

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### Third report on Hungary

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.*

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 5 December 2003 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's second report on Hungary in March 2000, progress has been made in a number of the fields highlighted in the report. Training in human rights and conflict management has been provided to police officers and other officials. The Hungarian authorities have set up an anti-discrimination network and a national network for integrated education. New bodies dealing with Roma issues have been established as well as an Office for Equal Opportunities. A new law on asylum entered into force in June 2002. An Act on Equal Treatment and the Promotion of Equal Opportunities was adopted on 22 December 2003. Different projects have been implemented in various fields of life to address the problems faced by the Roma minority, particularly in the fields of employment and education. The Hungarian authorities have shown a willingness to pursue issues relating to the position of ethnic and national minorities, including Roma.

However, the progress made in the field of legislation and governmental policy in dealing with the problems of racism, intolerance and discrimination remains limited in a number of respects. Racially-motivated violence, including also acts of police brutality, continues. While the situation of national and ethnic minorities other than the Roma minority has generally improved, there remain some lacunae in the legislative framework relating to national and ethnic minorities. The criminal law needs to be further extended in order to cover all instances of racist expression, and the existing provisions against racism are not sufficiently implemented. The Roma minority remains severely disadvantaged in most areas of life, particularly in the fields of health care, housing, employment and education. Some shortcomings in the law and practice concerning the rights of refugees, asylum-seekers and "persons authorised to stay" have been identified. There is still no comprehensive and targeted integration strategy ensuring that immigrants fully become part of Hungarian society. Antisemitic, racist, xenophobic and intolerant feelings have been expressed in the media, by some politicians as well as within mainstream society, alongside negative attitudes towards migrants and asylum seekers. ECRI recognises the positive initiatives that the Hungarian authorities are beginning to take in the field of Roma education but it considers that the segregation of Roma children in education remains an important issue of concern. Moreover, initiatives taken at national level to combat racism and discrimination do not always successfully filter down to local level.

In this report, ECRI recommends that the Hungarian authorities take further action in a number of fields. It recommends, inter alia, the ratification of Protocol 12 to the European Convention of Human Rights, fine-tuning the legislation on minority self-government and maintaining efforts in the field of cultural autonomy and the education of national and ethnic minorities in Hungary. It calls for a strengthened implementation of existing criminal law provisions against racism and the rapid adoption and implementation of further criminal law provisions to better combat racist expressions. ECRI also recommends that the Hungarian authorities duly implement the existing provisions of the civil and administrative law, including the Act on Equal Treatment and the Promotion of Equal Opportunities, adopted on 22 December 2003. ECRI calls for measures to improve the situation of non-citizens in Hungary, including immigrants, refugees, asylum-seekers and "persons authorised to stay". ECRI encourages the Hungarian authorities to take awareness-raising measures to combat racist feelings among the general public. It recommends that the Hungarian authorities maintain and strengthen their efforts to improve the situation of the Roma minority, particularly in combating discrimination against Roma in the fields of health care, housing and employment. In particular, ECRI recommends measures to combat any form of discrimination and segregation against Roma children in education. ECRI recommends a stronger response to incidents of police mistreatment of members of minority groups. It encourages the authorities to maintain their efforts concerning training on human rights and the problems of racism and discrimination aimed at officials working in contact with members of minority groups.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON HUNGARY

### International legal Instruments

1. In its second report on Hungary, ECRI recommended that Hungary ratify the Revised European Social Charter. It recommended the signature and ratification of the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level.
2. ECRI notes that Hungary has not yet ratified the Revised European Social Charter, neither has it signed and ratified the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level. Hungary signed Protocol 12 of the European Convention on Human Rights on 4 November 2000 but has not yet ratified it. The Hungarian authorities informed ECRI of their intention to submit Protocol 12 to the Parliament with a view to its ratification. Hungary has signed the Convention on Cybercrime, and the Hungarian authorities informed ECRI of their intention to sign and ratify the Additional Protocol to this Convention, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, as soon as possible.

### ***Recommendations:***

3. ECRI reiterates its recommendation that Hungary ratify without delay the Revised Social Charter, the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level.
4. ECRI furthermore urges Hungary to ratify Protocol No 12 to the European Convention on Human Rights, and to sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. ECRI also encourages the Hungarian authorities to sign and ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### Constitutional provisions and other basic provisions

#### - ***National and Ethnic Minorities in Hungary***

5. In its second report on Hungary, ECRI encouraged the authorities to closely monitor the implementation and the effectiveness of the system of minority self-government and to make all necessary changes in close collaboration with the communities concerned.
6. ECRI notes that Act LXXVII of 1993 on the Rights of National and Ethnic Minorities is generally regarded as a comprehensive and progressive tool for the protection of the rights of minorities. However, it is generally argued that there is a need to review some shortcomings which have been identified in the practice of minority self-government. ECRI is concerned about reports from certain minority representatives according to which they experience

inappropriate pressure in certain localities aimed at discouraging such minorities from establishing and running a minority self-government. Concerns have been expressed about abuses in the elections, whereby persons who do not belong to a given minority are elected as representatives of that minority, by taking advantage of the fact that persons not belonging to a given minority are entitled to vote or stand for the minority self-government elections. The authorities have entered into a process of changing the legislation on the election of minority self-governments in order to end the abuses which have occurred. ECRI notes with interest that an active debate is taking place within Hungary on this issue and that a wide range of propositions have been made in this regard, notably by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities. One suggestion put forward is for the introduction of a register of members belonging to a national or ethnic minority who would be entitled to vote in minority self-government elections<sup>1</sup>.

7. ECRI notes that the process of amending the legislation also covers others problematic aspects concerning the scope of competences and the budget of minority self-governments. ECRI acknowledges that efforts have been made in the area of the rights of national and ethnic minorities.
8. Representatives of national and ethnic minorities have expressed their concern about the absence of adequate representation of minorities in Parliament. Even though such representation is provided for in the Hungarian Constitution, to date no concrete measures have been adopted in this respect. ECRI notes with interest that a working group is preparing legislative amendments in order to find a solution for national and ethnic minorities to be adequately represented in Parliament. According to the national authorities, this question will be settled only in the context of the amendment of the legislation pertaining to the rights of national and ethnic minorities and to the election of the minority self-governments.

#### ***Recommendations:***

9. While recognising the positive role of the minority self-government system in the protection and enforcement of the rights of the national and ethnic minorities in Hungary, ECRI recommends that the Hungarian authorities continue their review of this system in order to identify and address any shortcomings, either in the relevant legislation or existing practice so as to increase the efficiency and the credibility of such institutions.
10. ECRI encourages the Hungarian authorities to give national and ethnic minorities the possibility of exercising their legally guaranteed right to be represented in Parliament as soon as possible.

