Hungary

Constitution

Article 70/A: (1) The Republic of Hungary shall ensure the human rights and civil rights for all persons on its territory without any kind of discrimination, such as on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever. (2) Any kind of discrimination described in paragraph (1) shall be strictly penalized by the statute. (3) The Republic of Hungary shall promote the equality of rights for everyone through measures aimed at eliminating the inequality in opportunity.

Criminal Code

Section 155: (1) The person whowith the aim of the total or partial extermination of a national, ethnic, racial or religious group - a) kills the members of the group, b) causes serious bodily or mental injury to the members of the group because they belong to the group, c) constrains the group into such conditions of life which menace the group or certain members thereof with death, d) takes such a measure which is aimed at the impediment of births within the group, e) displaces the children belonging to the

group into another group commits a felony and shall be punishable with imprisonment from ten to fifteen years or life imprisonment. (2) The person who commits preparation for genocide, shall be punishable for a felony with imprisonment from two years to eight years.

Section 157: (1) The person who - with the aim of the obtention and maintenance of domination by one racial group of people over another racial group of people and/or with the aim of the regular oppression of the other racial group - a) kills the members of a racial group or groups, b) constrains a racial group or groups to such conditions of life by which it strives for the total or partial physical annihilation of the groups commits a felony and shall be punishable with imprisonment from ten to fifteen years or life imprisonment. (2) The person who commits another crime of apartheid, shall be punishable for a felony from five to ten years. (3) The punishment shall be imprisonment from ten to fifteen years or life imprisonment, if the criminal act of apartheid described in subsection (2) has given rise to serious consequences. (4) For the purposes of subsections (2) and (3), the crime of apartheid shall mean the crime of apartheid defined in paragraphs a)/(ii), a)/(iii), c), d), e), and f) of Article II of the International Treaty on the Combat and Punishment of Crimes of Apartheid, adopted on 30 November 1973 by the General Assembly of the the United Nations Organisation in New York promulgated by Law- Decree No. 27 of 1976.

Criminal Code §174/A

« Whoever a) restricts another person by violence or by threats in his freedom of conscience b) prevents another person from freely exercising his religion by violence or threats, commits a crime, and is punishable by imprisonment extending to three years »

Criminal Code §174/B

punishes violence against a member of a national, ethnic, racial or religious group (and presumption of membership of such a group) with imprisonment

1) The 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.

2) lists aggravating factors such as use of arms.

Criminal Code §269:

incitement against a community: A person who incites to hatred before the general public against (a) the Hungarian nation; (b) any national, ethnic, racial group or certain groups of the population, shall be punishable for a felony offence with imprisonment up to three years. Proposed amendment to §269 to ensure punishment of racial expression – adopted by Hungarian Parliament, but judged unconstitutional by Constitutional Court in May 2004 - unamended article still valid.

Criminal Code §269B:
detailed list of symbols which are connected to ideas and events relating to the forceful seizure and dictatorial keeping of power, and therefore represent violence, hate against certain national, ethnic, or religious groups

NB. "In early 2008, on the initiative of six of its members, Parliament enacted a new amendment to the Criminal Code, taking a new approach based on abuse, and which would allow the prosecutor to initiate an investigation on broader grounds, including non-verbal abuse (such as the use of Nazi salutes). In October 2007, at the government's initiative, Parliament had also already amended the Civil Code. Previously, only identifiable individuals who were personally targeted by insulting or defamatory statements could seek civil law remedies such as damages; under the 2007 amendments, this right would be extended to individuals or associations belonging to a group of people generally targeted by broadly defined insults based on national, ethnic or racial identity.
However, neither of these sets of provisions has come into force, as they were each referred to the Constitutional Court for review prior to their promulgation. The Court was asked to examine the provisions from a number of angles, including possibly disproportionate limits on freedom of expression, questions as to whether the provisions were sufficiently clear to ensure legal certainty, possible discrimination against persons who are not members of minority groups protected by the provisions, and possible infringements of the right to selfdetermination of members of civil society organisations who did not feel insulted by a given statement but whose association decided to initiate legal proceedings. On 30 June 2008, the Constitutional Court found the 2008 amendments to the Criminal Code unconstitutional. At the time of writing, the result of the review of the Civil Code was not yet known. "
(Source: ECRI Report on Hungary, 2009, available at:
http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbC-IV-2009-003-ENG.pdf)

Case Law

COURT DECISION IN THE FIRST INSTANCE IN THE CASE OF LÓRÁNT HEGEDÛS JR.

Summarized communication

Municipal Court of Budapest
Case No.: 13.B.423/2002/7.

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Municipal Court of Budapest delivered the following

sentence

passed on the basis of the reconvened sessions of the public hearings held on 4th and 6th December 2002:

GYÖRGY METES as primary accused

found guilty: as an accomplice acting in the crime of incitement against the community

On the above grounds the Municipal Court of Budapest sentenced Metes György as primary accused to the pecuniary penalty of payment of an amount equal to 350 (in words: three hundred and fifty) days' fine.

The amount of the fine charged for one day has been assessed by the court to be HUF 1,500 (in words: one thousand and five hundred Hungarian forints) to be paid by the primary accused György Metes.

In case of non-payment of the pecuniary penalty by the primary accused György Metes thus determined by the court in the sum of altogether HUF 525,000 (in words: five hundred and twenty-five thousand Hungarian forints), the pecuniary penalty shall be changed into the sentence of imprisonment in minimum security prison for a period of days equal to the number of daily items of the fine non-paid.

LÓRÁNT HEGEDÛS Jr., as accused of the second degree

found guilty: as an accomplice acting in the crime of incitement against the community in cumulative offence

On the above grounds the Municipal Court of Budapest sentenced Lóránt Hegedûs Jr., to imprisonment to be carried out in prison for the period of 1 (one) year and 6 (six) months.

The execution of the sentence of imprisonment in the case of Lóránt Hegedûs Jr., as accused of the second degree has been suspended by the court for a probation term of 3 (three) years.

The civil claims filed in this criminal action have been ordered by the court to be adjudged by other statutory proceedings of the civil lawsuit.

The accused are ordered by the court to the payment of the costs of the criminal proceedings incurred up to this date or that may incur in this connection at any time in the future.

Justification

György Metes, as primary accused
(personal data)

Lóránt Hegedûs Jr., as the accused of the second degree
(personal data)

György Metes, primary accused, president of the MIÉP (Party for Hungarian Truth and Life) Organization of District XVI (of Budapest), and the editor-in-chief of the journal Ébresztô published by the same organization of MIÉP. Lóránt Hegedûs Jr., as the accused of the second degree, is the vice-president of MIÉP, and ex-member of the Parliament.

In August 2001, upon the request of György Metes, primary accused, Lóránt Hegedûs, Jr, wrote an article titled "The Christian Hungarian State" to com-

memorate the 20th August; this article was published in the journal entitled Ébresztô issued by the MIÉP organization of District XVI in 12000 copies.

The article read as follows:

"Christian Hungarian State,
This is how we can address our thousand year old country relying on the gold deposit of countless incidents of martyrdom suffered in the course of ten centuries. With the words of "the young and free Sándor Petôfi appearing in the light of undying glory on the plain of Transylvania" we can "look down into the ocean of the past/Beholding cliffs that rise to storm the skies/My hero land, your deeds of courage vast/We had our word to say on Europe's stage/And ours was not a minor actor's part/As dreaded by the world our drawn sword's rage/ As children dread the lightning in the dark."

And let me refer to the words of László Németh, who wrote about the mission of the Hungarian nation extending to the whole of Central-Eastern Europe, organizing these peoples into a unit of quality, and in the absence of such mission the life of the Hungarian people would gradually fall into decay.

Christian Hungarian State! What a powerful organizing force appeared in you and had been exerted by you within the wreath of the Carpathian Mountains and far beyond them, radiating the resounding triumph of the Christian ethics whereby small groups of people and large communities, societies, people and nations are arranged in "beautiful and brilliant order".

However, Jesus Christ says: "My kingdom is not of this world." This is where we can understand the real underlying cause and reason of all Hungarian suffering. "Our fight is fought with the Hungarian inferno" – wrote Endre Ady. Where the light of the Soul of God, conquering and invigorating the world, appears, the negative soul, the devil will become intolerably hysterical, then it would turn into something cold-bloodedly deliberate and meanly vulgar.

This was how the Tatars, Turks and last, but not least the Russians turned up as the representation of the devastating, hysterical animosity: to destroy the wonders experienced by the spiritual constitution in the space and time of Christ, which is above the Asian space and time.

And similarly, this was how the Habsburg-house made its presence here to display its cold-blooded disposition to meanness, as the most untalented and most obtuse dynasty in Europe, what is more, all over the world.

The Christian Hungarian State could have withstood even that, if, as a result of the self-renunciation of the Compromise of 1867, the hordes of the vagabonds of Galicia had not invaded it; who, as if they were the old self of man without salvation, in an ancient onslaught fretted and are still scrunching this homeland, which, despite all this, is capable of resurrection from its ruins, on the heaps of the bones of our heroes. With their Sion of the Old Testament lost because of their sins and rebellions against God, let the most promising eminence of the moral order of the New Testament, the Hungarian Sion be irretrievably perished.

Also, Ady stated about the Hungarian Sion: "Never ever so much chaos, passion, violence, and Jewishness raved in a nation ..." And because it is not possible to burn out every single Palestinian from the banks of river Jordan with Fascist methods very often surpassing even those of the Nazis, they come to the banks of the Danube, sometimes as internationalists, sometimes as nationalists, and sometimes as cosmopolitans, to kick into the Hungarians once again, because they feel like it.

