In practice, however, the state is rarely able to collect all criminal expenses.

In a 1996 report, the Ombudsman for Civil Rights noted a number of problems with the efficiency of the system of appointed counsel.<sup>162</sup> It is not compulsory for appointed counsel to appear at any pre-trial stage except in the case of minors. Since fees for appointed defence counsels are very low, and there is no fee at all for activities during the pre-trial phase, there is little incentive to appear when not required.<sup>163</sup> Should the defendant be convicted, appointed counsel may request courts to require the defendant to pay a sum equivalent to a private commission,<sup>164</sup> but this is rarely applied as it is considered unethical. The system of appointed defence counsel does not therefore offer adequate protection for defendants who cannot afford private counsel, a disproportionate number of whom are Roma.

## B. Protection from Racially Motivated Violence

Before 1996, no specific provision addressed racially motivated violence, and such offences could only be categorised as damage to property, disorderly conduct or (aggravated) assault. In that year, however, on a motion of the President, the Parliament adopted an amendment to the Criminal Code that established the offence of racially

<sup>159</sup> Act I of 1973 on the Code of Criminal Procedure, Art. 6.

<sup>160</sup> Order 120/1973 of the Ministry of Justice.

<sup>161</sup> The Hungarian system is not in harmony with the relevant international standards in this regard: there have been cases where the European Court of Human Rights jurisprudence would require the state to provide free counsel in order to abide by Article 6 of the European Convention on Human Rights.

<sup>162</sup> Articles 113 and 192 of the Code of Criminal Procedure stipulates a fine for failure to appear and the National Chamber of Attorneys may reprimand members for professional negligence, but in practice this rarely happens. See Office of the Ombudsmen, 1996.

<sup>163</sup> Decree 1/1974 of the Ministry of Justice prescribes fees of HUF 1000 (c. € 4) for the first hour of the given procedural act and HUF 500 (€ 2) for every subsequent hour. This compares with ‘market’ fees of HUF 10 000–15 000 (c. € 39–58).

<sup>164</sup> Code of Criminal Procedure, Art. 219.

motivated assault (Article 174/B).<sup>165</sup> As amended, the law stipulates a penalty of up to five years for this offence, and eight in the case of armed assault. There are no special bodies to investigate, prosecute or monitor the incidence of racially motivated crimes. Responsibility for these crimes falls within the general mandate of the public prosecutors and the wider framework of the Criminal Code. No separate provisions exist to enhance sentences for crimes other than assault motivated by racial hatred.

There are no separate provisions governing racially motivated abuses committed by law enforcement personnel, although existing legislation enables prosecution for abuse of authority,<sup>166</sup> maltreatment in official proceedings,<sup>167</sup> forced interrogation<sup>168</sup> and unlawful detention.<sup>169</sup> Where circumstances permit, these provisions can be applied in combination with Article 174/B, allowing for consideration of racial motivations on the part of the perpetrator.

From 1998–2000, 16 investigations were undertaken on the basis of Article 14/B, which resulted in eight indictments on the basis of Article 174/B. However, owing to the fact that this offence is treated together with other so-called “violations of physical integrity” in the statistics of the Ministry of Justice, it is not possible to determine whether there have been any convictions.<sup>170</sup> However, NGOs claim that, in 2000, “[p]rosecutors failed to pursue perpetrators of racially motivated crimes. [...] Activist groups complained that the law is underutilized and that law enforcement officials are not trained to investigate racially motivated crimes.”<sup>171</sup>

Police abuse of Roma has been documented by domestic and international observers. In 2000, ECRI expressed “deep concern at the continuation of police discrimination and ill-treatment of members of the Roma/Gypsy community in particular.”<sup>172</sup> In 2001,

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<sup>165</sup> Article 174/B of the Criminal Code on Violence Against a Member of a National, Ethnic, Racial or Religious Group: “A person who assaults somebody else because he belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him with violence or menace into doing or not doing or into enduring something, commits a felony and shall be punishable with imprisonment up to five years. The punishment shall be imprisonment from two years to eight years, if the act of crime is committed *a)* by force of arms, *b)* in an armed manner, *c)* causing a considerable injury of interest, *d)* with the torment of the injured party, *e)* in groups, *f)* in criminal conspiracy.”

<sup>166</sup> Criminal Code, Art. 225.

<sup>167</sup> Criminal Code, Art. 226.

<sup>168</sup> Criminal Code, Art. 227.

<sup>169</sup> Criminal Code, Art. 228.

<sup>170</sup> Public Prosecutor’s Office, Statistical Department of the Ministry of Justice, 2000. See Appendix B.

<sup>171</sup> *HRW World Report 2000*, Human Rights Watch, New York, 2000, p. 273.