#### ***- Status law on ethnic Hungarians living abroad***

11. On 19 June 2001, the Hungarian Parliament adopted Act N°62 of 2001, the so-called "status law" which gave specific benefits to ethnic Hungarians in neighbouring countries. The Act gave an estimated 3.5 million ethnic

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<sup>1</sup> See below, under "Monitoring the situation".



Hungarians living abroad the right to work in Hungary for three months each year. It provided also social, health, transportation and education benefits. This law was widely criticised by neighbouring countries and international bodies. ECRI notes in particular that several international institutions drew the attention of the Hungarian authorities to the possible discriminatory effects of this law<sup>2</sup>. The law was amended in 2003 in response to these criticisms. Subsequently, Hungary signed first with Romania and then with Slovakia agreements on educational subsidies for minorities living in the other country. It has been pointed out, however, that the possible discriminatory effects of Hungary's policy towards ethnic Hungarians living abroad could remain a sensitive issue.

### ***Recommendations:***

12. ECRI recommends to the Hungarian authorities to monitor closely its legislation concerning ethnic Hungarians living abroad to ensure that it does not infringe the principle of non-discrimination on the grounds of nationality and national or ethnic origin.

### **Criminal law provisions**

13. In its second report, ECRI recommended that the criminal law provisions in the field of combating racism and intolerance should be further extended to cover areas such as racist expressions.
14. Article 269 prohibits racial and religious hatred. Due to a relatively restrictive interpretation of this provision by the Supreme Court, it has rarely been applied by the courts, even in cases of blatant incitement to racial hatred. In reaction to this, the Parliament has adopted a law amending Article 269 to ensure that racist expressions will be duly punished. Subsection 1 of Article 269 now provides that "anyone who incites, before a large public, to hatred or instigates a violent act against a national, ethnic, racial or religious group or certain groups of the population, commits a felony and shall be punishable with an imprisonment up to three years". Subsection 2 states that "anyone who violates, before a large public, human dignity by defaming or humiliating a person or persons because of his/their belonging to a national, ethnic, racial or religious group, commits a misdemeanour and shall be punishable with an imprisonment up to two years". ECRI welcomes this development. However, taking into account the fact that certain concerns have been expressed concerning the risk of infringing upon the right to freedom of expression by strengthening the criminal law in this respect, ECRI draws attention to the importance of ensuring that implementation of the new legislation is in full conformity with Article 10 of the European Convention on Human Rights protecting freedom of expression and with the related case-law of the European Court of Human Rights.

<sup>2</sup> See for instance, PACE, Resolution 1335 (2003) on Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries ("Magyars").

**Recommendations:**

15. ECRI encourages the Hungarian authorities to take into account the recommendations on criminal law provisions contained in its General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination, according to which the law should penalise racist acts including: the public denial with a racist aim of the crime of genocide; the dissemination and distribution with a racist aim of racist material; and the creation and activities of a group which promotes racism.
  16. ECRI recommends to the authorities actively to implement the new legislation aimed at reinforcing the fight against racism.
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17. In its second report, ECRI called for a more vigorous implementation of the criminal law provisions relating to the fight against racism. In particular, ECRI recommended that the Hungarian authorities take steps to: continue and further develop the training of judges and police in view of combating prejudice and raising awareness; raise awareness of the general public concerning the prohibition of racial violence or threats and encourage victims to come forward and bring complaints. It suggested appointing more police officers from the minority groups as well as officials assigned to particular responsibility for receiving complaints in confidence. ECRI also called for a public and firm commitment at the highest level - on the part of politicians and the authorities responsible – to prosecute any form of racism.
  18. ECRI notes with satisfaction that police officers, border police officers, prosecutors and judges receive training on human rights on a regular basis, including on the problem of racism and intolerance. It also notes that some efforts have been made to recruit Roma into the police force in order to improve relations between the police and this minority group, although numbers of Roma police remain low. One reason for this disappointing result may be the reluctance of Roma to enter the police due to their lack of confidence in this institution. ECRI notes with satisfaction that the authorities are in the process of drafting an Act for the protection of victims<sup>3</sup>, that victim protection officers have been appointed and civil victim protection offices set up. It hopes that such steps will encourage victims of racism to come forward and bring their complaints to the police.
  19. Despite these and other measures taken, the implementation of the criminal law provisions to combat racism remains problematic and ECRI expresses its concern about reports according to which the situation in this respect has hardly changed since the adoption of its second report on Hungary. ECRI notes that the number of persons prosecuted for and convicted of racist violence has remained low over the period 1999-2002. However, at the same time, numerous sources continue to report acts of violence, committed mainly against members of the Roma community, but also against members of other groups, such as non-citizens, by members of the majority population, and, most

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<sup>3</sup> See Decision No.115/2003. (X. 28.) OGY (National Assembly) on the national strategy of crime prevention, which provides for the adoption of an act on victim protection.

alarmingly, by police officers<sup>4</sup>. It has been observed that the police and the prosecutors fail to take into account the racist motive of offences, preferring to consider such offences as common offences. In some cases, the police and the prosecutors encounter a difficulty in proving the racist motive of offences.

### ***Recommendations:***

20. ECRI reiterates its recommendation concerning the need for more vigorous implementation of criminal law provisions relating to the fight against racism. It is of the opinion that further steps are necessary in order to increase the effectiveness of criminal law protection against racist crimes. ECRI recommends that further human and financial resources be allocated to measures aimed at ensuring that the investigation and prosecution of racist crimes are carried out in a thorough and systematic fashion.
21. ECRI recommends that the Hungarian authorities continue their efforts to provide training to police officers, legal advisers, prosecutors and judges on issues pertaining to the implementation of penal legislation addressing racism and racial discrimination.
22. Further impetus should also be given to efforts to recruit members of minority groups, particularly Roma, as law enforcement officials, and particularly as police officers. To this end, barriers to the recruitment of Roma into the police should be identified and, where possible, removed. ECRI particularly encourages the authorities to inform members of the Roma communities about the possibilities of joining the police force.
23. ECRI recommends that all necessary measures be taken to raise the awareness of the general public concerning the prohibition of racist acts as well as to combat any obstacle that might prevent victims from coming forward and bringing complaints to the police, such as a lack of confidence in the institution.

### **Civil and administrative law provisions**

24. In its second report, ECRI recommended that the authorities give priority to the implementation of already existing legal provisions to combat discrimination and that they consider introducing a body of anti-discrimination law covering all fields of life.
25. ECRI notes that Article 76-1 of the Civil Code prohibits discrimination against individuals on the basis of nationality, race or religious affiliation. Article 84 provides for remedies in case of violation of Article 76, including compensatory damages, restitution, the issuing of an injunction, and the declaration of the rights of the victim of discrimination. ECRI is pleased to learn that Article 5-1 of the Labour Code was amended in 2001 in order to strengthen the prohibition of discrimination in the field of labour law. The new provision prohibits direct and indirect discrimination in many aspects of employment including the recruitment stage. It provides for a shared burden of proof between the victim and the discriminator. While ECRI welcomes this new provision as a positive step in the

<sup>4</sup>

See below, under "Conduct of law enforcement officials".

fight against discrimination in civil and administrative law, it understands that this provision is not yet fully applied. ECRI is concerned to learn that, according to a number of sources, the principle of shared burden of proof is not sufficiently taken into account by some judges who may not be sensitised enough to the problem of racial discrimination. In general, existing civil and administrative provisions sanctioning discrimination are rarely invoked by victims of racial discrimination who may consider that an action before the courts would be costly and time-consuming with no satisfactory result to be expected in the end.