They become hysterical even from the salutation: CHRISTIAN HUNGARIAN STATE.

They say: it is exclusion. Every 20th August this false proposition is squawked by them cheating Hungarians out: the Hungarian state founded by King Saint Stephen I of Hungary was a receptive one. Of which László Németh said that we would like to have today such a clear situation as it had been in the multilingual state of Saint Stephen, where, under the mask of patriotism, the minority could not lie themselves into majority.

Now let you Hungarians listen to the one single message of survival over the thousandth year of the Christian Hungarian state, which has been based on the ancestral inheritance and continuity of right: EXCLUDE THEM! FOR IF YOU DO NOT EXCLUDE THEM, THEY WILL EXCLUDE YOU!

Of this message we are warned by the misery of thousand years, by the inheritance nevertheless existing "high above" of our country that has been robbed and looted a thousand times, and last but not least by the stone-throwing sons of Ramallah."

Lóránt Hegedûs Jr., accused of the second degree, read out the above text in Pannon Rádió; which was recorded, and at 6.55 and 7.55 a.m. on 4th September 2001 it was broadcast in the programme entitled "Religious norms and spiritual call" of the same radio channel.

The immunity of Lóránt Hegedûs Jr., ex-member of the Parliament was suspended by the Parliament of the Republic of Hungary in its decision no. 89/2001. (XII.20.) dated 18 December 2001.

The Central Investigation Office of the Public Prosecution presented a bill of indictment No. Nyom. 174/2001. against György Metes as primary accused and Lóránt Hegedûs Jr., as accused of the second degree, including excerpts of the text of the article quoted above to substantiate the accusation of one count of the crime of incitement against the community, in violation of the statutory provisions stated in Article 169 b) of the Hungarian Criminal Code, which was committed by the accomplices acting in the crime and which was committed by Lóránt Hegedûs Jr., as accused of the second degree, in cumulative offence. The prosecutor present at the trial clarified the factum of the crime, and, by maintaining the legal classification of the act, added to the charges the entire article written by Lóránt Hegedûs Jr.

György Metes, as primary accused and Lóránt Hegedûs, Junior, as accused of the second degree, made a detailed confession admitting the facts but not pleading guilty.

In his confession György Metes, as primary accused, confirmed that it was upon his request that Lóránt Hegedûs, Junior compiled the article presented as a crime in the indictment. He also stated that he had read the article prior to the publication and found no grounds to refuse its publication, therefore he published it unchanged, in its original version. He also acknowledged that in his opinion the article could be interpreted in various ways, even in the way presented in the bill of indictment.

In his confession Lóránt Hegedûs Jr. as accused of the second degree, stated that he had only drawn the conclusion from the words of Sándor Petôfi, Endre Ady and László Németh. It had not been his intention to incite hatred, as it would have been inconsistent with both his education and profession. He stated that he had only exercised his right of expression of opinion granted by the constitution when he had written that article. He had only responded to the article entitled "The methodology of Exclusion" written by István Hell, in accordance with the decision of the MIÉP group in the Parliament and MIÉP President István Csurka. Lóránt Hegedûs Jr. also told the court that the term "exclusion" in its original Latin meaning, as "excommunication" meant exclusively intellectual and spiritual dissociation, therefore it could not be qualified as exhortation to commit any criminal act.

...

Due to the nature and type of the case, the court inevitably had to address the issue of anti-Semitism, anti-Jewish feelings as well as the topic of incitement to hatred.

It can be established that no definition is available for anti-Semitism up to this date. Its peculiar feature is that raising the issue itself generates tensions or induces people to take a point of view. This concept can be assigned to a wide range of opinions from the simple dislike of the Jews quite up to the physical persecution of the Jewish people.

All that can be stated in connection with this concept is that it is a social and political trend directed against the Jews, which can be traced down almost in every society from the ancient times up to the present days, sometimes in weaker forms, sometimes in stronger manifestations, depending on the current tensions prevailing in the given society.

Every democratic and civilized society tries to suppress the views of exclusion and discrimination, including anti-Semitism. Among the set of the tools available for this purpose, criminal law may be the ultimate means only and can be employed exclusively under the predetermined conditions set by Hungarian and international legislation.

In summary, the court is bound to address anti-Semitism only to the extent the right of the expression of opinion granted in the constitution is concerned, having regard to the fact that anti-Semitism is ordered to be punished by the Hungarian Criminal Code in force exclusively if it is manifested as an incitement to hatred. Even then, the court examines not anti-Semitism but the incitement against the community.

The right of the expression of opinion is granted by Act XX of 1949 as amended, on the Constitution of the Republic of Hungary, in Article 61. /1/, as a fundamental constitutional right, which is, however, determined as a liberty that may be subject to restriction in the provisions of the International Covenant on Civil and Political Rights. Neither of them makes any distinction as to the positive or negative quality of the opinion expressed or whether it may cause injury to anyone or not.

According to the position of the court, opinions in this extraordinarily wide scale may be expressed freely as long as they do not turn into incitement to hatred. Conclusively, the statutory provision in Article 269 of the Criminal Code may not be supposed to offer a specific protection by criminal law against the expression of opinions that are insulting, offensive or perhaps humiliating.

Accordingly, the only thing the court had to decide upon was whether the article or lecture is to incite hatred or not. Upon looking into this matter, extraordinary importance must be attached to the fact that incitement has no specific interpretation in criminal law. This must be all the more emphasized because the question what is capable of incitement and what is not cannot be approached subjectively. In this case both indictment and adjudication would be subject to individual judgement, political sensitivity or tolerance. Consequently, in delivering the judgement the court had to proceed in a manner to eliminate subjective elements as much as possible, and to base its judgement exclusively on the facts and on the legal regulations which are strictly applicable to the case.

Article 19 of the International Covenant on Civil and Political Rights passed by Session XXI of the General Assembly of the United Nations on 6 December, 1966, which was promulgated by Law Decree No. 8 of 1976 states that "everybody has the right to free expression of opinion and this right includes the freedom of dissemination of all kinds of data and thoughts ..."). At the same time,

Article 20 /2/ specifies that "any propagation of national, racial or religious hatred which incites to discrimination, hostility or violence, shall be prohibited".

Pursuant to Article 4 of the agreement promulgated by Law Decree No. 1 of 1969, which may impose legal sanctions on the Hungarian State, the participating states shall:
"a) declare that any propagation of ideas based on racial superiority or racial hatred, any incitement to racial discrimination, all aggressive acts or incitement directed against groups of persons of any race, colour or ethnic origin, furthermore any support, including the financial support, of racist activities shall qualify as acts of crime subject to punishment by penal law."

Article 10 point 1 of the European Convention of Human Rights contains a further provision, which states that "Everybody has the right of the free expression of opinion. This right includes the freedom to form opinions and the freedom to know and transfer information and ideas, irrespective of borders and without the right of intervention therein by the authorities."

Based on all the aforementioned it can be established that here two types of obligations have to be faced. On the one hand, the obligation to ensure the free expression of opinion, and, on the other hand, the obligation of subjection to criminal sanctions of all incitement to national, racial or religious hatred.

...

The court has come to the conclusion that it is a fact that the provision of certain liberties and at the same time the restriction thereof for the protection of the rights of others are in contradiction with each other and may unavoidably lead to clashes of interests.

In certain cases, especially where political, religious or racial issues are concerned, the exercise of a right, which manifests itself in a negative expression of opinion, may cause actual infringement of the law in the area concerned.

In such a case both parties have sufficient grounds to apply for the enforcement or protection of their specific rights, whereupon any decision taken may cause injury to the other party.

Now the task is passed onto the legislator to define the constitutional boundaries of the expression of opinion so that it should not cause a disproportionate injury to the lawful interests of others while it could be enforced in the widest possible range.

...

In colloquial usage, the word 'hatred' means a vehement, hostile emotion. Incitement is a statement or series of statements which are aimed at inducing a malicious and hostile behaviour which is not based primarily on reasoned, rational and consciously considered views, but on rage and base instincts.

According to the grammatical interpretation of the law, therefore, the one who incites to hatred, intends to excite vehement, hostile feelings arising out of rage or base instincts.

In these definitions, according to the viewpoint of the court, it is emphasized that the encouraging, provoking or instigating act shall be aimed at inducing some behaviour or activity which is hostile or causes damage.

This is also pointed out in Article 20 /2/ of the International Covenant on Civil and Political Rights, stating that the act subject to punishment is "hostility or incitement to violence", whereas pursuant to Article 4 of the agreement promulgated by Law Decree No. 1. of 1969 it is any "violent act or incitement thereto."

In summary, according to the viewpoint of the court, the objective adjudication, which is free of emotions and subjective elements, of the acts made subject to the indictment can be ensured only by the construction of the concept 'incitement' in line with the aforementioned and also in accordance with the definitions of the various international conventions. Any departure therefrom would bring about particularly harmful consequences. The broad construction would lead to unjustified restrictions of the constitutional liberties, while the narrow construction would cause uncontrolled outbursts of rage.

...

In Resolution No. 30/1992. (V.26.) Ab the Constitutional Court stated a stare decisis opinion concerning the issue, namely, that while maintaining the free-

dom of expression of opinion, it is necessary and justified – albeit only in a narrow range and as an ultimate solution – to intervene by the means of criminal law, where the protection of the violated legal matter cannot be ensured in any other way.

In view of the aforementioned, the court had to form an opinion not on the validity of the content of what had been published or communicated, but the suitability thereof to incitement to hatred.

According to the viewpoint of the court, the examination and evaluation of the content of the statements subject to indictment would require a political and historical fact-finding and assessment which can be neither the aim nor the task of the present criminal proceeding as it lies beyond the adjudication of the criminal procedure.