<sup>172</sup> CRI (2000) 5, para. 17.



the European Committee for the Prevention of Torture stated that: “[t]he great majority of the allegations heard were consistent as regards the form of ill-treatment inflicted. Persons alleged that they had been struck with truncheons, punched, kicked or slapped by police officers. In addition, verbal abuse of persons detained by the police was apparently common. Foreign nationals, juveniles and Roma seemed to be particularly at risk of such ill-treatment. In some cases, the delegation gathered medical evidence consistent with allegations of ill-treatment [...]”<sup>173</sup>

The most significant police crimes in this respect include abuse of authority, maltreatment in official procedure, enforced interrogation, and illegal detention. Figures from the Public Prosecutor’s Office show 1,133 such crimes reported in 2000, 1,068 in 1999 and 1,247 in 1998, but the number of cases involving Roma victims is not recorded.<sup>174</sup> On average, only 11 percent of reported cases of police mistreatment, and only eight percent of reported cases of forced interrogation result in formal charges.<sup>175</sup> NGOs estimate that only five percent of Roma complaints of police abuse lead to convictions.<sup>176</sup> The conclusion that a disproportionate number of cases brought by Roma are either “terminated” after investigation or do not lead to convictions is supported in data from the town of Hajduhadhaz, where fifteen cases brought by Roma in recent years against police officers remain either unresolved or ended in acquittal.<sup>177</sup>

### C. Minority Rights

The list of domestic legal instruments containing specific minorities provisions is long, and includes the Constitution,<sup>178</sup> the Act on Public Education, the Media Act, the Civil Code, the Criminal Code, the codes of civil and criminal procedure, and a series of minor laws. The Minorities Act makes extensive provision for the participation of minorities in public life, as well as for protection of minority education and culture; the government has claimed that the Act’s provisions go beyond the requirements of the FCNM.<sup>179</sup>

<sup>173</sup> *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, CPT/Inf (2001) 2, paras. 14, 18, <<http://www.cpt.coe.int/en/reports/inf2001-02en.htm>> (accessed 12 June 2001).

<sup>174</sup> Due to the Data Protection Act. The existing breakdown of figures from the Public Prosecutor’s Office is given in Appendix B.

<sup>175</sup> Public Prosecutor’s Office, Statistical Department of the Ministry of Justice 2000.

<sup>176</sup> *White Booklet 1999*.

<sup>177</sup> *World Report 2000*, Human Rights Watch, p. 272. Half of the town’s police force were under investigation for abusive conduct at the time.

<sup>178</sup> Constitution, Art. 68.

<sup>179</sup> State Report 1999, Art. 19.

## 1. Identity

The term “minority” is defined in Hungarian law.<sup>180</sup> The Act recognises 13 minority groups, including the Roma minority,<sup>181</sup> and provides the possibility for the recognition of other groups upon petition.<sup>182</sup> The Act does not apply to refugees, immigrants, foreign citizens settled in Hungary, or stateless persons.<sup>183</sup>

## 2. Language

Estimates of the number of Hungarian Roma who speak Romani languages vary in different government documents, from ten percent to about thirty percent.<sup>184</sup> The estimated 20 percent of Roma who speak Romanes, and ten percent who speak Beash do not, in practice, benefit from the considerable minority language rights provided for in Hungarian law.

Romanes and Beash are specifically excluded from Hungary’s ratification of the European Charter for Regional and Minority Languages. The explanation in Hungary’s state report to the treaty is that “it is difficult to geographically define those areas where the two Gypsy languages are used.” Hungary, the report notes, undertakes commitments only with regard to “the languages of those minorities who live in sufficient concentrations in well-defined regions of the country (*Romanians, Slovenians*), or who although scattered in several regions or counties have, because of their numbers, a developed structure for native language education and cultural life (*Croatians, Germans, Serbians, Slovaks*).”<sup>185</sup>

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<sup>180</sup> Minorities Act, Art. 1: “any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history.”

<sup>181</sup> The recognised minorities are the following: Armenian, Bulgarian, Croatian, Greek, German, Polish, Roma, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, Ukrainian. Minorities Act, Art. 61.

<sup>182</sup> Minorities Act, Art. 61(2).

<sup>183</sup> Minorities Act, Art. 2.

<sup>184</sup> *Measures Taken by the State to Promote the Social Integration of Roma Living in Hungary*, Ministry of Foreign Affairs, Budapest, 2000, pp. 21–22. Also see, Istvan Kemeny, “The structure of the Roma population in Hungary as reflected by linguistic changes”, *Regio*, 1/1999.

<sup>185</sup> *Report of the Republic of Hungary on the Implementation of the Provisions of the European Charter for Regional or Minority Languages of the Council of Europe*, February 1999.

The Ministry of Justice has asserted that the demand for officials speaking Roma languages is minimal, since relatively few Roma speak these languages.<sup>186</sup>

Critics believe that the Charter would, *inter alia*, provide an instrument to tackle educational discrimination affecting Roma children.<sup>187</sup> The lack of state officials who understand Romani languages is also considered to contribute to the quasi-automatic placement of Roma children in special schools and to their poor access to health services.

The Minorities Act stipulates a wide range of minority language rights. “[E]verybody may freely use his/her mother tongue wherever and whenever s/he wishes to do so. The conditions of the language use of minorities – in cases provided for by a separate law – must be guaranteed by the state.”<sup>188</sup> In communities where, according to the law, “there are people who belong to minorities,” local authorities are obliged to employ candidates proficient in the relevant language, in local public services, provided they meet general professional requirements.<sup>189</sup>

Minority MPs have the right to use their mother tongue in Parliament, as do minority members on local governmental boards.<sup>190</sup> Languages of recognised minorities can be used in the course of the civil, criminal and administrative procedure.<sup>191</sup> At the request of minority self-governments, local governments must ensure that announcements of regulations, and pertinent publications and notices are carried out in the language of the requesting minority as well as in Hungarian. Administrative forms must also be made available in the minority language, as must public signs bearing the names of towns, streets and public offices, notices relating to public tenders, and public announcements by private companies.<sup>192</sup> Although a number of these provisions are utilised by other minority groups, they are not known to be utilised by Roma.