26. ECRI notes with satisfaction that in 2001 the Ministry of Justice set up an "anti-discrimination network" in cooperation with the national Roma Self-Government and the Office for National and Ethnic Minorities. This network is composed of offices which provide free legal aid to Roma who feel that they have suffered discrimination based on their ethnic origin.
27. On 22 December 2003, the Parliament adopted an Act on Equal Treatment and the Promotion of Equal Opportunities (Act CXXV of 2003). This Act prohibits discrimination, in particular on grounds such as racial origin, colour, nationality, national or ethnic origin, mother tongue and religious convictions. Both direct and indirect discriminations are prohibited. The scope of the Act is very wide as it covers a large number of fields such as employment, social security, health care, housing, education and training, and supply of goods and services. The Act provides for the principle of a shared burden of proof between the victim and the discriminator in administrative and civil law. Positive measures of temporary duration aimed at promoting equal opportunities for certain disadvantaged groups are expressly allowed. Chapter IV provides for the setting up of a national Republican Equal Opportunities Programme aimed at analysing the situation of the relevant groups of society and determining the objectives of promoting equal opportunities. In addition, the Act provides for the setting up of an Authority in charge of ensuring compliance with the principle of equal treatment<sup>5</sup>. ECRI welcomes the adoption of this law which is a significant step forward in the fight against racial discrimination in Hungary and contains a large number of elements provided in ECRI's General Policy Recommendation N° 7 on national legislation to combat racism and racial discrimination.

### ***Recommendations:***

28. ECRI recommends that the Hungarian authorities take all appropriate steps to ensure that the existing provisions of civil and administrative law to combat racial discrimination are duly implemented.
29. In particular, ECRI hopes that the authorities will closely monitor the implementation of the anti-discrimination provision in the Labour Code, and take additional measures to raise awareness among employers and workers concerning this additional protection. ECRI also hopes that the recently set up anti-discrimination network will be given all necessary human and financial resources to become an efficient tool to help combating any form of discrimination against Roma throughout Hungary.
30. ECRI recommends that the Hungarian authorities swiftly implement the Act on Equal Treatment and the Promotion of Equal Opportunities and closely monitor

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<sup>5</sup> See below, under "Specialised bodies and other institutions".

its application.

31. ECRI encourages the authorities to inform the general public about the content and the scope of the Act on Equal Treatment and the Promotion of Equal Opportunities. It also encourages the authorities to organise training for judges and legal advisers on the content and implementation of the civil and administrative provisions aimed at combating discrimination, including the new legislation.

### **Specialised bodies and other institutions**

32. In its second report, ECRI stressed the important role played by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in combating racism and intolerance. It recommended the Hungarian authorities to take appropriate action to follow up the observations and proposals made by this institution and to further extend its role, powers and functions.
33. ECRI notes with satisfaction that the Hungarian authorities have set up a number of institutions which are to play a significant role in the fight against racism and intolerance in Hungary. In particular, it welcomes the setting up of an Office for Equal Opportunities at governmental level. The mandate of this recently established body is to organise and coordinate government action in the field of equal opportunities. The Office will operate in close cooperation with the Ministries and with national and local public institutions in order to set up a national action plan for equal opportunities. It also aims at combating discrimination and promoting equal opportunities through the establishment of a national network composed of local meeting points where information and methodological assistance can be exchanged between the national and local public bodies and the civil society. The Office will work on issues related to gender equality and disabled persons, but will also have a special role to play in ensuring equal opportunities of members of the Roma community. Other institutions have been established to specifically address Roma issues such as the State Secretary for Roma issues and the Council for Roma affairs, which has a consultative status. ECRI also welcomes the appointment of Roma Commissioners in a number of Ministries and particularly of the Commissioner for the integration of Roma and socially disadvantaged children<sup>6</sup>.
34. The Act on Equal Treatment and Equal Opportunities<sup>7</sup> provides for a special Authority of the public administration in charge of ensuring compliance with the principle of equal treatment. This Authority is entitled to receive complaints, conduct ex officio investigations and issue decisions that will be binding upon the parties. It will also be entitled to impose civil and administrative sanctions such as fines upon the authors of discriminatory acts. This Authority is also entitled to make recommendations, notably on legislation. Prior to the adoption of the Act, human rights NGOs expressed concern over the independence of the future Authority. These NGOs have also expressed their concern that the Act does not provide for the Authority to be granted sufficient human or financial resources for it to carry out its work effectively. ECRI notes that, according to Article 13-2 of the Act, the Authority works under the instruction of the government, under the supervision of a member of the government.

<sup>6</sup> See below, under "Discrimination against Roma in the field of education".

<sup>7</sup> See above, under "Civil and administrative law provisions".

### ***Recommendations:***

35. ECRI urges the Hungarian authorities to extend the mandate of the independent Parliamentary Commissioner for the Rights of National and Ethnic Minorities with due regard to ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.
36. While ECRI welcomes the establishment of many new bodies working in the field of its mandate, it draws the attention of the Hungarian authorities to the vital need for coordination and cooperation between all existing bodies and for the continuity of programmes that have demonstrated their effectiveness. ECRI therefore hopes that the new institutions will operate in close cooperation with the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and with the Office for National and Ethnic Minorities in order to avoid any overlap or gaps in the work of all of these institutions. The latter bodies should be given adequate powers and resources in carrying their functions.
37. ECRI recommends that the Hungarian authorities grant to the existing and future bodies involved in the fight against racism and racial discrimination sufficient human and financial resources to enable them to operate in the best possible conditions.
38. ECRI strongly encourages the Hungarian authorities to consider guaranteeing in the near future full independence to the Authority established to ensure compliance with the principle of equal treatment, with due regard to ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

### **Reception and status of non-citizens**

#### **- *Refugees and asylum-seekers***

39. In its second report, ECRI addressed a certain number of issues relating to the situation of asylum-seekers in Hungary. It felt that the authorities should give further consideration to the situation of persons "authorised to stay in the country". It also urged the authorities to improve conditions in community shelters and to organise trainings on human rights, cultural awareness and non-discrimination for border guards and officials responsible for community shelters. ECRI also encouraged politicians and representatives of the authorities to avoid sending negative messages on asylum-seekers.
40. ECRI is pleased to learn that a number of steps have been taken in order to improve the situation of refugees and asylum-seekers in Hungary. A new law on asylum entered into force on 1 January 2002. This law establishes an Office of Immigration and Nationality under the Ministry of Interior with seven regional directorates. This Office deals with all issues related to refugees and to the naturalisation, entry and stay of non-citizens in Hungary. ECRI notes that the

new law brings about some important positive developments in the field of asylum legislation. For instance, it reduces the maximum length of detention of non-citizens without legal status from 18 to 12 months. This law also grants additional rights and benefits to persons "authorised to stay". Moreover, since 2002, asylum-seekers of school age have access to public schools and special Hungarian language courses have been organised for some of them. In 2003 a reception centre was set up to accommodate up to 28 unaccompanied children seeking asylum. Officials working in contact with non-citizens receive human rights training on a regular basis.