...

The court did not accept the presentation of the defense on behalf of the accused.

Lóránt Hegedûs Jr., accused of the second degree, intended to communicate to the reader or the listener his own point of view using the ideas of well-known personalities who are highly esteemed by the entire Hungarian society. In his article, when quoting excerpts from Sándor Petôfi, Endre Ady or László Németh, after each passage a kind of partial postulate is formulated based on the content of the excerpt, as if it were an explanation of the aforementioned passage. At the end of his article, in accordance with the final conclusions representing his own viewpoint he claimed the following: "EXCLUDE THEM! FOR IF YOU DO NOT EXCLUDE THEM, THEY WILL EXCLUDE YOU! ".

It is the position of the court that Lóránt Hegedûs Jr., in order to support his own ideas, quoted such well-known works of such well-known persons of which each is suitable in itself to influence people. The mentality of the whole article corresponds to Lóránt Hegedûs's own final conclusions.

The court refuses to agree with such conclusions and viewpoints, no matter in what form they are presented, and denounces such ideas on moral grounds and firmly dissociates itself from them.

The concept of 'exclusion' composed in the article has no specific construction in criminal law. Also in this case, for the purposes of interpretation, the court considered the definition worded in the Hungarian Concise Dictionary of Definitions. According to the Hungarian Concise Dictionary of Definitions, the word 'exclusion' means that he who makes exclusion, hampers somebody in the enforcement of his rights or prevents him from getting his share of, or partaking in something.

Obviously, exclusion may have lawful and also illegal means. The article made subject to the indictment does not contain any data which would call for the use of any illegal means.

It must be established, however, that calling upon to conduct exclusion is deemed to constitute a criminal act by itself, in view of the fact that exclusion may lead to some kind of physical segregation, or serve as a basis for that. No matter to what extent it may be "legitimate", exclusion by all means would preclude the possibility of the enforcement of some kind of right for particular members of the Hungarian society. Such orders for a so-called "legitimate exclusion" corresponding to the call by the accused were stated in Act No. IV of 1939 on the limitation of the social and economic expansion of the Jews as well as in Act No. VIII of 1942 on the regulation of the legal status of the Israelite denomination. The objective of these provisions also was to prevent certain members of the society from exercising their rights via "legal regulations".

According to the viewpoint of the court, Lóránt Hegedûs Jr., accused of the second degree, was aware that the statements expressed in his article were suitable to incite and add fuel to hatred. This fact was acknowledged also by György Metes, the primary accused of the indictment, when he stated in his confession that, from this aspect, the article may be interpreted this way.

The call to the exclusion of a certain part of the society and their stigmatization thereby, in other words, the arousing of hatred in itself may be suitable to disturb the social order, peace and public tranquillity.

In summary the court establishes therefore that Lóránt Hegedûs Jr., accused of the second degree made statements directed against the Jews which are suitable to incite hatred as described in the Hungarian Criminal Code. The final aim of

this article was, and the accused was aware of it, that the aroused hatred might as well erupt from the enclosed world of emotions and manifest itself for others. This conduct constitutes and qualifies as incitement against the community as stated in the statutory provision in Article 269. b) of the Hungarian Criminal Code.

...

The accused committed their act in great publicity as the periodical paper entitled Ébresztô had a circulation of 12000 copies, while the article communicated in the programme of Pannon Rádió was broadcast to an audience of a precisely not definable, however, large number of listeners.

Based on the aforementioned, the court concluded that by their conduct carried out in great publicity, György Metes, primary accused and Lóránt Hegedûs Jr., accused of the second degree, incited hatred against a national, ethnic, racial and religious group, namely against the Jews. This conduct was performed by Lóránt Hegedûs Jr. in cumulative offence.

Accordingly, the court pronounced György Metes, primary accused, guilty of incitement against the community which constitutes a criminal act violating Article 269 b) of the Hungarian Criminal Code and is to be qualified in accordance with that Article, which he committed as an accomplice; and Lóránt Hegedûs Jr., accused of the second degree, guilty of incitement against the community which constitutes a criminal act violating Article 269 b) of the Hungarian Criminal Code and is to be qualified in accordance with that Article, which he committed as an accomplice in cumulative offence.

...

The extraordinary danger to society, exerted by their act, was assessed by the court as an aggravating circumstance at the disadvantage of both accused. In respect of Lóránt Hegedûs Jr., accused of the second degree, the fact that he committed his act as a member of the Parliament and as a vice president of a political party, was assessed by the court as a further aggravating circumstance.

In view of the extenuating circumstances in respect of Lóránt Hegedûs Jr., accused of the second degree, the sentence of imprisonment was suspended by the court for a probation period pursuant to Article 89 /1/, /2/ and /3/ of the Hungarian Criminal Code.

...

Budapest, 6 December, 2002

Edina Kaszay	Dr. László Szebeni	János Kocsis
associate judge	presiding judge	associate judge

[SZESZLÉR T. (eds), Anti-Semitic Discourse in Hungary in 2002-2003, Report and Documentation, pp. 321-333]

COURT DECISION IN THE SECOND INSTANCE IN THE CASE OF LÓRÁNT HEGEDÛS JR.

Summarized Communication

Municipal High Court of Appeal of Budapest
Case Reg. No.: 3.Bf.111/2003/10

IN THE NAME OF THE REPUBLIC OF HUNGARY!

The Municipal High Court of Appeal of Budapest delivered the following

S e n t e n c e

at the public hearing held on 6 November 2003:

Judgement No. 13.B.423/2002/7. delivered and pronounced by the Municipal Court of Budapest on 6 November 2002 in the criminal proceeding launched against György Metes and his accomplice, charged for the commitment of the criminal act of incitement against community, has been

r e v e r s e d.

Whereby
accused in the first order, charged with the criminal act of incitement against the community,

accused of the second degree, charged with the criminal act of incitement against the community, committed in cumulative offence, are hereby

a c q u i t t e d

from the indictment.

The eventual costs incurred in the criminal procedure shall be borne by the state.

JUSTIFICATION:

György Metes, primary accused and Lóránt Hegedûs Jr., accused in the second degree, were pronounced guilty of the criminal act of incitement against the community, which was committed by them as accomplices, and by Lóránt Hegedûs, Junior, accused in the second degree, in cumulative offence. The Municipal Court of Budapest sentenced György Metes as primary accused to the pecuniary penalty an amount equal to 350 days' fine, where HUF 1500 is charged for each day item, totalling HUF 525000; and Lóránt Hegedûs Jr., accused in the second degree, to imprisonment of 1 year and 6 months, suspended for a probation term of 3 years.

The civil claims filed in this criminal action were ordered by the court to be adjudged by other statutory proceedings of the civil lawsuit.

The accused were ordered by the court to the payment of the costs of the criminal proceedings that may incur at any time in the future.

...

The sentence of the trial court has been appealed by György Metes, primary accused and Lóránt Hegedûs, Jr, accused of the second degree for acquittal; the duly authorized defense attorney of the primary accused lodged an appeal for acquittal of his client on the grounds of absence of any criminal offence committed by him; the duly authorized defense attorney of the accused of the second degree lodged an appeal for dismissal of the criminal procedure and also for the acquittal of his client on the grounds of absence of any criminal offence committed by him.

The prosecutor acknowledged the sentence of the first instance at the hearing in respect of both accused.

In warrant No. Bf.98/2003. the Public Prosecutor's Office presented the motion to add the distribution of the newspaper article to the facts of crime, otherwise to uphold the judgement.

The representative of the Municipal Appellate Chief Prosecutor's Office who was present at the public hearing (BF.139/2003.) by maintaining the written

warrant of the Public Prosecutor's Office, moved for the uphold of the sentence of the first instance.

At the public hearing the accused and their defense attorneys maintained their appeal unchanged.

...

The statement of facts established by the court of the first instance, – which has not been opposed to by appeals – is substantiated as it presents the newspaper article made subject of the indictment, the background to its composition, furthermore, the fact that it had been read out by the accused of the second degree in a Pannon Rádió programme.

...

The evidences bearing significance in terms of the adjudication of the case was revealed and considered by the court of the first instance. The indictment filed by the prosecutor which formed the basis of the criminal procedure was exhausted, and it was detailed why it was deemed that the culpability of the accused could be established. The legal justification, however, contains certain statements which are irrelevant in respect of the present case. Weighing of these circumstances is outside the duties of the court as judicature.

The irrelevant circumstances to be omitted from the justification of the judgement are as follows:

- In the decision of the court of the first instance (the last two passages on page 4 and the first three passages on page 5) it is elaborated what qualifies as anti-Semitism in the view of the court. The definition of the anti-Semitism and the analysis of its nature is not the task of the criminal court of trial of the given case.

- The decision of the court (last passage on page 5, first passage and third passage on page 6) gives an overview of what kind of duties the legislature has in connection with the international legal regulations; furthermore, it explains (last passage on page 6 and first passage on

page 7) what tasks legislature has to face. This detailed description is contrary to the otherwise correct statement of the court of the first instance that in the course of the criminal proceedings of the case it is confined to the charges stated in the indictment. It also implies that the indictment shall be fully exhausted, however, it may not be transgressed (passage the last but three on page 4 of the judgement).

– Furthermore, the wording "denounces such ideas on moral grounds" in the fifth passage on page 9 is also to be omitted as it is in contrast to the requirement of an objective procedure which is otherwise correctly stated by the court of the first instance. The particular conviction professed by the individual judge cannot bear any relevance to the decision concerning the indictment. Also, the historical overview in the last passage on page 9 about the anti-Jewish laws was also irrelevant for similar reasons because in the present case the performance of the crime of apartheid pursuant to Article 157. /2/ of the Hungarian Criminal Code was not even stated. This criminal act is performed by someone who takes any legislative or other kind of measures in order to intentionally prevent some racial group from participating in the political, social, economic and cultural life of a country. The subject of the indictment was not a legislative or some other kind of measure, but a newspaper article.