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<sup>186</sup> NEKH Comments, p. 6.

<sup>187</sup> “A romák nyelve nincs védve” (“The language of the Roma is not protected”), *Nepszabadság*, 13 November 2000.

<sup>188</sup> Minorities Act, Art. 51 (1).

<sup>189</sup> Minorities Act, Art. 54.

<sup>190</sup> Minorities Act, Art. 52 (1). In this case, the Hungarian translation of the speech or its summary is attached to the minutes of the meeting. The minutes and resolutions of the board of representatives may also be recorded or worded in the mother tongue of the given minority if there is a minority in the community – as well as appearing in Hungarian. In the event of disputes over the interpretation, the Hungarian version is deemed authentic.

<sup>191</sup> Minorities Act, Art. 51 (2). These are: Act IV of 1957 on the Administrative Procedure (Art. 2), Act III of 1952 on Civil Procedure (Art. 8), Act I of 1973 on Criminal Procedure (Art. 8).

<sup>192</sup> Minorities Act, Art. 53.

### 3. *Education*

The Minorities Act makes extensive provision for the languages of recognised minorities in education. The Act establishes a state duty to train teachers to provide education in minority languages or “bilingually” to minorities as well as the right of minorities to establish and maintain minority schools and other educational institutions.<sup>193</sup>

In practice, however, Roma do not benefit from the Act’s protection. There are few if any classes in Romani languages in Hungary, although some Roma leaders have called for Romani language education, and, as noted above, about 30 percent of Roma speak these languages. Second, implementation of “minority education programmes” as noted above, have generally failed to include a Roma cultural component, and have instead segregated Roma children and institutionalised substandard education amongst Roma.

Minority self-governments that have attempted to exercise their right to be consulted with regard to the nomination of school directors of schools where minority children study have been largely ignored. In summer 2001, the local government of Halmajugra (Heves county), extended the contract of the school principal of the local school, in which nearly 100% of the students are Roma, over the protests of parents and teachers, and without the agreement of the Roma minority self government.<sup>194</sup>

Finally, the Roma minority has a number of schools maintained by a combination of foreign and state funding, such as the Kalyi Jag Romani Minority School of Budapest for Roma students who have finished first level education, the Jozsefvaros School in Budapest, maintained by the Jozsefvaros School Foundation, the Gandhi High School in Pecs and the Alternative Foundation School for the Ethnic Roma in Szolnok. While replication of these “model schools” is called for in the Mid-term Package,<sup>195</sup> no such measures have been taken and the future of these schools is uncertain.<sup>196</sup>

### 4. *Media*

Hungary has a rich and diverse Roma media culture. Four or five periodicals principally produced by and for Roma are published fairly regularly. A “Roma Press Center” has been

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<sup>193</sup> Minorities Act, Art. 43–48.

<sup>194</sup> B. Berkes, “Erotlennek mutatkoznak a cigany onkormanyzatok” (“Roma self-governments revealed as powerless”), *Nepszabadsag*, 26 July 2001, p. 5.

<sup>195</sup> Mid-term Package, para. 1.5.3.

<sup>196</sup> OSI Roundtable, Budapest, 3 April 2001.

successful in delivering content to the mainstream Hungarian press and offering alternative perspectives on issues of importance to Roma. As regards electronic media, state support has been less impressive. Nonetheless in March 2001, after having been refused a frequency a year earlier, a Roma radio-station, Radio C was granted a frequency for seven years. The new Roma radio-station can now be received in Budapest and within a 30-mile radius. Apart from Radio C, Roma have not enjoyed full access to the media.

On paper, Hungarian law provides strong protection for minority access to the media. The Minorities Act stipulates that separate legislation requires public service television and radio stations to “ensure that national and ethnic minority programmes are produced and broadcast on a regular basis.”<sup>197</sup> Act I of 1996 on Radio and Television Broadcasting (the Media Act) authorises the national minority self-governments to delegate a member to the boards of trustees of the foundations which oversee public broadcasting in Hungary: the Hungarian Radio Public Foundation, the Hungarian Television Public Foundation and the “Hungaria” Television Public Foundation.<sup>198</sup> The Media Act also obliges Hungarian public radio and television to provide the larger minorities – including the Roma minority – with a weekly broadcasting slot. Regional state radio stations broadcast 30-minute long minority programmes daily. Members of the minority national self-governments have the right to decide independently how they will use this time. However, the Roma national self-government has complained that its allocated programming has been relegated to off-peak TV transmission times.<sup>199</sup> In negotiations to modify its agreements with Hungarian Television, the Roma National Self-government only achieved an extension of transmission times from 24 to 26 minutes.

The Media Act also requires public service broadcast providers to give special attention to the portrayal of the values of national, ethnic and other minorities, and stipulates that preference in the distribution of tenders and subsidies should be granted to non-profit service providers who promote ethnic or other minority interests. However, the Ombudsman has requested the National Radio and Television Board (ORTT) to investigate the fact that this latter provision has been largely ignored.<sup>200</sup>

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<sup>197</sup> Minorities Act, Art. 18 (1).

<sup>198</sup> Public media in Hungary are managed by share holding companies controlled by three public foundations (one for radio and one each for two public television channels).