41. However, ECRI is concerned that an important number of problems still need to be solved as regards the situation of refugees and asylum-seekers in Hungary. Although ECRI notes that the maximum detention period has been reduced, it notes with concern allegations that persons of certain nationalities are automatically placed in detention for the maximum period on the sole grounds of their nationality, irrespective of any other criteria that should normally be taken into account in such decisions.
42. ECRI is particularly concerned to learn that since January 2001 no asylum-seekers in detention have been either recognised as refugees or granted the status of "persons authorised to stay". There are allegations that this could be due to doubts placed on the credibility of persons in detention, which impinge upon the consideration of their asylum applications. ECRI considers that a person's detention in Hungary should bear no relation to the risk of persecution this person would face in his or her country of origin. Therefore, the fact that a person is in detention should not be allowed to affect the decision on his or her entitlement to a refugee status. The Hungarian authorities have informed ECRI that their policy is on similar lines.
43. Concerns have also been expressed that the law granting humanitarian residence permit to "persons authorised to stay" has not yet been implemented. For the moment, "persons authorised to stay" are granted only a renewable temporary permit of very short duration that places them in a situation of uncertainty. Due to this precarious situation, such persons are *de facto* deprived of certain rights such as access to work. The fact that these persons are kept in community shelters is also worrying as it means that they lack the basic conditions for integrating into Hungarian society and experience certain limitations on their freedom of movement. However, the Hungarian authorities have informed ECRI that they provide these persons with help in finding jobs and moving out of the community shelters, in order to contribute to their social integration.
44. While welcoming the positive developments concerning the living conditions in some detention centres and open community shelters, ECRI notes that in many cases, the situation is still not satisfactory and that further progress is needed as regards accommodation of asylum-seekers, "persons authorised to stay" and refugees. The Hungarian authorities have informed ECRI that works aimed at enlarging and renovating the existing detention centres are in progress.
45. ECRI notes that a four-level refugee determination process was created. This provides more possibilities for review of the decision but it also lengthens the procedure, while the aim of the new law was to shorten the asylum determination procedure.

46. In June 2002, the Hungarian authorities set up an integration committee, composed of representatives of several ministries, NGOs and experts in refugee issues, in order to prepare a pilot integration project for recognised refugees in the town of Debrecen. This project provides for Hungarian language and culture courses, assistance in contacting local employers and accommodation in pre-fabricated houses. This project is a first positive step but, because of its location, some refugees involved in the project have encountered difficulties in finding jobs, and therefore in integrating into Hungarian society.
47. In general, according to the Office of the United Nations High Commissioner for Refugees (UNHCR) in Hungary and other sources, further amendments to the legislation on refugees and asylum-seekers are needed. The authorities, recognising the need to improve the law, are preparing a new draft which is to be submitted to the Parliament in spring 2004. ECRI also notes that many of the measures in favour of asylum-seekers are taken by NGOs or the UNHCR. It has been suggested that the State should become more involved in these initiatives, for instance by providing legal assistance to asylum-seekers. The authorities have informed ECRI that on 20 October 2003, the National Assembly adopted Act No. 80 of 2003 on legal assistance. Under Section 4, the forms of assistance specified under the Act can be ensured for asylum procedure.

***Recommendations:***

48. ECRI recommends that the Hungarian authorities closely monitor the use of detention with respect to non-citizens and take steps to ensure that it is used as a last resort and that no discrimination on the grounds of nationality takes place in this respect.
49. ECRI recommends that the Hungarian authorities closely examine the reasons why no person kept in detention has been granted either refugee or a "person authorised to stay" status over the last years.
50. ECRI encourages the Hungarian authorities to take all appropriate measures to combat any prejudice or negative stereotypes concerning non-citizens by strengthening awareness –raising and human rights training for officials working in relation with refugees and asylum-seekers.
51. ECRI urges the Hungarian authorities to swiftly take steps to resolve the problems encountered by "persons authorised to stay" due to the precariousness of their status, notably by granting them humanitarian residence permits.
52. ECRI recommends that the Hungarian authorities examine the conclusions and recommendations of the UNHCR Office in Hungary and of human rights NGOs working in this field as concerns the need to change legislation and practice pertaining to refugees, asylum-seekers and "persons authorised to stay" in order to improve their general situation.



- ***Integration of immigrants***

53. ECRI notes that the authorities have started to reflect on an integration policy and have already set up pilot projects in this field. It is also pleased to note that the law allows non-citizens to take part in local elections under certain conditions.
54. However, ECRI is concerned that to date, there is still no comprehensive and targeted integration strategy ensuring that immigrants fully become part of Hungarian society. ECRI feels that more attention needs to be paid to non-citizens as members of Hungarian society rather than just as economic entities, and that measures should be taken which reflect this approach, such as, for example, awareness-raising measures within society in general, concerning the contribution made by non-citizen to the Hungarian culture and society. A frequently-cited problem is that many non-citizens do not possess an adequate mastery of the Hungarian language. ECRI encourages Hungarian authorities to support Hungarian lessons for adults and access to courses on Hungarian culture. ECRI notes with interest that the authorities have launched a project aimed at elaborating a comprehensive programme for the social integration of refugees, temporarily protected persons and immigrants.

***Recommendations:***

55. ECRI welcomes initiatives such as the project aimed at elaborating a comprehensive programme for the social integration of refugees, temporarily protected persons and immigrants but considers that the Hungarian authorities should strengthen their efforts in order to adopt a general integration policy covering the whole territory of Hungary and concerning not only recognised refugees but also other non-citizens such as economic immigrants or "persons authorised to stay". This is particularly important in the light of the future accession of Hungary to the European Union and the resulting opening up of the Hungarian labour market to European Union citizens. The integration policy should include measures designed to improve knowledge of the Hungarian language and culture, offered to non-citizen adults as well as school-children.
56. As mentioned previously, ECRI encourages Hungarian authorities to become party to the European Convention for the Participation of Foreigners in Public Life at Local Level<sup>8</sup>.