In spite of the circumstances bearing no significance in the delivery of the judgement as detailed in the aforementioned, in its decision the court of the first instance voiced a number of principles with which the court of the second instance agreed.

One important principle was that from the point of view of the adjudication of the act made subject to indictment it bears no relevance whether any proceedings were launched against which of the persons, as the court may decide on the criminal liability only of that person against whom an indictment has been filed. Significance shall be assigned not to the words, expressions or parts of the sentences, but to those sentences in their original context from which it can be established undoubtedly whether the accused committed a criminal act, and if they have, what kind of criminal act they performed.

In summary, the court is obliged to address anti-Semitism only to the extent the right of the expression of opinion granted in the constitution is concerned, having regard to the fact that anti-Semitism is ordered to be punished by the Hungarian Criminal Code in force exclusively if it is manifested as an incitement to hatred. Even then, the court examines not anti-Semitism but the incitement against the community. Even then not anti-Semitism, but the incitement against community shall be subjected to the scrutiny of the court. Another well-founded argument is that in Article 61. /1/ of the Constitution of the Republic of Hungary, as well as in the International Covenant on Civil and Political Rights the right of expression of opinion is stated as a fundamental constitutional right.

None of the aforementioned distinguishes as to the positive or negative content of the opinion expressed, and whether or not it may cause any injury to a person or persons.

Opinions may be freely expressed as long as they do not turn into incitement to hatred. Conclusively, the statutory provision in Article 269 of the Criminal Code does not constitute any specific protection offered by criminal law against the expression of offensive, insulting or possibly humiliating opinions. Accordingly, the only thing the court has to decide is whether the incriminated article or communication incites hatred or not.

The fact what makes incitement and what not, cannot be approached subjectively. In such a case both the indictment and adjudication would then be subject to individual judgement, political sensitivity or tolerance.

Accordingly, in passing the judgement the court shall proceed in order to eliminate subjective elements as much as possible, and to base its judgement exclusively on the facts and on the legal regulations which are strictly applicable to the case.

...

There is no democratic society without pluralism and tolerance; the freedom of expression of opinions is one of the corner-stones of the democratic society, one of the prerequisites of its development. This freedom shall be granted also to thoughts, information, ideas and principles which are offensive, astonishing or alarming.

However, in spite of the fact that in its judgement the aforementioned principles and resolutions were addressed in detail in respect of the issue of the performance of the criminal act of incitement to hatred in the given case which violated Article 269 of the Criminal Code, the court of the first instance arrived at a false legal conclusion. At the same time its legal viewpoint contradicts its statement presented in the last but one passage on page 9 of the judgement, which confirmed that "the article made subject to indictment does not contain any data which called for the use of unlawful means".

...

The appeal launched by the accused and the defense attorneys for acquittal is substantiated.

On the basis of the statement of the facts established by the Municipal Court of Budapest, a false conclusion has been drawn concerning the culpability of the accused where the speech with its previously conceived content, carefully designed construction, which was presented in written form, as well as in the form of a voice recording and a radio broadcast, and which, undoubtedly, contained statements offending and humiliating the part of the Hungarian Jews originating from Galicia, was assessed as one exceeding the boundaries of the right of the expression of opinion and freedom of speech, which constitutes a criminal act.

The criminal conduct of the incitement against the community as defined in Article 269. b./ of the Criminal Code is incitement to hatred. Incitement to hatred is a serious abuse of the freedom of the expression of opinion, and it is an emotional preparation to violence. In the justification of the resolutions passed by the Constitutional Court and in the case decisions No. BH.1997/165. and BH. 1998/521. of the Supreme Court a definitive guideline is provided as to how the incitement to hatred shall be construed.

To summarize the aforementioned: the person who

- calls to violent acts,
- calls to the performance of such an action or conduct, where
- the danger is not only assumed but there are actual rights endangered and there is a direct threat of a violent act,

is deemed not as someone who exercises the right to the freedom of expression of opinion, but one who commits the incitement to hatred.

In the colloquial meaning of the word, a perceivable moral disapproval is assigned to incitement.

The content of incitement to hatred, – as a concept used in criminal law – has been formulated by the practice of judicature. The person who in large public incites to hatred against particular groups of people, shares not only his antipathy, unfavourable or offending views and ideas arousing concern with other people, by setting the mood of the public, but also he displays a rebellious conduct generating tension, which is suitable to arouse the rage of the people and to violate the social order and peace.

The heated hatred may turn into extreme activity, ultimately into the eruption of violent acts. The incitement against the community is basically not a political but a legal crime, and as such, has been listed among the crimes against public tranquillity.

The person who provokes active, efficient hatred in others, performs incitement to hatred.

The opinion expressed in the article/voice recording published by György Metes, primary accused and written then read out to voice recording and communicated via radio broadcast by Lóránt Hegedûs Jr., accused of the second degree, may be offensive, astonishing and also alarming.

However, the criminal act of incitement against the community as determined in Article 269. b./ of the Criminal Code is not constituted thereby. The newspaper article does not call upon the performance of any activity or conduct or some violent act. It is not even suitable to stimulate the active effective hatred in the reader or in the listener which is required for the facts as described in the statutory provision.

It follows from the (immaterial) endangering nature of the criminal act that the assumed existence of the danger (abstract endangerment) is not sufficient for its performance.

Danger means the realistic possibility of the occurrence of the injury, that is, the prevalence of a situation where the possibility of the development of the process in the direction of the occurrence of the injury has to be reckoned with.

The conclusion of the Municipal Court of Budapest that it is sufficient that the offender has the foresight that the aroused hatred might as well emerge from the enclosed world of emotions and manifest itself in a manner perceivable also for outsiders is not substantiated; it must satisfy also the triple requirements detailed above.

Nor was the reasoning shared by us in respect of the statement that the invitation for exclusion by itself constitutes a criminal act, as no such provision is contained in the Criminal Code currently in force, or was contained in the Criminal Code in force at the time of the performance of the act. On the other hand, in its judgement the Municipal Court of Budapest failed to address the extent of the danger, the tangibility thereof, as well as the degree of violence.

From the call "Exclude them! For if you do not exclude them, they will exclude you" it does not follow and cannot be assumed that it was the intention of the accused to encourage its readers / listeners to conduct violent acts. From the part of the sentence "they will exclude you" it cannot be concluded that the author of the article fears violence on the part of the Jews originating from Galicia, and desires to prevent it.

Evidently, in the absence of any threatening violent conduct by the Jewish people the necessity of the prevention of any violent conduct may not even occur, and thus, such preventive violent exclusion is not encouraged by the accused of the second degree, not even indirectly.

The constitutional principle described in the judgement and the case decisions brought by the Supreme Court were left out of consideration by the Municipal Court of Budapest when it failed to confront the criteria of incitement to hatred with the newspaper article and the radio programme featuring in the given case.

This comparison was subsequently performed by the Court of Appeal according to the aforementioned, and in its review it was concluded that the conduct of the accused was not factual. The incitement to hatred as an element of the factum of

crime as determined in the statutory provision is absent, therefore the accused are acquitted from the indictment for the criminal act of incitement against the community, violating Article 269. b./ of the Criminal Code, on the grounds of absence of any criminal conduct (pursuant to Article 331 /1/ of the Criminal Procedure).

...

In view of the fact that the court of the second degree did not establish the performance of criminal acts at the disadvantage of either of the accused, the civil claim launched by N.N. was refused without the examination of the legitimacy of suit (BH.1998/217.).

Pursuant to Article 339. /1/ of the Criminal Procedure, the costs of the criminal proceedings eventually incurred up to this date shall be borne by the state for reasons of acquittal of the accused.

Dated: Budapest, 6 November 2003

...

Dr. Péter Nehrer	Dr Katalin Csere	Dr Éva Lányi
presiding judge	presenting judge	judge

The decision No. 3.Bf.111/2003/10. of the Municipal High Court of Appeal in respect of György Metes, primary accused and Lóránt Hegedûs Jr., accused in the second degree shall become legally binding as of 6 November, 2003.

Dated: Budapest, 6 November 2003

Dr. Péter Nehrer
presiding judge

[SZESZLÉR T. (eds), Anti-Semitic Discourse in Hungary in 2002-2003, Report and Documentation, pp. 335-343]

Hungary (legislation hate speech)

Első / előző / következő / utolsó dokumentum Becsuk

30/1992. (V. 26.) AB határozat
Közzétéve a Magyar Közlöny 1992. évi 53. számában
AB közlöny: I. évf. 5. szám

1358/B/1991

A MAGYAR KÖZTÁRSASÁG NEVÉBEN!

Az Alkotmánybíróság jogszabály alkotmányellenességének utólagos vizsgálatára irányuló indítványok tárgyában meghozta a következő

határozatot:

Az Alkotmánybíróság a Büntető Törvénykönyvről szóló 1978. évi IV. törvény /Btk/ 269. § (1) bekezdése alkotmányellenességének megállapítására és megsemmisítésére irányuló kérelmeket elutasítja.

Az Alkotmánybíróság megállapítja, hogy a Btk 269. § (2) bekezdése alkotmányellenes, ezért azt a határozat közzétételének napjával megsemmisíti.

Az Alkotmánybíróság elrendeli, hogy a Btk 269. § (2) bekezdése alapján lefolytatott és jogerős határozattal lezárt büntetőeljárásokat vizsgálják felül, amennyiben az elítélt még nem mentesült a hátrányos következmények alól.