<sup>199</sup> For example, *Roma Magazine* is broadcast on M1, the main state channel, on Monday at 1:00 p.m. and repeated early on Saturday morning on M2, which cannot be received at many small settlements with significant Roma populations.

<sup>200</sup> According to NEKH, the ORTT “has no knowledge of cases that would prove that local radio stations do not abide by the obligations they assumed in connection with the minorities living in their area of reception.” NEKH comments, p. 19.

In recent years the ORTT has passed a number of resolutions concerning the portrayal of minorities, whilst Roma plaintiffs have won personal lawsuits concerning several broadcasts. The ORTT is also charged with distributing government funding to support media. Of the HUF 55 million (c. € 215,455) distributed in April 2000 for, *inter alia*, “programmes presenting the culture, life and standpoint of national and ethnic minorities”, less than HUF three million (c. € 11,742) will be given to Roma or programmes about Roma. The ORTT has declined to explain its distribution criteria.

### 5. *Participation in Public Life*

The 1993 Minorities Act outlines the terms and conditions for the establishment of minority “self-governments” at the local and national levels to represent the rights and interests of recognised national minorities.<sup>201</sup> The system constitutes a unique attempt to institutionalise minority participation in public affairs, and has been praised widely. Nonetheless, in practice the minority self-government system has channelled the political energies of Hungarian Roma into structures that are essentially consultative, with the effect of institutionalising marginalisation, rather than enhancing effective participation in public life. Local governments have repeatedly failed to take the opinions expressed by Roma self-government representatives into consideration, and the law specifies no consequences. Although there are presently 10–15 Roma political parties in Hungary, their role in national political life remains marginal.<sup>202</sup>

There are currently no Roma MPs in Hungary’s Parliament.

Local minority self-governments have the right to solicit information from and submit initiatives to any public administrative authority in connection with minority issues and to establish and maintain institutions in the areas of education, media and the preservation of traditions. Their consent is required for the adoption of local government decrees affecting minorities and the use of minority languages; and for the appointment of leaders to minority institutions. Minority self-governments at the national level are also entitled to establish and maintain cultural institutions, to express opinions on acts, statutes and decrees affecting minorities, and to participate in the professional supervision of all levels of minority education.

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<sup>201</sup> For a full description of the structure and election of these bodies see, State Report 1999, Article 15.

<sup>202</sup> The Minorities Act provides for the regulation of minority representation in Parliament by a separate statute. No such statute has been adopted, although the Constitutional Court called on the legislature to end the unconstitutional situation in 1995.

Many problems have arisen during implementation of the Act. As the Ombudsman has pointed out, the system for providing operational funding to local minority self-governments has had an adverse impact on their independence and ultimately on their ability to represent the interests of their communities effectively.<sup>203</sup> The Office of the Prime Minister has acknowledged that the present system is not optimal, and that more efficient funding regulations ought to be developed.<sup>204</sup> Local governments – which have been assigned an increased amount of duties since 1990 – are insufficiently funded and operate within a wider social environment, unsympathetic to the special problems faced by Roma. Although local governments are legally required to cooperate with minority self-governments, and entitled to transfer certain functions to them, minority governments are assigned tasks they lack the budgetary resources to fulfil. There is frequently conflict over whether budgetary allocations are adequate to the tasks assigned.<sup>205</sup> There have also been problems related to the unlawful assignment to minority self-governments of responsibilities for the distribution of social benefits and services – responsibilities that are the exclusive responsibility of local governments.<sup>206</sup>

Such actions can awaken unrealistic expectations towards minority self-governments and undermine their legitimacy with their minority constituencies. The president of the Nyiradony Roma minority self-government (Szabolcs-Szatmar-Bereg county) states: “[local Roma] expect us to solve the situation, and keep asking what [changes] they will experience. They put great pressure on us and even ask what we’ve done with our 580,000 HUF (€ 2,257) [yearly operating stipend].”<sup>207</sup>

Problems have also been experienced in the election of minority self-governments. In line with the inalienable right to self-identification, neither candidates nor voters are required to prove their belonging to an ethnic minority. The smaller number of votes required for candidates to win a seat on minority self-governments<sup>208</sup> allows non-minority candidates to stand for election and win on spurious grounds.<sup>209</sup> For example, in Hajduhadhaz (Hajdu-Bihar county) two non-Romani members were elected to the minority self-government and, according to the president of the minority self-government, have

<sup>203</sup> *Ombudsman’s Report 1998*, pp. 99–102.

<sup>204</sup> NEKH Comments, p. 9.

<sup>205</sup> See *Ombudsman’s Report, 1999*, Section 3.2.1

<sup>206</sup> See *Ombudsman 1998*, Section 3.2.2, HCNM 2000, p. 138;

<sup>207</sup> Interview with the president of the Nyiradony Roma minority self-government, August 2000.

<sup>208</sup> Act LXIV of 1990 on the Election of Mayors and Local Government Representatives.