**Vulnerable groups**

- ***National and Ethnic Minorities***

57. The 1993 Law on the Rights of National and Ethnic Minorities recognises 13 national and ethnic minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Ruthenian, Slovakian, Slovenian, Roma, Romanian, Serbian and Ukrainian<sup>9</sup>.

<sup>8</sup> See above, under "International legal instruments".

<sup>9</sup> On the question of representation of national minorities at national and local level, see above, under "Constitutional provisions and other basic provisions".

58. As the situation of the Roma minority is extremely difficult and cannot be compared to that of other national and ethnic minorities, ECRI will address it in other parts of this report<sup>10</sup>. Concerning members of the twelve other minorities, ECRI is pleased to learn that, with some exceptional cases, they do not face discrimination in their daily lives. However, ECRI notes that representatives of such minorities have called for more cultural autonomy and for the strengthening of the measures already taken in respect of education in minority languages. It has been pointed out that the efforts undertaken by the Hungarian authorities concerning the funding of minority schools should be sustained and even extended.
59. Representatives of minorities have drawn attention to the absence of balanced coverage of their communities in the media. While, in general, insufficient attention is paid to the culture and traditions of minorities, when these subjects are treated, reports sometimes convey negative stereotypes and prejudices about minorities. Minority representatives have therefore called for better representation of minorities within the media profession.

#### ***Recommendations:***

60. ECRI encourages the Hungarian authorities to monitor the 1993 legislation with a view to ensuring the rights of minorities to cultural autonomy and minority language education.
61. ECRI recommends that further consideration be given to the need to raise the awareness of the general public and media professionals concerning the culture of national and ethnic minorities.

#### ***- Roma communities***

62. In its second report, ECRI expressed its concern at a number of problems encountered by members of Roma communities, particularly in the field of access to public services, housing and employment. In particular, ECRI stressed that discrimination by local authorities should not be tolerated by national authorities and considered that in this respect it was important to ensure that national policies and legislation against discrimination were understood and applied at the local level. ECRI also called for the training of officials working within local administrations to raise awareness and combat prejudices.
63. ECRI notes with interest the large range of initiatives adopted by the Hungarian authorities to improve the situation of Roma communities in many fields of life. While the 1999 mid-term package of measures to improve living standards and the social position of the Roma is still being implemented, a new mid-term package of measures is being prepared. A reformulated long-term strategy is also scheduled to be submitted to Parliament. ECRI also notes that in some cases owners of discotheques or bars have been sanctioned by courts for refusing Roma entrance to their establishments. However, ECRI is very

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<sup>10</sup> See below, "Roma communities" and "Discrimination against Roma in education".

concerned to learn that since the adoption of its second report, Roma have continued to suffer widespread discrimination, particularly in the field of access to public services, housing, employment, supply of goods and services and education<sup>11</sup>.

64. As concerns health care, according to some figures, the life expectancy of Roma remains ten years shorter than that of the rest of the population. ECRI notes with concern allegations that discrimination, and in some cases segregation, of Roma takes place in the field of health care although the law clearly prohibits discrimination in this field. The national bodies focusing on Roma issues have informed ECRI that they have begun a comprehensive investigation into the situation of Roma in the field of health and that programmes have recently been developed, including measures such as appointing social workers trained in Roma culture to work in hospitals (for example the programme for tolerance in the public health system).

#### ***Recommendations:***

65. ECRI urges the Hungarian authorities to examine thoroughly allegations of discrimination and segregation in access to health care and, where appropriate, to take all necessary measures to combat such practices.
66. ECRI recommends that measures be taken to ensure that members of Roma communities enjoy equal access to health care. ECRI also recommends awareness-raising and training initiatives aimed at health care personnel to combat stereotypes and prejudices that can lead to discriminatory treatment of Roma patients. An introduction to Roma culture would be most opportune for health care personnel in contact with the Roma community.
67. ECRI also considers that the appointment of assistants who speak the Romani language and who can serve as mediators between Roma patients and health care personnel would be a positive step.
68. As concerns employment, recent figures show that in Hungary 74 % of Roma men and 83 % of Roma women are unemployed. These rates are reported to be even higher in certain areas. ECRI notes with concern that since the adoption of its second report, the situation has not improved as concerns employment of Roma. However, it notes that the national authorities have implemented a number of programmes aimed at promoting equal opportunities of disadvantaged persons on the labour market with a special emphasis on the Roma population. There have been interesting initiatives such as the creation of public work for Roma in local administration or in employment offices, vocational trainings for Roma or subsidies allocated to Roma to help them to integrate into the labour market. In this respect, ECRI notes that the Ministry of Labour works in close cooperation with national and local NGOs.

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Concerning education of Roma children, see below, under "Specific issues".

**Recommendations:**

69. ECRI recommends that further efforts be made to improve the employment situation of the Roma community. It considers that, given the long-term and endemic nature of the disadvantage Roma experience on the labour market, special measures are necessary to place them in a position in which they can compete on an equal footing with members of the majority population.
70. As concerns housing, it seems that Roma are still disproportionately subject to forced evictions throughout Hungary. Since May of 2000, notaries of local governments are entitled to order the eviction of unlawful tenants, and any appeals launched against such orders are not suspensive. ECRI's attention has been drawn to the fact that this procedure has a particularly adverse impact upon Roma, as many of them are in a difficult social and economic situation. This is a procedure which, while appearing neutral in its application, nevertheless affects disproportionately a specific ethnic group and may contain elements of indirect discrimination. Moreover, ECRI is very concerned at reports from several sources according to which illegal forced evictions of Roma families have been taking place, sometimes followed by immediate demolition of houses. It is also worrying to learn that in some cases when Roma wish to settle in a neighbourhood or village, they encounter fierce resistance from local authorities, often under the pressure of the local population. In such cases, Roma are strongly discouraged from settling in that particular locality, sometimes even through violent threats.
71. A more general problem which affects the situation of Roma is the lack of housing allocated on a social basis in Hungary. ECRI understands that public housing is a matter for local authorities and it seems that there is an urgent need for a comprehensive national policy in social housing. ECRI is pleased to learn that the government has launched programmes to raise the number of social housing in Hungary.
72. Roma in Hungary are in some cases confined to segregated settlements which lack the basic amenities for a decent life, with serious consequences for their health and their capacity to improve their situation in other areas.

**Recommendations:**

73. ECRI recommends that urgent measures be taken to improve the housing situation of Roma, and particularly to ensure that no arbitrary forced eviction of Roma families takes place.
74. ECRI strongly encourages the Hungarian authorities to develop a social housing policy which could benefit members of the Roma community living in poor conditions. In particular, ECRI recommends that Roma families who are currently living without access to even basic amenities are provided with a decent standard of housing and infrastructure.
75. ECRI also stresses the need to address the problem of segregation of Roma communities from the majority community, and the attitudes on the part of the

majority community which have contributed to such segregation, and considers that the principle objective of housing policy should be to allow Roma communities to live as a part of majority communities.