Az Alkotmánybíróság e határozatát a Magyar Közlönyben közzéteszi.

Indokolás

I.

1. Indítványozók a Büntető Törvénykönyvről szóló 1978. évi IV. törvénynek /Btk/ az 1989. évi XXV. törvény 15. §-ával

megállapított 269. §-a alkotmányellenességének megállapítása és e bűncselekményi tényállás megsemmisítése iránt nyújtottak be indítványt. Álláspontjuk szerint a Btk 269. §-a azért alkotmányellenes, mert büntetni rendel olyan magatartásokat, amelyek az Alkotmány 61. §-ában biztosított véleménynyilvánítási és sajtószabadság, továbbá egyik indítványozó szerint a 60. §-ban biztosított gondolatszabadság és a 65. §-ában biztosított menedékhez való jog gyakorlásának körébe esnek.

2. A Pesti Központi Kerületi Bíróság az előtte folyamatban lévő ügyben 6.B.X. 20. 192/1991/28. számú végzésével az eljárást az Alkotmánybíróságról szóló 1989. évi XXXII. törvény /AB tv/ 38. § (1) bekezdésére hivatkozva felfüggesztette. A végzés szerint a Btk "ellentmondani látszik" az Alkotmány 8. § (1)-(2) és (4) bekezdésének, figyelemmel az Alkotmány 61. § (1) és (2) bekezdésében foglaltakra.

3. Az Alkotmánybíróság ülésén felszólalt a Legfelsőbb Bíróság elnöke és a legfőbb ügyész. Álláspontjuk szerint a Btk 269. §-a nem alkotmányellenes.

II.

1. A közösség elleni izgatás tényállását, a Btk jelenlegi 269. §-át a Büntető Törvénykönyv módosításáról szóló 1989. évi XXV. törvény 15. §-a állapította meg a következőképp:

" (1) Aki nagy nyilvánosság előtt
a) a magyar nemzet vagy valamely nemzetiség,
b) valamely nép, felekezet vagy faj, továbbá a lakosság egyes csoportjai ellen gyűlöletre uszít, bűntettet követ el, és három évig terjedő szabadságvesztéssel büntetendő.

(2) Aki nagy nyilvánosság előtt a magyar nemzetet, valamely nemzetiséget, népet, felekezetet vagy fajt sértő vagy lealacsonyító kifejezést használ, vagy más ilyen cselekményt követ el, vétség miatt egy évig terjedő szabadságvesztéssel, javító-nevelő munkával vagy pénzbüntetéssel büntetendő."

2. A vizsgált büntető rendelkezések szabályozásának története során mind a védett jogi tárgyak köre, mind az elkövetési magatartások módosultak. Változatlan maradt a büntetendővé nyilvánítás célja: annak a határnak törvényi megvonása, ahol a véleménynyilvánítás és ezen belül a szólás szabadsága véget ér, és ahol a büntetőjogilag tilalmazott magatartások kezdődnek.

A magyar büntetőtörvénykönyvről szóló 1878. évi V. törvénycikknek / Csemegi Kódex / az Alkotmánybíróság által vizsgált tényállás szempontjából releváns rendelkezése szerint büntetendő az, aki valamely gyülekezeten nyilvánosan, szóval, vagy aki nyomtatvány, irat, képes ábrázolat terjesztése vagy közszemlére kiállítása által valamely osztályt, nemzetiséget vagy hitfelekezetet gyűlöletre a másik ellen izgat. / 172. § (2) bek./

Az állami és társadalmi rend hatályosabb védelméről szóló 1921. évi III. törvénycikk vétség miatt büntetni rendelte azt, aki a magyar állam vagy a magyar nemzet ellen meggyalázó kifejezést használ vagy ily cselekményt követ el. /8. §/

A demokratikus államrend és a köztársaság büntetőjogi védelméről szóló 1946. évi VII. törvénycikk, a Csemegi Kódex rendelkezése helyébe a demokratikus államrend és demokratikus köztársaság, az állampolgári szabadság és jogegyenlőség elleni lázítás és izgatás tényállásait iktatta. A büntetőtörvények egyes fogyatékosságainak megszüntetéséről és pótlásáról szóló 1948. évi XLVIII. törvénycikk a demokratikus államrend és demokratikus köztársaság elleni rágalmazást kiegészítette a nemzeti, nemzetiségi és felekezeti érzület büntetőjogi védelmével.

A "Hatályos anyagi büntetőjogi szabályok hivatalos összeállítása" /BHÖ/ 1952-ben az 1946. évi VII. és az 1948. évi XLVIII. törvénycikkben megfogalmazott tényállásokat az állam belső biztonsága elleni bűncselekmények között lényegében változatlan szöveggel tartalmazta.

A Büntető Törvénykönyvről szóló 1961. évi V. törvény több ponton módosította az állam elleni bűntettek között elhelyezett izgatás szabályozását. Új bűncselekményként jelent meg a közbiztonság és közrend elleni cselekmények között a "közösség megsértése". Ez az izgatás tényállásában meghatározott magatartások enyhébb büntetését helyezte kilátásba arra az esetre, ha a cselekmény az eset összes körülményeire, különösen a bűntett indítékára, az elkövetés módjára, az elkövető személyi körülményeire tekintettel kisebb súlyú.

Az izgatás és a közösség megsértése közötti elhatárolás a jogalkalmazói gyakorlatra hárult. Tekintettel arra, hogy az elhatárolás nem csupán a büntetési mérték szempontjából volt fontos, hanem a magatartás állam elleni vagy köztörvényes bűncselekménykénti megkülönböztetése szempontjából is, az új Btk előkészítésekor igyekeztek határozottabb elhatárolási ismérvet kialakítani.

Ennek eredménye lett, hogy az 1978. évi IV. tv, a Btk eredeti 148. §-ában szabályozott "izgatás" célzatos bűncselekménnyé vált, azaz a bűnösség megállapításához többé már nem volt elegendő, hogy az elkövető csupán tudatában legyen: cselekménye alkalmas a tényállásban szereplő jogi tárgyak elleni gyűlölet felkeltésére, hanem szükséges volt, hogy szándéka kifejezetten erre irányuljon, ezt kívánja, ennek érdekében cselekedjék.

Akinek esetében a gyűlölet keltésére irányuló célzat nem volt megállapítható, az ugyanazon magatartásért a köznyugalom elleni bűncselekmények között elhelyezett közösség megsértése /eredeti 269. § (1) bek./ miatt volt büntetendő. A közösség megsértését valósította meg továbbá az, aki mások előtt a magyar nemzetet, továbbá - nemzetiségük, felekezetük, fajuk vagy szocialista meggyőződésük miatt - csoportokat vagy személyeket sértő vagy lealacsonyító kifejezést használt, avagy egyéb ilyen cselekményt követett el /eredeti 269. § (2) bek./.

A jogállami garanciák megteremtése érdekében 1989-ben a politikai jellegű bűncselekmények a sürgősen módosítandó rendelkezések között kaptak helyet. Az 1989. évi XXV. törvény az állam elleni bűncselekemények közül kiemelte az izgatást, és a köznyugalom elleni bűncselekmények között, - a büntetőjogi felelősséget lényegesen korlátozva - a "közösség elleni izgatás" új tényállását fogalmazta meg. A büntetőjogi felelősség korlátozását egyrészt a védendő jogi tárgyak körének szűkítése, másrészt a nagy nyilvánosság alaptényállási elemmé tétele eredményezte.

3. Valamennyi kontinentális jogrendszerű európai demokratikus ország, továbbá az angolszász jogterületen Anglia és Wales, Kanada, valamint Új-Zéland büntető törvényben tiltja meg a "faji" izgatást. Az izgatás, a gyűlöletkeltés és a véleménynyilvánítás szabadsága között a megfelelő határ megvonása azonban nemzetközileg is jelentős viták forrása.

III.

Az indítványok a Btk 269. § (1) bekezdésében meghatározott bűncselekményi tényállás tekintetében nem megalapozottak. A Btk 269. § (2) bekezdése azonban - figyelemmel az Alkotmány 8. § (1) és (2) bekezdésében foglaltakra - az Alkotmány 61. § (1) és (2) bekezdésében biztosított véleménynyilvánítási és sajtószabadságot szükségtelenül és aránytalanul korlátozza, ezért alkotmányellenes.

1. A Btk 269. §-át egybevetve az Alkotmány 60. § (1)

bekezdésével nyilvánvaló, hogy a gondolat szabadsága és a közösség elleni izgatás semmilyen ponton nem érintkezik. Így a büntető rendelkezés ezen alapjogot nem korlátozza, nem sérti, mert az a vélemény kinyilvánítására vonatkozik. A vitatott tényállás meghatározott magatartás megbüntetését írja elő. A büntetőjog axiómái közé tartozik, hogy pusztán a gondolat nem lehet büntetőjogi felelősségre vonás alapja.

Ugyancsak nem fedezhető fel tartalmi összefüggés a Btk 269. §-a és az Alkotmány 65. §-ának azon rendelkezése között, amely szerint a Magyar Köztársaság - a törvényben meghatározott feltételek szerint - biztosítja a menedékjogot azoknak a külföldi állampolgároknak, akiket hazájukban, illetőleg azoknak a hontalanoknak, akiket tartózkodási helyükön faji, vallási, nemzeti, nyelvi vagy politikai okokból üldöznek. Az Alkotmánybíróság állás- pontja szerint a menedékjog megszerzésének feltétele az egyénnek faji, vallási okok, nemzeti hovatartozása, illetve meghatározott társadalmi csoporthoz való tartozása, avagy politikai nézetei miatti üldözéstől való megalapozott félelme, nem pedig az elhagyott ország népe elleni gyűlöletre uszítás, illetve azt sértő, lealacsonyító kifejezések használata. A menedékjog, mint alkotmányos alapjog és a Btk 269. §-a között releváns öszefüggés nincs, így ellentétük sem mutatható ki.