<sup>209</sup> *Ombudsman 1998*, pp. 32–34. This is known as the “cuckoo phenomenon”; an analysis can be found in the same report on p. 17.

prevented the minority self-government from condemning educational segregation. The Ombudsman has suggested measures to address this problem, such as holding separate election days for local and minority self-governments, or providing ballot sheets only on the basis of requests by citizens.<sup>210</sup>

Minority self-governments have also experienced electoral difficulties in Budapest, where special procedures (laid out in the Minorities Act) specifically require an unusually high quorum for the election of representatives – 75 percent of the total electoral body. In 1998, this led to a failure to elect both Roma and Romanian self-governments for the capital.<sup>211</sup> In the case of the Romanian Minority Self-government, the electoral body was granted an irregular third attempt with a lowered quorum (of 50 percent plus one). No third chance, however, was given to the Roma minority for the election of their self-government for Budapest and the capital lacks a Roma self-government to this day, a situation which necessarily impacts the interests of the large Roma community there.

The Ombudsman has noted a general lack of mechanisms for monitoring the performance of minority self-governments, and recommends that the legality of their operation be regularly assessed.<sup>212</sup>

Financial dependence on local governments can impact minority self-governments' independence in other areas, sometimes defining their loyalties and undermining their capacity to represent Roma interests effectively. For example, despite the fact that minority self-governments have effective veto power over local government decisions in respect of minority education, they do not exercise it. Even in towns with Roma minority self-governments, Roma children who don't belong in special schools for the mentally handicapped are placed in such schools. The president of the Roma minority self-government in Hosszupalyi (Hajdu-Bihar County), where, according to estimates, every fifth Roma child begins his/her education in special schools, asserted that "[the local authorities] would kill us if we tried to change things."<sup>213</sup>

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<sup>210</sup> *Ombudsman 1998*, pp. 32–34. According to the Ministry for Justice, the cuckoo phenomenon will be eliminated by modifications currently being introduced to the Minorities Act. The Ministry proposes to solve the problem by introducing a "partial registration" of minority voters; the plan is allegedly supported by minority representatives. NEKH Comments, p. 5.

<sup>211</sup> Minority self-governments for Budapest are elected according to the same precepts as national minority self-governments.

<sup>212</sup> *Ombudsman 1999*, p. 86. He suggests that this task should be vested in the Minister of Justice, the Office for National and Ethnic Minorities or the Public Prosecutor's Office.

<sup>213</sup> Information from the president of the minority self-government, Budapest, August 2000.



## IV. Institutions for Minority Protection

### A. Official Bodies

#### *Parliamentary Commissioner for Ethnic and National Minorities (Minorities Ombudsman)*

The Minorities Ombudsman is appointed by parliament specifically to investigate infringements of the rights of national or ethnic minorities, and to initiate measures for remedy.<sup>214</sup> Financial independence is provided for, as is immunity from prosecution (not extending to slander or libel).<sup>215</sup> The Office is open to complaints from anyone who has suffered injury due to the acts or omissions of any public authority, provided that all available legal remedies have been exhausted or none exist. The Ombudsman may withhold the identity of applicants on request, and may also act *ex officio* to investigate rights abuses.

The Ombudsman is entitled to investigate any authority, including the armed forces, national security services, and the police, and may request all documentation, written explanations, declarations or opinions from officials or any employee in the relevant body and demand the initiation of an inquiry.<sup>216</sup> On discovering an infringement of rights, the Ombudsman may, *inter alia*, file a motion with the Constitutional Court; lodge a protest with the competent public prosecutor; or propose that legislation be amended, repealed or introduced.<sup>217</sup> The Ombudsman may also initiate disciplinary proceedings; in the case of a perceived criminal offence he is obliged to initiate criminal proceedings.<sup>218</sup> However, he has no power to impose legal sanctions directly on perpetrators of infringements of minority rights.

According to the Ombudsman's data, Roma not only lodge more complaints than all other minority groups combined,<sup>219</sup> but their complaints also differ substantively from

<sup>214</sup> According to Article 32/B of the Hungarian Constitution. The status, rights and obligations of the Ombudsman are set forth in Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights.

<sup>215</sup> Remuneration is the same as the basic remuneration of ministers. The Ombudsman cannot be held responsible in court or before any other authority for any fact or opinion communicated in the course of the exercise of his/her mandate. Act LIX of 1993, Art. 9 and 11.

<sup>216</sup> Act LIX of 1993, Art. 18.

<sup>217</sup> Act LIX of 1993, Art. 22–23.

<sup>218</sup> Act LIX of 1993. Art. 24.

<sup>219</sup> In 2000, the Ombudsman treated a total of 431 cases, initiated by private persons, minority self-governments, local self-governments, state organs, educational institutions, and also *ex officio* actions initiated by the Ombudsman himself. Complaints by Roma far outnumber those of the other 12 minorities: in 1998, 281 out of 409 complaints were lodged by Roma individuals; for 1999, the figure was 235 out of 435, and 291 out of 431 in 2000. See *Ombudsman 2000*.

those of other minorities. While non-Roma complaints concern so-called “positive” rights such as rights to minority names or minority language street signs, the majority of Roma complaints concern acts of discrimination.

The Ombudsman’s opinions and recommendations have had a demonstrable effect: reports estimate that 60–75 percent of the Office’s recommendations, initiatives and legislative suggestions – many of them aimed at tackling discrimination – have been accepted by the respective government offices at whom they were directed.<sup>220</sup> However, some of the Ombudsman’s more far-reaching recommendations have been disregarded. For example, the Ministry for the Interior rejected a recommendation that authorities be obliged to initiate petty offence procedures *ex officio* on the discovery of employment-related discrimination. Designation of the ethnic status of perpetrators in crime-related reports decreased dramatically following a 1997 joint statement by the Ombudsmen for Data Protection and Minorities, declaring the publication of ethnic status in such reports illegal.