76. ECRI expresses its concern at information according to which initiatives taken at the national level to improve the situation of the Roma community may not always filter down to the local level to be implemented in practice. This may be linked to the high level of prejudices against Roma among officials, elected or not, working in local government and administration as well as to a lack of the necessary powers on the part of central Government. It has been suggested that one of the solutions to this problem could be to further empower the Roma community to play an active part in initiatives aimed at improving its position in society.

### ***Recommendations:***

77. ECRI reiterates its recommendation that discrimination by local authorities should not be tolerated by national authorities. It is essential to ensure that national policies and legislation in favour of the Roma community are understood and applied at local level. ECRI also urgently calls for training of officials working within local administrations to raise awareness and combat prejudices.
78. ECRI recommends that further emphasis be placed on ensuring that the Roma community is involved at all stages of the planning and implementation of measures which concern them, at as local a level as possible. In particular, the preparation and appointment of persons who can act as mediators between Roma and the authorities could be most opportune. ECRI stresses the importance of encouraging projects and initiatives which emanate from the Roma community itself, through the on-going provision of funding and the widening of successful projects to other areas. In this regard, it encourages the Hungarian authorities to continue and strengthen their efforts to establish Roma community centres in local communities where Roma can find information and assistance on on-going and future projects concerning them.

### **- Antisemitism**

79. ECRI expresses its concerns at reports according to which antisemitism remains a serious problem in Hungary. It manifests itself through antisemitic acts and expressions such as antisemitic slogans voiced by hooligans during football matches or as public denial of the Holocaust. There are still some neo-nazi groups active in Hungary and some media conveying antisemitic discourse. It is also reported that some politicians make frequent antisemitic statements in public and antisemitic attitudes persist in mainstream society. ECRI finds it encouraging that antisemitism seems to have become less publicly acceptable according to the results of a recent survey, in which a total of 6-7% of those surveyed admitted to openly antisemitic feelings, in contrast to 14-15% in 1993-1994. ECRI notes that a politician was sentenced by a court of first instance to a suspended imprisonment for incitement to racial hatred in relation with statements made on the Jewish community, although he was recently acquitted after an appeal.

***Recommendations:***

80. ECRI recommends that the Hungarian authorities remain vigilant in respect of antisemitic acts and discourse and that they take all appropriate measures, including criminal prosecution when necessary, to respond to them with the greatest vigour.

**Climate of opinion**

81. In its second report, ECRI recommended that the Hungarian authorities take measures, including where necessary legal measures, to combat racist organisations. ECRI also stressed that shifts towards extremism in political discourse – even if these initially appear fairly minor – could pose a threat to democracy and to the general tone of political and public debate.
82. ECRI notes with interest that, according to some sources, the general climate of opinion has somewhat improved in Hungary over recent years. For instance, it is reported that violent racist attacks by skinheads against Roma or non-citizens have decreased. However, racist, xenophobic and intolerant attitudes amongst mainstream society remain an issue of concern in Hungary. While the anti-Roma feelings have slightly decreased from 40-42 % in 1993-94 to 36-38 % in 2001-2003 according to a poll, such results remain very disturbing. Stereotypes and prejudices about the Roma population continue to be widely-held among the general public, particularly outside the capital and the main cities of Hungary. Various public expressions of hostility towards this group continue to give ECRI cause for concern. Non-citizens encounter the same kind of negative attitudes from mainstream society. For instance, ECRI deplores the existence of instances of xenophobic behaviour on the part of inhabitants of towns in reaction to plans to establish refugee centres in the surroundings.

***Recommendations:***

83. ECRI strongly encourages the Hungarian authorities to strengthen their efforts to carry out awareness raising campaigns on the problems of racism and intolerance, not only in the capital and the large cities, but also and particularly, in small local communities and less populated regions.

**Media**

84. ECRI notes that certain prejudices and negative stereotypes against members of minority groups, such as Roma, Jews, immigrants, refugees, asylum-seekers and other members of minority groups have been conveyed in the media. As concerns non-citizens, the media sometimes perpetuate negative perceptions of asylum seekers or refugees through associating them with illegal activities. Moreover, ECRI is concerned by the fact that, according to different sources, the media sometimes report crimes as being committed by persons of a certain ethnic origin, including in cases where the background of the alleged perpetrator is not relevant to the report. ECRI notes that such reporting may create or exacerbate prejudices and stereotypes in public opinion. It has also

been highlighted that some media exploit anti-Roma feeling in Hungary in order to attract public attention. For instance, the Parliamentary Commissioner for the Rights of National and Ethnic Minorities has recently initiated an investigation into a TV station which showed a programme caricaturing a Roma wedding and conveying strong prejudices about Roma, and reported the case to the National audiovisual board (ORTT). ECRI is pleased to note that the national authorities have expressed their strong disapproval of this programme. However, ECRI also notes that comments have been made on the positive role played by the media in fighting against racism and intolerance and it hopes that the media will further strengthen their efforts in this direction.

### ***Recommendations:***

85. ECRI considers that media professionals should be warned of the danger of negative reporting and also strongly supports the implementation by media professionals of codes of conduct which favour a more responsible type of reporting.

### **Conduct of law enforcement officials**

86. In its second report, ECRI considered that it should be made clear publicly and at a high level that incidents of police ill-treatment of members of minority groups should be thoroughly investigated and punished. ECRI also encouraged strengthening confidence-building measures to improve relations between the police and the Roma community.
87. Some steps have been taken to address the problem of police violence and mistreatment towards members of minority groups, especially Roma. For instance, ECRI is pleased to learn that 240 young police officers in Pest County are being taught a Romani dialect, Lovari, in a project designed to foster better relations between police and the Roma. These police officers are also learning about ethnic issues and conflict management. Initiatives to recruit Roma into the police force continue, although they have not been very successful as yet<sup>12</sup>. ECRI also notes that investigations have been conducted into cases of alleged cases of violence against Roma by police officers, resulting in the sentencing of some police officers for ill-treatment of members of the Roma community. ECRI is pleased to note that courses in human rights are being organised for police officers and other law-enforcement officials<sup>13</sup>. Public prosecutors regularly visit prisons to check the living conditions of the detainees. During such visits, detainees have the opportunity to complain to the public prosecutor about any abuse committed by a member of the staff.
88. However, ECRI deplores continuing incidents of police mistreatment and violence against members of minority groups such as Roma and non-citizens. According to non-governmental sources, these take different forms ranging from racist insults and arbitrary arrests to severe physical mistreatment and unlawful use of firearms. However, the authorities have informed ECRI that no cases of the use of arms by police officers were found illegal by investigation

<sup>12</sup> See above, under "Criminal law provisions".