2. 1. A Btk 269. §-a az Alkotmány 61. § (1) bekezdésében meghatározott véleménynyilvánítási szabadság és a (2) bekezdésben megjelölt sajtószabadság tényleges korlátozását, határainak a felelősségi rendszer legsúlyosabb eszközével, a büntetőjogi szankcióval való kijelölését jelenti.

Valamennyi alkotmányos alapjog tekintetében fontos kérdés, hogy azokat lehet-e és milyen feltételekkel megszorítani, korlátozni, kollíziójuk esetén milyen szempontok alapján kell a prioritást meghatározni. A véleménynyilvánítás, illetve az ebbe beletartozó sajtószabadság esetén ez a kérdés kiemelt jelentőséget kap, mivel ezen szabadságok a plurális, demokratikus társadalom alapvető értékei közé tartoznak.

Éppen ezért a véleménynyilvánítás szabadságának kitüntetett szerepe van az alkotmányos alapjogok között, tulajdonképpen "anyajoga" többféle szabadságjognak, az un. "kommunikációs" alapjogoknak. Ebből eredő külön nevesített jogok a szólás - és a sajtószabadság, amely utóbbi felöleli valamennyi médium szabadságát, továbbá az informáltsághoz való jogot, az információk megszerzésének szabadságát. Tágabb értelemben a véleménynyilvánítási szabadsághoz tartozik a művészi, irodalmi alkotás szabadsága és a művészeti alkotás terjesztésének szabadsága, a tudományos alkotás szabadsága és a tudományos ismeretek tanításának szabadsága. Ez utóbbiak tiszteletben tartásáról és védelméről az Alkotmány

70/G. §-ában külön is rendelkezik. A véleménynyilvánítási szabadsághoz kapcsolódik a lelkiismereti és vallásszabadság /60. §/, valamint a gyülekezési jog is /62. §/.

Ez a jogegyüttes teszi lehetővé az egyén megalapozott részvételét a társadalmi és politikai folyamatokban. Történelmi tapasztalat, hogy mindannyiszor, amikor a véleménynyilvánítás szabadságát korlátozták, sérelmet szenvedett a társadalmi igazságosság, az emberi kreativitás, csökkent az emberben rejlő képességek kibontakozásának lehetősége. A káros következmények nem csupán az individuum, hanem a társadalom életében is megmutatkoztak és az emberiség fejlődésének sok szenvedéssel járó zsákutcájához vezettek. Az eszmék, nézetek szabad kifejtése, a mégoly népszerűtlen vagy sajátos elképzelések szabad megnyilvánulása a fejlődni- képes és valóban eleven társadalom létezésének alapfeltétele.

2. 2. Az Alkotmány 8. §-ában rögzíti, hogy a Magyar Köztársaság elismeri az ember sérthetetlen és elidegeníthetetlen alapvető jogait, ezek tiszteletben tartása és védelme az állam elsőrendű kötelessége. Az alapvető jogokra és kötelességekre vonatkozó szabályokat törvény állapítja meg, alapvető jog lényeges tartalmát azonban nem korlátozhatja.

Az állam akkor nyúlhat az alapjog korlátozásának eszközéhez, ha másik alapvető jog és szabadság védelme vagy érvényesülése, illetve egyéb alkotmányos érték védelme más módon nem érhető el. Az alapjog korlátozásának alkotmányosságához tehát önmagában nem elegendő, hogy az másik alapjog vagy szabadság védelme vagy egyéb alkotmányos cél érdekében történik, hanem szükséges, hogy megfeleljen az arányosság követelményeinek: az elérni kívánt cél fontossága és az ennek érdekében okozott alapjogsérelem súlya megfelelő arányban legyen egymással. A törvényhozó a korlátozás során köteles az adott cél elérésére alkalmas legenyhébb eszközt alkalmazni. Alkotmányellenes a jog tartalmának korlátozása, ha az kényszerítő ok nélkül, önkényesen történik vagy ha a korlátozás súlya az elérni kívánt célhoz képest aránytalan.

Az Alkotmánybíróság a terhességmegszakítás alkotmányossági kérdéseivel foglalkozó határozatában kifejtette azt is, hogy az állam kötelessége az alapvető jogok "tiszteletben tartására és védelmére" az egyéni alapjogokkal kapcsolatban nem merül ki abban, hogy tartózkodnia kell megsértésüktől, hanem magában foglalja azt is, hogy gondoskodnia kell az érvényesülésükhöz szükséges feltételekről. Az emberek egyéni szabadságuk és személyes igényeik szempontjából gyakorolják alapjogaikat. Az államnak viszont arra van szüksége garanciális feladata ellátásához, hogy az egyes alanyi jogok biztosítása mellett az azokkal kapcsolatos értékeket és élethelyzeteket önmagukban is, azaz ne csupán egyes egyedi

igényekhez kapcsolódóan védje, s a többi alapjoggal összefüggésben kezelje. Az állam számára az alapjogok védelme csupán része az egész alkotmányos rend fenntartásának és működtetésének /64/1991. (XII. 17.)AB hat./.

Az egyéni véleménynyilvánítási szabadság szubjektív joga mellett tehát az Alkotmány 61. §-ából következik a demokratikus közvélemény kialakulása feltételeinek és működése fenntartásának biztosítására irányuló állami kötelezettség. A szabad véleménynyilvánításhoz való jog objektív, intézményes oldala nemcsak a sajtószabadságra, oktatási szabadságra, stb. vonatkozik, hanem az intézményrendszernek arra az oldalára is, amely a véleménynyilvánítási szabadságot általánosságban a többi védett érték közé illeszti. Ezért a véleménynyilvánítási szabadság alkotmányos határait úgy kell meghatároznia, hogy azok a véleményt nyilvánító személy alanyi joga mellett a közvélemény kialakulásának, illetve szabad alakításának a demokrácia szempontjából nélkülözhetetlen érdekét is figyelembe vegyék.

Tekintettel arra, hogy a vizsgálat tárgya a véleménynyilvánítási szabadságnak a büntetőjog eszközeivel történő korlátozása, az alkotmányosság megítélésénél érvényesülnie kell a büntetőjog egész rendszerére vonatkozó alkotmányos követelményeknek is. Ezek forrása az alkotmányos büntetőjog koncepciója, a jogállamiságból, mint alapértékből az állami büntetőhatalom gyakorlására háramló következmények rendszere, ezen belül pedig a büntető jogalkotás számára adódó tartalmi korlátok és formai követelmények.

Ennek megfelelően az Alkotmánybíróság a Btk 269. §-a alkotmányosságának megítélésénél a következő kérdéseket vizsgálta:

- elkerülhetetlenül szükséges-e a véleménynyilvánítás és sajtószabadság korlátozása a tényállásban leírt magatartások esetén,

- a korlátozás megfelel-e az arányosság követelményeinek, azaz az elérni kívánt célhoz a büntetőjog eszközrendszere általában és ezen belül az adott büntető tényállás szükséges és megfelelő-e.

A büntető tényállás két magatartási típust szankcionál: a gyűlöletkeltést /gyűlöletre uszít/ és a megvetés kifejezésre juttatását /sértő vagy lealacsonyító kifejezések használata, vagy ilyen cselekmény elkövetése/. A Btk 269. § (1) és (2) bekezdésében foglalt bűncselekmények mind az elkövetési magatartást magát, mind pedig veszélyességüket tekintve

lényegesen eltérnek, így az Alkotmánybíróság e két elkövetési magatartás alkotmányosságát külön vizsgálta.

IV.

A Btk 269. § (1) bekezdésében büntetni rendelt magatartások tekintetében az Alkotmánybíróság a következőket állapította meg.

1. A gyűlöletkeltésnek, az emberek egyes csoportjait megvető, megalázó megnyilvánulásoknak potenciálisan kártékony voltáról az emberiség bőséges történelmi tapasztalatokkal rendelkezik.

A szavak erejére már 1878-ban a Csemegi Kódex miniszteri indokolása így hívta fel a figyelmet: "Az eszmék szabad közlése, a minek legszebb vívmányait köszönheti az emberiség, ép oly ártalmassá válhatik, mint a tűz, mely világít és melegít, de mely ellenőrizetlenül és féktelenül csapongva, igen gyakran nagy szerencsétlenségnek, sok nyomornak és pusztulásnak lett már okozója."

Századunk súlyos történelmi tapasztalatai bizonyítják, hogy a faji, etnikai, nemzetiségi, vallási szempontú alsóbb- vagy felsőbbrendűséget hirdető nézetek, a gyűlölködés, megvetés, kirekesztés eszméinek terjesztése az emberi civilizáció értékeit veszélyeztetik.

Történelmileg és napjaink eseményei által is igazolt, hogy az emberek meghatározott csoportja elleni gyűlöletkeltési szándékot kifejező bármely megnyilvánulás alkalmas a társadalmi feszültségek kiélezésére, a társadalmi harmónia és béke megzavarására, legsúlyosabb kifejletében a társadalom egyes csoportjai közötti erőszakos összeütközésekre.