#### *Office for National and Ethnic Minorities (NEKH)*

The Office for National and Ethnic Minorities (NEKH) was established in 1990 with a mandate to *inter alia* assist in the development of government minority policy.<sup>221</sup> NEKH has undertaken a number of activities in support of the Roma minority in particular.<sup>222</sup>

NEKH plays an important role in developing and overseeing implementation of the governmental “Mid-term Package” for the Roma minority (see below). However, the office has not been granted the necessary competence and authority to perform this

<sup>220</sup> In 1998, 14 initiatives put forward by the Office were accepted, as were 8 of 11 recommendations. In 1999 15 of 19 initiatives, six out of nine recommendations and five out of eight legislative suggestions were accepted by the bodies addressed. Accepted recommendations against discrimination in employment, by the Minister of Welfare and Family Affairs and the Minister of Justice, include leaflets to inform employees of their rights in cases of discrimination; data collection on discrimination in employment; and a modification to Article 3 of the Labour Supervision Act. See *Ombudsman 1998*.

<sup>221</sup> Other responsibilities assigned to NEKH: elaboration of the conception of minority policy; participation in the elaboration of the government programme for implementation of the Minorities Act; facilitating contacts between governmental and minority institutions; monitoring and informing public opinion on minority issues; and maintaining relations with international organisations and institutions which deal with the protection of the rights of minorities living in different countries. See Government Resolution No 34/1990 (VIII.30).

<sup>222</sup> These activities included providing financial support to the National Roma Information and Cultural Center, the network of Roma Minority Community Houses, various Roma magazines published with state support, and Roma programmes broadcast on Hungarian radio and television once a week. See *Measures Taken by the State to Promote the Social Integration of the Roma Living in Hungary*, NEKH, 2000, p. 38.

task effectively.<sup>223</sup> NEKH also suffers from low prestige within the current administration generally, resulting in an inability to obtain clear and unequivocal information from other government agencies for reports on the implementation of the Package.<sup>224</sup> As of June 2001, no government report on Mid-term Package-related activities and funding was available.<sup>225</sup>

*Middle-term Package of Measures for the Improvement  
of the Living Conditions and Social Situation of the Roma Population  
and the Inter-Departmental Committee on Roma Affairs*

The Mid-term Package, adopted by the present Government in 1999, outlines policy objectives in the areas of education, culture, employment, agriculture and regional development; as well as social, health and housing programmes; anti-discrimination programmes and “communication tasks”.<sup>226</sup> Responsibility for implementation is assigned to a number of different government ministries as well as other bodies, which are called on to co-operate with the National Roma self-government and to earmark necessary resources in their annual budgets. The adoption of the Mid-term Package was hailed as an important step in addressing the concerns of Hungarian Roma. Deficiencies in implementation of the Package, however, have drawn criticism from the Ombudsman and others.

First, a loose organisational structure has not lent itself to coherent, focused implementation. The task of coordinating implementation of the various elements of the package was assigned to a special Inter-Departmental Committee on Roma Affairs (IDC), which is chaired by the Minister of Justice, with the head of NEKH as deputy-chair, and composed of deputy secretaries of state from the relevant ministries as well as the president of the national Roma minority self-government.<sup>227</sup> However, deputy secretaries do not possess sufficient authority to compel action within their own ministries, and often send department heads or other colleagues with less authority to IDC meetings in their place. The Minister of Justice has not attended a single IDC meeting. According to a

<sup>223</sup> OSI Roundtable, April 2001.

<sup>224</sup> The president of NEKH was formerly an under-secretary of State; after 1998 the office was placed under the authority of the Ministry of Justice, leading to a structural paradox, as in theory NEKH is vested with the task of coordinating the activities of all Ministries, including the Ministry of Justice.

<sup>225</sup> According to a former NEKH employee, preparation of a summary report was delayed by months because reports initially submitted by several Ministries were lacking in essential details and had to be sent back with requests for more information. OSI Roundtable, Budapest, 3 April 2001.

<sup>226</sup> Government Resolution 1047/1999, following on a former package, Government Resolution 1093/1997. Reportedly, few steps were taken towards implementation of the 1997 package.

<sup>227</sup> Government Resolution 1049/1999 on the Establishment of the Inter-Departmental Committee on Roma Affairs, Point 2.

former NEKH employee, placing officials of higher political status and administrative authority on the Committee would not only bring increased efficiency in terms of implementation, it would also constitute an important indication of political will.<sup>228</sup>

Second, a lack of effective coordination has hindered transparent monitoring and evaluation. In the absence of guidelines and supervision, authorities have taken an ad hoc approach to implementation: different ministries planning activities over different periods of time. Some ministries have drawn up implementation plans that target a number of socially-disadvantaged groups, including Roma.<sup>229</sup> Ministerial budgets do not differentiate between spending on the specific goals and programmes outlined in the Mid-term Package and spending on other programmes. For example, the Ministry of Education provides figures on supplementary funding for minority education that include the amount utilised by schools to support catch-up classes; in this way, governmental funding that supports effective segregation is presented to the public as funding to improve the situation for Roma. In all cases, it is very difficult to monitor how funding budgeted towards implementation of the Mid-term Package was actually used.