<sup>13</sup> See above, under "Criminal law provisions".

authorities. In cases of abuse by police officers, other members of the police or public prosecution are responsible for carrying out an investigation. Apart from this, at present no independent investigatory mechanism distinct from the public prosecution offices exists to investigate allegations of police mistreatment.

***Recommendations:***

89. ECRI urges that further measures be taken to put an end to incidents of police misbehaviour and mistreatment towards members of minority groups, in particular Roma and non-citizens.
90. ECRI stresses the importance of setting up an independent investigatory mechanism distinct from the public prosecution offices, to conduct enquiries into allegations of police misconduct and where necessary, ensure that the alleged perpetrators are brought to justice.

**Monitoring the situation**

91. In its second report, ECRI recommended that the Hungarian authorities consider ways of monitoring the situation of the various minority groups in Hungary, with due respect to the principles of the protection of data and of privacy, and based on a system of voluntary self-identification.
92. The existence of legislation prohibiting the collection of data broken down according to ethnic origin is cited as the main reason for the lack of concrete information, that would enable the authorities to monitor the situation of various minority groups. However, according to some sources, it is not clear which law prevents Hungarian authorities from collecting data on the basis of a system of voluntary self-identification, or publishing anonymous data on the situation of minority groups, covering several fields of life such as employment or housing. The debate on the reform of the minority self-government electoral system<sup>14</sup> has relaunched the discussion concerning ethnic data, as one proposal involves the creation of an electoral register for each minority. ECRI understands that this solution has been criticised on the basis of previous past unfortunate experiences. However, ECRI is convinced that the collection and publication of data broken down according to ethnic origin can be done in full respect of human rights, provided that certain requirements are met. ECRI emphasises that such data are very useful in identifying and combating problems of discrimination.

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<sup>14</sup> See above, under "Constitutional provisions and other basic provisions".



**Recommendations:**

93. ECRI recommends that ways of measuring the situation of minority groups in different fields of life be identified, stressing that such monitoring is crucial in assessing the impact and success of policies put in place to improve the situation. The monitoring should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination. It should be carried out with due respect to the principles of data protection and privacy and should be based on a system of voluntary self-identification, with a clear explanation of the reasons for which information is collected.
94. ECRI recommends that steps should be taken to monitor incidents of racist crimes and their outcome in a more systematic fashion.

**II. SPECIFIC ISSUES****Discrimination against Roma in the field of education**

95. In its second report on Hungary, ECRI expressed its concern about evidence of widespread discrimination and disadvantages encountered by Roma children in the field of education. It recommended that the Hungarian authorities take steps to combat all forms of school segregation towards Roma children and to ensure the effective enjoyment of equal access to education. In particular ECRI addressed the issue of channelling Roma children into special schools for the mentally retarded, inviting the authorities to review this system in order to avoid any discrimination.
96. ECRI is pleased to note that the Hungarian authorities have taken a number of positive initiatives of a general nature in order to combat discrimination towards Roma in the field of education. Amongst others, the Minister of Education has appointed a Commissioner for the integration of Roma and socially disadvantaged children. The Commissioner has already taken steps to improve the education system in order to combat the segregation of Roma children in schools. Provisions prohibiting discrimination in education have been added to the law on education. According to a Decree, since 2002 the author of such discrimination is punishable with a fine. A National Network for Integrated Education was set up in January 2003. It is intended to provide assistance in particularly disadvantaged regions to children whose parents did not complete primary school and whose families live in very poor conditions. This assistance consists of pedagogical tools as well as financial support to schools participating in the network. In 2003, the network comprises more than 40 model institutions and it is hoped that the network will increase rapidly.
97. However, ECRI is very concerned by a number of serious issues pertaining to the education of Roma children that were discussed in its second report and which still need to be addressed.
98. In particular, ECRI is very concerned that the practice of channelling Roma children into special schools for mentally disabled children, even though they do not suffer from mental disabilities, still exists. The number of Roma children attending such special schools remains disproportionately high. ECRI notes that

the Hungarian authorities are conscious of the problems raised by the current system of assessing whether a child should attend a special school or not, and they have already taken steps to improve the situation in this field. For instance, the regulation concerning the decisions taken by a board of experts to send children to these special schools was amended in order to strengthen the role of the parents in the decision-making process. However, it has been stressed that, while measures to increase the rights of the parents have been taken in theory, their implementation is insufficient due to the lack of information provided to parents in practice. It has also been argued that more stringent rules, based on more culturally-sensitive IQ tests, should be set up in order to ensure that only mentally disabled children are placed in special schools.

99. ECRI is particularly concerned by reports that decisions to send children to schools for the mentally disabled, have sometimes been taken solely on the grounds that the child comes from a low-income family or is of Roma origin. A further problem is the lack of possibilities for children to be re-directed into mainstream schools, despite the fact that, based on their capacities, this is where they should be placed.
100. A programme to combat the overrepresentation of Roma children in special education for the mentally disabled has been set up by the Ministry of Education under the responsibility of the Commissioner for the integration of Roma and socially disadvantaged children. This programme will soon be submitted to the Government and it is hoped that it will be launched as soon as the Government gives its approval. The programme involves an assessment of the current situation in order to determine the most appropriate means for resolving these problems. The authorities are also considering the possibility of encouraging the return of children to mainstream schools once the children have fulfilled certain criteria.

### ***Recommendations:***

101. ECRI urges the Hungarian authorities urgently to take further steps to end the over-representation of Roma children in special schools, including the preparation and implementation of means of assessment that are not culturally biased and the training of teachers and other involved persons to ensure that they are making appropriate decisions. ECRI recommends that measures be taken to facilitate the integration of Roma children currently in special schools into the mainstream school system.
102. ECRI expresses its concern over another form of segregation, whereby separate classes are established in mainstream schools. This results from the manner in which remedial or catch-up programmes are being implemented. For example, one form of catch-up programme, "Roma minority education", involves the creation of special classes for Roma children in order to enable them to catch up with the normal programme and receive information about Roma people and culture. It appears that the aim of this programme - allowing Roma children to 'catch-up' - has never been achieved, and, instead, the system has in effect maintained the segregated education of Roma children. There have also been allegations of abuse made against certain school authorities, according to which the money allocated to schools to organise such programmes was not really used for the intended purpose and the teachers

responsible for such classes were not adequately trained to this effect. In certain cases, it seems that the element of teaching Roma culture was neglected or that the parents did not really have an opportunity to oppose the registering of their child in this class, even though the law gives them the right to do so.

103. The Government has become aware of the segregation resulting from the system of remedial classes for Roma and has taken steps to redress the situation. In 2002, it decided, on the one hand, that the Roma minority education programme will not be automatically linked with a remedial programme and, on the other hand, that there should be special preparative programmes conducted in an integrated manner. This implies that children with difficulties will generally be taught together with the class, even if for certain subject matters they may attend special classes. Even though it is too early to assess the results of this new policy which entered into force for the academic year 2003/2004, ECRI welcomes such an initiative as a positive step to combat the segregation of Roma.