A gyűlöletkeltés legszélsőségesebb, már ténylegesen bekövetkezett kártékony hatását bizonyító történelmi és jelenkori tapasztalatok mellett figyelembe kell venni azokat a mindennapi veszélyeket is, amelyek a gyűlölet felkeltésére alkalmas nézetek, eszmék korlátok nélküli kinyilvánításával járnak. E megnyilvánulások akadályozzák, hogy az emberek bizonyos közösségei harmonikus kapcsolatban éljenek más csoportokkal. Ez, növelve egy adott, kisebb vagy nagyobb közösségen belüli érzelmi, szociális feszültségeket, szétszakítja a társadalmat, erősíti a szélsőségeket, az előítéletességet és intoleranciát. Mindez csökkenti a plurális értékrendet, a különbözőséghez való jogot elismerő, toleráns, multikulturális, az emberek egyenlő méltóságának elismerésén alapuló, a diszkriminációt értékként el nem

ismerő társadalom kialakulásának esélyét.

2. A véleménynyilvánítás és sajtószabadság körében az emberek meghatározott csoportjai elleni gyűlöletkeltés alkotmányos védelemben részesítése feloldhatatlan ellentmondásban lenne az Alkotmányban kifejezésre jutó politikai berendezkedéssel és értékrenddel, a demokratikus jogállamiságra, az emberek egyenlőségére, egyenlő méltóságára, valamint a diszkrimináció tilalmára, a lelkiismereti és vallásszabadságra, a nemzeti, etnikai kisebbségek védelmére, elismerésére vonatkozó alkotmányos tételekkel.

Az Alkotmány 2. § (1) bekezdése szerint a Magyar Köztársaság demokratikus jogállam. A demokrácia fogalma rendkívül összetett. A vizsgált kérdés szempontjából azonban lényeges, hogy tartalmilag jelenti a különbözőséghez való jogot, a kisebbségek védelmét, az erőszakról és az erőszakkal fenyegetésről, mint a konfliktusmegoldás eszközeiről való lemondást.

A gyűlöletkeltés a fenti tartalmi jegyek tagadása, az erőszak érzelmi előkészítése. Visszaélés a véleménynyilvánítás szabadságával, az emberek meghatározott csoportjának, egy kollektivitásnak olyan intoleráns minősítése, amely nem a demokrácia, hanem a diktatúra jellemzője. A véleménynyilvánítási és sajtószabadság gyakorlása olyan formáinak eltűrése, amelyet a Btk 269. § (1) bekezdése tilalmaz, ellentmondana a demokratikus jogállamiságból fakadó követelményeknek.

Az Alkotmány 54. § (1) bekezdése szerint minden embernek veleszületett joga van az emberi méltósághoz. Így tehát az emberi méltóság a véleménynyilvánítási szabadság korlátja lehet.

3. A véleménynyilvánítási és sajtószabadság korlátozásának szükségessége következik a magyar állam nemzetközi kötelezettségeiből is. Az Alkotmány 7. § (1) bekezdése szerint a Magyar Köztársaság jogrendszere elfogadja a nemzetközi jog elismert szabályait, biztosítja a vállalt nemzetközi jogi kötelezettségek és a belső jog összhangját. A vizsgált kérdés tekintetében fennálló nemzetközi kötelezettségek a következők:

3. 1. Az Egyesült Nemzetek Közgyűlése XXI. ülésszakán, 1966. december 16-án elfogadott, az 1976. évi 8. törvényerejű rendelettel kihirdetett Polgári és Politikai Jogok Egyezségokmánya rögzíti a gondolatszabadságot /18.c./, valamint a szabad véleménynyilvánításhoz való jogot /19.c./.

Ez utóbbi szerint:
1. Nézetei miatt senki sem zaklatható.

2. Mindenkinek joga van szabad véleménynyilvánításra; ez a jog magában foglalja mindenfajta adat és gondolat határokra való tekintet nélküli - szóban, írásban, nyomtatásban, művészi formában vagy bármilyen más tetszése szerinti módon történő - keresésének, megismerésének és terjesztésének a szabadságát is.

3. Az e cikk 2. bekezdésében meghatározott jogok gyakorlása különleges kötelességekkel és felelősséggel jár. Ennélfogva az bizonyos korlátozásoknak vethető alá, ezek azonban csak olyanok lehetnek, amelyeket a törvény kifejezetten megállapít és amelyek

a) mások jogainak vagy jóhírnevének tiszteletben tartása, illetőleg

b) az állambiztonság vagy a közrend, a közegészség vagy a közerkölcs védelme érdekében szükségesek."

Határozottabb állásfoglalást tartalmaz a 20. cikk 2. bekezdése: "Törvényben kell megtiltani a nemzeti, faji vagy vallási gyűlölet bármilyen hirdetését, amely megkülönböztetésre, ellenségeskedésre vagy erőszakra izgat."

3. 2. A magyar állam számára jogi kötelezettséggel jár a 1969. évi 1. tvr-rel kihirdetett, a faji megkülönböztetés valamennyi formájának kiküszöböléséről szóló nemzetközi egyezmény.

Az Egyezmény 4. cikke szerint a részes államok

a) " törvény által büntetendő cselekménnyé nyilvánítják a faji felsőbbrendűségre vagy gyűlöletre alapozott eszmék terjesztését, a faji megkülönböztetésre való izgatást, valamint bármely faj, illetve más színű vagy más etnikai származású személyek csoportja ellen irányuló minden erőszakos cselekedetet vagy arra való izgatást, továbbá fajgyűlölő tevékenység mindenféle támogatását, annak pénzelését is beleértve;

b) Törvényellenessé nyilvánítanak és betiltanak minden olyan szervezetet, valamint szervezett és minden egyéb propagandatevékenységet, amely a faji megkülönöztetést előmozdítja vagy arra izgat, az ilyen szervezetekben vagy

tevékenységben való részvételt pedig törvény által büntetendő cselekménynek tekintik;

c) nem engedik meg, hogy országos vagy helyi hatóságok vagy közintézmények a faji megkülönböztetést előmozdítsák vagy arra izgassanak."

3. 3. Az emberi jogok és alapvető szabadságok védelméről szóló Európai Egyezmény nem tartalmaz közvetlen kötelezettséget az államok számára az izgatás bűncselekménnyé nyilvánítására, hanem elsősorban a véleménynyilvánítási jog korlátozásának miként jét szabályozza.

Az Egyezmény 10. cikke szerint:
"1. Mindenkinek joga van a véleménynyilvánítás szabadságához. E jog magában foglalja a véleményalkotás szabadságát és az információk, eszmék megismerésének és átadásának szabadságát országhatárokra tekintet nélkül és anélkül, hogy ebbe hatósági szervnek joga lenne beavatkozni. E cikk nem képezi akadályát annak, hogy az államok a rádió-, mozgókép- vagy televízióvállalatok működését engedélyezéshez kössék.

2. E kötelezettségekkel és felelősséggel együttjáró szabadságok gyakorlása a törvényben meghatározott olyan alakszerűségeknek, feltételeknek, korlátozásoknak vagy szankcióknak vethető alá, amelyek szükséges intézkedéseknek minősülnek egy demokratikus társadalomban a nemzetbiztonság, a területi integritás, a közbiztonság, a zavargás vagy bűncselekmény megelőzése, a közegészség vagy az erkölcsök védelme, mások jó hírneve vagy jogai védelme, a bizalmas információ közlésének megakadályozása, a bíróságok tekintélyének és pártatlanságának fenntartása céljából."

Az Emberi Jogok Európai Bizottsága több határozatában úgy foglalt állást, hogy a 10. cikk 2. pontja értelmében a fajgyűlölő közlések megtiltása a szabad véleménynyilvánítás érvényes korlátozásának tekintendő.

Az Alkotmánybíróság álláspontját összegezve: a véleménynyilvánítás és sajtószabadság korlátozását mind az emberek meghatározott csoportjai elleni gyűlöletkeltésnek történelmileg bizonyítottan kártékony hatása, mind az alkotmányos alapértékek védelme, továbbá a Magyar Köztársaság nemzetközi kötelezettségeinek teljesítése szükségszerűvé és indokolttá teszi.

4. A büntetőjog a jogi felelősségi rendszerben az ultima ratio. Társadalmi rendeltetése, hogy a jogrendszer egészének

szankciós zárköve legyen. A büntetőjogi szankció, a büntetés szerepe és rendeltetése a jogi és erkölcsi normák épségének fenntartása akkor, amikor már más jogágak szankciói nem segítenek.

Az alkotmányos büntetőjogból fakadó tartalmi követelmény, hogy a törvényhozó a büntetendő magatartások körének meghatározásakor nem járhat el önkényesen. Valamely magatartás büntetendővé nyilvánításának szükségességét szigorú mércével kell megítélni: a különböző életviszonyok, erkölcsi és jogi normák védelmében az emberi jogokat és szabadságokat szükségképpen korlátozó büntetőjogi eszközrendszert csak a feltétlenül szükséges esetben és arányos mértékben indokolt igénybe venni, akkor, ha az alkotmányos vagy az Alkotmányra visszavezethető állami, társadalmi, gazdasági célok, értékek megóvása más módon nem lehetséges.

Az Alkotmánybíróság álláspontja szerint a Btk 269. § (1) bekezdésében tilalmazott magatartásnak a korábban elemzett, az egyént és a társadalmat érintő hatásai, következményei olyan súlyosak, hogy más felelősségi formák, így a szabálysértési vagy polgári jogi felelőségi rendszerek eszközei elégtelenek az ilyen magatartások tanusítóival szemben. E magatartások helytelenítésének, elítélésének erőteljes kifejezése, azon demokratikus eszméknek, értékeknek megerősítése, amelyek ellen e cselekmények elkövetői támadnak, valamint a megsértett jog és erkölcsi rend helyreállítása a büntetőjog eszközeit igényli.