Finally, critics maintain that the lack of detailed information regarding implementation of the Mid-term Package has allowed for serious distortions in terms of how the programme has been communicated to the Hungarian public.<sup>230</sup> Although government activities on the package are frequently mentioned in the press, the information presented is often incomplete and sometimes misleading – tending to emphasise large amounts spent on improving living conditions for Roma without specifying the nature of the programmes or detailing the expenditure.<sup>231</sup> Presenting the package in this way carries the risk of reinforcing public perceptions of Roma as the unworthy recipients of government munificence, and may inspire greater public resentment against Roma in the event that it does not produce immediate and tangible results – a prospect that both the government and the Commission believe is unlikely.

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<sup>228</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>230</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>231</sup> *Hungarian Mirror*, official newsletter of the Prime Minister's Office, 2000/1, p. 5: "The Hungarian government spends an increasingly larger amount to improve the living conditions of the Roma population each year. In 2000 this amount totalled almost HUF 10 billion (€ 38,910,505)." The projection for 2001 is HUF nine billion (c. € 35,019,455). Working material related to the 2000 implementation of the Medium-term Mid-term Package – draft budget made available at the press conference of the Inter-Ministerial Committee on 13 April 2001.

## B. Civil Society

Since 1989, a large number of local and national Roma organisations have been established, which conduct a wide range of activities and programmes in the cultural, social, and political spheres as well as in the area of rights protection.<sup>232</sup> Few non-Roma civil society organisations support Roma interests.<sup>233</sup>

A small number of both Roma and non-Roma organisations have criticised and contested discrimination against Roma. Given the absence of government statistics, the information gathered by civil society organisations as well as by Roma minority self-governments has been decisive both in establishing general patterns of discrimination against Roma<sup>234</sup> and in challenging specific cases of discrimination in Hungarian courts.<sup>235</sup> In recent years, these organisations have succeeded in forging close links with state administrative bodies at the local and national levels. The Ombudsman co-operates closely with human rights organisations, drawing attention to the possibility of litigation in cases where his proposals are not taken up or where litigation is the only way to provide remedy for clients. However, human rights organisations do not have *locus standi* under Hungarian law, and so they must retain private lawyers to represent victims.

Several prominent Roma organisations have drawn attention to the connection between discrimination against Roma – including in the distribution of government funding – and the growing impoverishment of Roma communities. The leaders of these organisations have pressed for the development of policies that take both of these factors into account, such as making receipt of government support for employment and small business programmes contingent upon demonstrating that some of this funding has been allocated to Roma.<sup>236</sup>

<sup>232</sup> For a list of Roma and other NGOs dealing with issues such as sustainable development and advocacy, see NIOK, *Nonprofit Onarckep* at <<http://www.niok.hu/>> (accessed 14 May 2001).

<sup>233</sup> There are exceptions: in June 2000 Roma leaders joined forces with trade unions composed primarily of non-Roma, to organise a “poverty protest” against government social policy.

<sup>234</sup> For example, RPA’s fact-finding into systematic police abuse in Hajduhadhaz has been cited by many human rights organisations, e.g. *World Report 2000*, Human Rights Watch. The Hungarian Helsinki Committee provided a submission to the UN Committee Against Torture in November 1998.

<sup>235</sup> Both NEKI and the RPA have posted some success in challenging cases of discrimination against Roma. NEKI received 171 complaints in 2000, almost entirely submitted by Roma; of which they established evidence of discrimination in 39 instances. Of nine cases brought to the courts in 1999, the court found evidence of discriminatory practice in eight. *White Booklet 2000*, p. 7; *White Booklet 1999*. The RPA’s success in fighting the discriminatory practice of holding separate graduation ceremonies for Roma and non-Roma children in Tiszavasvári is described in Section III. The Hungarian Helsinki Committee offers a legal counselling service that has assisted Roma victims of police brutality before domestic and international fora.

<sup>236</sup> OSI Roundtable, Budapest, 3 April 2001.

Most NGOs in Hungary remain small and “donor-driven” – their existence tied to the implementation of specific projects and their activities defined at least in part by the agendas of the organisations that fund them.<sup>237</sup> In past years, many international organisations have provided seed funding for “pilot projects”, on the assumption that these projects would be monitored and evaluated by the government, and that successful projects would be taken up and integrated into broader government policy. However, this has not occurred, and the future of many projects – such as model minority schools for Roma or the network of Roma “community houses”<sup>238</sup> – is uncertain.<sup>239</sup>

Strengthening the capacity of civil society organisations to pursue an independent agenda would be a key step in the development of a broader “human rights culture” in Hungary, and in encouraging the development of a social context within which positive measures to improve the situation for Roma would be not only contemplated, but implemented.<sup>240</sup>

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<sup>237</sup> See e.g. *Roma programok a rendszerváltás utáni Magyarországon* (“Roma programmes in Hungary after the transition”), World Bank manuscript 2000.

<sup>238</sup> Roma “community houses” were established in a number of towns with the objective of providing Roma minority self-governments and NGOs with space for meetings and the organisation of cultural events, education classes, etc. Reportedly, the houses have struggled to function efficiently, and are almost entirely reliant on foreign funding. *Nepszabadság*, “Alig működő roma közösségi házak” (“Barely-functioning Roma community houses”), 17 November 2000.

<sup>239</sup> OSI Roundtable, Budapest, 3 April 2001.

<sup>240</sup> OSI Roundtable, Budapest, 3 April 2001.