#### ***Recommendations:***

104. ECRI urges the Hungarian authorities to take all necessary steps to end the segregation that results from certain catch-up or remedial programmes involving the channelling of Roma children into separate special classes in mainstream schools.
105. ECRI recommends that the authorities closely monitor the new preparative programme in order to ensure that this programme results in Roma children being fully integrated into mainstream schools.

106. ECRI is concerned to learn about a form of *de facto* segregation which has led to the existence of schools implementing the mainstream curricula but attended mainly - if not only - by Roma children. This form of segregation is closely linked with the problem of *de facto* segregation in housing. The migration process within Hungary has led to the creation of neighbourhoods or settlements where only Roma live and the schools which are in those neighbourhoods are therefore only attended by Roma pupils. It has also been observed that another reason for the existence of schools where the proportion of Roma is very high is the fact that non-Roma parents take their children out of schools where the proportion of Roma starts to rise due to migration, even though the parents do not move out of the neighbourhoods.

#### ***Recommendations:***

107. ECRI recommends that the Hungarian authorities closely examine the situation as regards mainstream schools mainly attended by Roma in order to develop measures to foster integrated schools.
108. ECRI expresses its concern about petitions addressed to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities alleging that certain school headmasters were persuading, or even forcing, Roma parents to

register their children as private pupils and therefore to take them out of schools and make them study at home. It appears that the possibility of being declared a private pupil is 8 times higher for a Roma child than for a non-Roma. It has been highlighted that such a system leads to discrimination in cases where the parents themselves do not have the level of education necessary to ensure the thorough education of their child.

***Recommendations:***

109. ECRI urges the Hungarian authorities to closely monitor the decision-making process of registering children as private pupils in order to assess its possible discriminatory effects and to take all necessary measures to ensure that this system is not used as a means of taking Roma children out of schools.
110. In its second report on Hungary, ECRI urged the Hungarian authorities to take appropriate measures to improve the attendance of Roma children at kindergarten level.
111. It appears that the question of low attendance of Roma children at kindergarten level remains an important issue to be addressed. The fact that these children do not attend kindergarten puts them at a considerable disadvantage when they start primary schools and for the rest of their life. It has been stressed that one of the reasons why Roma children do not attend kindergarten is the poverty which prevents their parents from paying the kindergarten fees or the meals in kindergarten. Another reason is that children of unemployed parents may be refused entrance to kindergartens with a shortage of places, on grounds that the parents will stay at home to care for the children. ECRI notes with interest that the Ministry of Education has decided that from September 2003 kindergarten meals would be free of charge for the poorest families.

***Recommendations:***

112. ECRI recommends that the Hungarian authorities develop and restructure kindergarten education to ensure that all Roma children attend kindergarten. Measures which could be taken to achieve this aim may include increasing the number of kindergarten schools in regions where a high proportion of Roma live, appropriate awareness-raising and training of kindergarten staff and the appointment of Roma mediators in kindergartens in order to create a link between the Roma families and the school authorities.
113. ECRI urges the Hungarian authorities to take further measures to ensure that poverty does not prevent children from attending kindergarten.
114. In its second report on Hungary, ECRI felt that urgent measures were called for to increase the participation of Roma children in education at the secondary and the higher level.
115. ECRI is pleased to learn that in order to promote the education of young Roma, a scholarship system has been developed. In the Academic year 2002/2003, for instance, almost 20 000 Roma were granted a scholarship. According to

several comments, this initiative is a very positive step even though it is too early to assess its real impact on equal opportunities for Roma students on the labour market, as the majority of students who have been granted a scholarship have not yet finished their studies. However, it has been pointed out that the number of scholarships is insufficient to meet the increasing demand from Roma students.

***Recommendations:***

116. ECRI recommends that further measures be taken to encourage the participation of Roma children in education at the secondary and tertiary level. Such measures should include financial subsidies to ensure that children from poorer families are able to continue their studies, as well as awareness-raising initiative among Roma communities concerning the importance of education for their children.
117. In its second report on Hungary, ECRI recommended that the authorities take steps to counter prejudices and discrimination among children and parents from the majority population.
118. ECRI is pleased to note that the new Act on Public Education obliges schools to include the culture of the local minority in their curriculum to be taught not only to members of such minority but also to children from the majority population.

***Recommendations:***

119. ECRI recommends that further steps be taken to combat prejudice and discrimination in schools, including specific training for headmasters and teachers, who should then be responsible for countering any hostility or prejudices among parents from the majority population.

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## APPENDIX

### **The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Hungary**

ECRI wishes to point out that the analysis contained in its third report on Hungary, is dated 5 December 2003, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Hungary was subject to a confidential dialogue with the Hungarian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Hungarian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.



### **Observations on the ECRI Third Report on Hungary**

#### **as to point 14:**

*The President of the Republic asked the Constitutional Court to exercise preliminary control over the constitutionality of the new Act amending Section 269 of the Criminal Code. Thus, whether the provision cited in the Report shall enter into force depends on the decision of the Constitutional Court.*

#### **as to point 15:**

*The dissemination of racist documents is prohibited under Section 3 of Act No. 2 of 1986 on the Press. According to this provision, in the course of exercising the freedom of the press no criminal offence or incitement to the commission of criminal offence shall be performed, neither shall public morals or the personal rights of others be violated.*

*The formation of racist organizations is prohibited under subsection 2 Section 1 of Act No. 2 of 1989 on the Freedom of Association. This Section provides that the exercise of the freedom of association cannot violate the Constitution, cannot constitute or incite to the commission of a criminal offense and cannot violate other persons' rights and freedoms. If despite this prohibition an organization is formed with the aim of changing the constitutional order of the Republic of Hungary either by using force or by threatening with the use of force, Section 139/A of the Criminal Code on organizing against the constitutional order shall be applicable.*

#### **as to point 51:**

*Since 1 February 2003 the Office of Immigration and Nationality has been issuing humanitarian residence permits.*

#### **as to point 67:**

*The Ministry of Health, Social and Family Affairs together with the Office of Equal Opportunity has launched the program of "Tolerance for Health". In this programme specially trained social workers help to treat people, living in disadvantageous circumstances and needing individual treatment (e.g. Romas).*

#### **as to point 68:**

*We recommend to indicate the sources upon which the figures contained in the first sentence are based, because of Hungarian employment authorities do not keep registration on the ethnic origin of the employees.*

#### **as to points 88-90:**

*In Hungary the public prosecution is subordinated to the National Assembly and is absolutely independent from the executive power. During the supervision of investigation it may instruct the police. In certain types of cases it has the authority to conduct investigations independently. Therefore we hold that the organization of the public prosecution fully complies with the requirement of "independent investigatory body".*

*Budapest, 8 March 2004*