## V. Recommendations

*In addition to the recommendations elaborated in the Overview Report, the following measures could contribute to enhanced minority protection in Hungary:*

1. Invest bodies responsible for the implementation of the Mid-term Package with sufficient authority to do so effectively. Establish transparent and consistent reporting, monitoring and budgeting standards.
2. Establish mechanisms for monitoring the practice of local governments, particularly in the allocation of social housing, and adopt disciplinary measures in case of discriminatory behaviour by these bodies.
3. Adopt stronger mechanisms to ensure consultation with non-governmental human rights and Roma organisations in the development, implementation and evaluation of governmental minority policy. Monitor implementation of the recommendations of the parliamentary Commissioner for National and Ethnic Minorities, and consider elaborating disciplinary measures to be applied against official bodies that fail to comply.
4. Establish a framework for monitoring the expenditure of state support for minorities, including, *inter alia*, funding for special Roma “catch-up” classes by local governments and others.
5. Review the existing system of assigning students to “special schools” for the mentally handicapped, especially concerning the assignment of disproportional numbers of Roma students to these schools, with a view to reform or abolition.

## Appendix A

### Demography

*Demographic data:* Hungary's population was 10,709,463 in 1980, falling to 10,374,823 in 1990. The following figures were recorded in the 1980 and 1990 censuses according to the "native language" and "nationality" of the national and ethnic minorities in Hungary.

*Table A1*  
**Estimated numbers of minorities in Hungary**

Minorities	Estimated Number
Gypsy/Roma	400,000–600,000
German	200,000–220,000
Slovakian	100,000–110,000
Croatian	80,000–90,000
Romanian	25,000
Polish	10,000
Serb	5,000–10,000
Slovenian	5,000
Bulgarian	3,000–3,500
Greek	4,000–4,500
Armenian	3,500–10,000
Ukrainian	2,000
Ruthenian	6,000
Total:	835,000–1,083,955

SOURCE: "Minority Organisations" as cited in the Report Submitted by Hungary Pursuant to Article 25 of the Framework Convention for the Protection of National Minorities, Budapest, 1999.



*Table A2*  
**Population according to native language**

Minorities	Number of People		Percentage of the Population in 1990
	1980	1990	
Slovakian	16,054	12,745	0.1228
Romanian	10,141	8,730	0.0841
Croatian	20,484	17,577	0.1694
Serb	3,426	2,953	0.0285
Slovenian, Wend	3,142	2,627	0.0253
German	31,231	37,511	0.3616
Romani languages	27,915	48,072	0.4634
Armenian	".."	37	0.0004
Greek	".."	1,640	0.0158
Bulgarian	".."	1,370	0.0132
Polish	".."	3,788	0.0365
Ukrainian, Ruthenian	".."	674	0.0065
Total	112,393	137,724	1.3275

SOURCE: MAPSTAT Central Statistical Office software, Budapest, 1992

Estimates based on 1992 and 1993 educational statistics and regarded as reliable by experts put the number of Roma in Hungary at about 461,000, or 4.2 percent of the population.<sup>241</sup> The 2001 census methodology was based on the results of a 1992 conference, involving representatives of regional statistical offices, members of various minority groups and demographic researchers. It included four voluntary questions related to "nationality", mother tongue, language spoken at home, and cultural value.

<sup>241</sup> Kertesi, Kezdi, *A cigany nepesseg Magyarországon* ("The Gypsy Population in Hungary"), 1998.

## Appendix B

### Crimes by Public Officials

The tables below show how many “official crimes” were reported in 1998 and 1999, in how many cases investigation was refused or terminated,<sup>242</sup> in how many cases the prosecutor’s office pressed charges and how many defendants were convicted for official crimes in these two years.

*Table B1*

#### **Police abuse: reported crimes, investigations, charges and convictions**

2000				
Type of Offence	Cases Reported	Investigation Refused	Investigation Terminated	Charges Pressed
Maltreatment in official proceedings (Article 226)	850	303	442	94
Forced interrogation (Article 227)	283	130	128	23
Total	1,133	233	570	117

SOURCE: Public Prosecutor’s Office

<sup>242</sup> According to Art. 139 of Act I. of 1973 on Criminal Procedure, the investigation has to be terminated if (a) the act is not a criminal offence, or it was not committed by the suspect; (b) the committing of a criminal offence or the identity of the offender may not be concluded from the data of the investigation and no result may be expected from the continuation of the procedure; (c) the suspect is not or cease to be punishable; (d) the act has already been decided upon by a court.

1999				
Type of Offence	Cases Reported	Investigation Refused	Investigation Terminated	Charges Pressed
Maltreatment in official proceedings (Article 226)	787	249	455	77
Forced interrogation (Article 227)	281	126	131	23
Total	1,068	375	586	100

SOURCE: Public Prosecutor's Office

1998				
Type of Offence	Cases Reported	Investigation Refused	Investigation Terminated	Charges Pressed
Maltreatment in official proceedings (Article 226)	858	282	467	103
Forced interrogation (Article 227)	389	157	202	30
Total	1,247	439	669	133

SOURCE: Public Prosecutor's Office

*Table B2*  
**Number of defendants found guilty**

Type of offence	1998	1999	2000
Maltreatment in official proceedings (Article 226)	69	66	69
Forced interrogation (Article 227)	14	29	24
Total	83	95	93

SOURCE: Statistical Department of the Ministry of Justice.