5. Végül vizsgálandó kérdés, hogy a Btk 269. § (1) bekezdése mértéktartó és megfelelő választ ad-e a veszélyesnek, nem kívánatosnak ítélt jelenségre, azaz az alkotmányos alapjogok korlátozása esetén irányadó követelménynek megfelelően a cél eléréséhez a lehetséges legszűkebb körre szorítkozik-e. Az alkotmányos büntetőjog követelményei szerint a büntetőjogi szankció kilátásba helyezésével tilalmazott magatartást leíró diszpozíciónak határozottnak, körülhatároltnak, világosan megfogalmazottnak kell lennie. Alkotmányossági követelmény a védett jogtárgyra és az elkövetési magatartásra vonatkozó törvényhozói akarat világos kifejezésre juttatása. Egyértelmű üzenetet kell tartalmaznia, hogy az egyén mikor követ el büntetőjogilag szankcionált jogsértést. Ugyanakkor korlátoznia kell az önkényes jogértelmezés lehetőségét a jogalkalmazók részéről. Vizsgálni kell tehát, hogy, a tényállás a büntetendő magatartások körét nem túl szélesen jelöli-e ki és elég határozott-e.

A Btk 269. § (1) bekezdése megfelel a korlátozással szemben támasztott követelményeknek. Amint a határozat II/2. pontjában adott történeti áttekintés mutatja, az 1989-es módosítás a büntetőjogi felelősség lényeges szűkítését

eredményezte több ponton:

- A védendő jogi tárgyak közül elmaradt az alkotmányos rend, valamint az állam szövetségi, barátsági vagy együttműködésre irányuló egyéb nemzetközi kapcsolata.

Ennek következtében az ezen intézmények elleni gyűlöletre uszítás kiesett a büntetendő magatartások közül. A büntetőjog eszközrendszere csak akkor lép működésbe, ha valaki az alkotmányos rend erőszakos megváltoztatásaként /139. §/, az alkotmányos rend elleni szervezkedésként /139/A. §/, lázadásként /140. §/, hazaárulásként /141. §/ stb. minősülő magatartást tanúsít, amely a gyűlöletkeltéshez képest lényegesen több tevékenységet kíván meg.

- Az izgatás korábbi tényállásának súlyosabban minősített esete, a nagy nyilvánosság előtti elkövetés vált a közösség elleni izgatás alaptényállásává. Ennek fogalmát egyrészt maga a törvény, a 137. § 10. pontja határozza meg. Eszerint "nagy nyilvánosságon a bűncselekménynek sajtó, egyéb tömegtájékoztatási eszköz vagy sokszorosítás útján elkövetését is érteni kell". Másrészt e fogalom tartalma a büntető jogalkalmazásban régóta kialakult.

A közösség elleni izgatás az eredeti izgatáshoz képest kétségtelenül szélesítette a büntetőjogi felelősséget azzal, hogy a tényállás nem célzatos, azaz a bűnösség megállapításához nem szükséges a gyűlöletkeltés kifejezett, egyenes szándéka, elegendő csupán az, hogy az elkövető tudatában legyen: magatartása a gyűlölet kiváltására alkalmas.

A tényállásban a jogi tárgyak közül értelmezést igényel a lakosság egyes csoportjai kitétel. E mögött az eltérő nézetrendszer (párttagok, egyesületek, mozgalmak stb. résztvevői) vagy egyéb, tulajdonképpen bármely ismérv szerint elkülönülő személyek védelmének szándéka húzódik meg.

Értelmezést igényel továbbá a gyűlöletre uszításban megjelölt elkövetési magatartás. Önmagukban a szavak is általánosan ismert tartalommal bírnak. A gyűlölet az egyik legszélsőségesebb, negatív, a Magyar Nyelv Értelmező Szótára szerint (2. kötet 1132. o.) nagyfokú ellenséges indulat. Aki uszít, az valamely személy, csoport, szervezet, intézkedés ellen ellenséges magatartásra, ellenséges, kárt okozó tevékenységre biztat, ingerel, lázít (Értelmező Szótár 7. kötet 59. o.).

Tekintettel arra, hogy már a Csemegi Kódexben is a

gyűlöletre izgatás volt az elkövetési magatartás, a jogalkalmazók a konkrét esetek megítélésében több mint 100 év értelmezési gyakorlatára támaszkodhatnak. A Curia már a századfordulón több döntésében nagy szabatossággal határozta meg meg az izgatás fogalmát: A törvény eme kifejezés alatt "izgat" nem valamely kedvezőtlen és sértő véleménynek nyilvánítása, hanem olyan lázongó kifakadások értendők, amelyek alkalmasak arra, hogy az emberek nagyobb tömegében a szenvedélyeket oly magas fokra lobbantsák, amelyből gyűlölet keletkezvén, a társadalmi rend és béke megzavarására vezethet (Büntetőjogi Döntvénytár 7. köt. 272. l.) . Nem izgatás tehát a bírálat, helytelenítés, kifogásolás, sőt még a sértő nyilatkozat sem; izgatásról csak akkor van szó, midőn a kifejezések, megjegyzések stb. nem az értelemhez szólnak, hanem az érzelmi világra akarnak hatni s szenvedélyek, ellenséges indulatok felkeltésére alkalmasak. Az izgatás fogalmát illetően egyébként teljesen közömbös, hogy az állított tények valóak-e vagy sem; a lényeges az, hogy bár való, vagy valótlan adatoknak csoportosítása a gyűlölet felkeltésére alkalmas legyen (Büntetőjogi Döntvénytár 1. köt. 124. l.) .

A közösség elleni izgatás súlyosabb alakzata, a gyűlöletre uszítás tényállása tehát megfelel az arányosság követelményének: csak a legveszélyesebb magatartásokra terjed ki és a tényállási elemek a jogalkalmazók részéről egyértelműen értelmezhetők. Az a tény, hogy a Btk eredeti tényállásai még a közelmúltban is alkalmat teremtettek a véleménynyilvánítási szabadság olyan korlátozására, amely a demokratikus értékrend szerint nem elfogadható, önmagában nem érv a tényállás alkotmányellenessége mellett. Csupán azt bizonyítja, hogy a büntetőjog eszközeivel való visszaélés igen korlátozottan védhető ki a tényállások pontos megfogalmazásával. Az igazi védelmet a demokratikus jogállam intézményeinek működése, a bíróságok valódi függetlensége, a demokratikus értékeknek elkötelezett társadalmi környezet megteremtése biztosíthatja.

V.

1. A szabad véleménynyilvánításhoz való jog a fentiek szerint nem csupán alapvető alanyi jog, hanem e jog objektív, intézményes oldalának elismerése egyben a közvélemény, mint alapvető politikai intézmény garantálását is jelenti. A szabad véleménynyilvánítás jogának kitüntetett szerepe ugyan nem vezet arra, hogy ez a jog - az élethez, vagy az emberi méltósághoz való joghoz hasonlóan - korlátozhatatlan lenne, de mindenképpen azzal jár, hogy a szabad véleménynyilvánításhoz való jognak valójában igen kevés joggal szemben kell csak engednie, azaz a véleményszabadságot korlátozó törvényeket megszorítóan kell értelmezni. A vélemény szabadságával szemben mérlegelendő korlátozó törvénynek nagyobb a súlya, ha közvetlenül másik alanyi alapjog érvényesítésére és védelmére szolgál, kisebb,

ha ilyen jogokat csakis mögöttesen, valamely " intézmény " közvetítésével véd, s legkisebb, ha csupán valamely elvont érték önmagában a tárgya (pl. a köznyugalom) .

2. A Btk 269. § (1) bekezdésének elkövetési magatartása a "gyűlölöletre uszítás". A Curia idézett meghatározása az akkori "izgatásra" nézve nyilvánvalóvá teszi, hogy olyan magatartások értendők ide, "amelyek alkalmasak arra, hogy az emberek nagyobb tömegében a szenvedélyeket oly magas fokra lobbantsák, amelyből gyűlölet keletkezvén, a társadalmi rend és béke megzavarására vezethet." A társadalmi rend és béke - a Btk szóhasználatával a köznyugalom - ilyen megzavarása mögött ott van nagyszámú egyéni jog megsértésének a veszélye is: a csoport ellen felszított indulat fenyegeti a csoporthoz tartozók becsületét, méltóságát (szélsőséges esetben életét is), megfélemlítéssel korlátozza őket más jogaik gyakorlásában is (köztük a szabad vélemény-nyilvánításban) . Az (1) bekezdésben szankcionált magatartás olyan veszélyt hordoz egyéni jogokra is, amelyek a közvetlen tárgyként szereplő köznyugalomnak olyan súlyt adnak hogy - a IV. pontban történt kifejtés szerint - a véleményszabadság korlátozása szükségesnek és arányosnak tekinthető. Noha a mérlegelés gyakorlati eredménye hasonló, ebben a gondolatmenetben nem csupán a köznyugalom megzavarásának intenzitásáról van szó, amely egy bizonyos mérték fölött ("clear and present danger") igazolja a szabad véleménynyilvánításhoz való jog korlátozását. Itt az a döntő, hogy mi került veszélybe: az uszítás az alkotmányos értékrendben szintén igen magasan álló alanyi jogokat veszélyeztet.

A "gyalázkodásnál" ezzel szemben nem tényállási elem a sértő kifejezésnek vagy azzal egyenértékű cselekménynek a köznyugalom megzavarására alkalmas volta. A "gyűlöletre uszítással" ellentétben az elkövetési magatartásból sem következtethető ez ki. A Btk abból indul ki, hogy a nemzeti vagy vallási közösségekre nézve sértő kifejezés használata általában ellentétes a társadalom kívánatos nyugalmával. Ez az immateriális bűncselekményi tényállás tehát a közrendet, a köznyugalmat, a társadalmi békét önmagában véve, elvontan védi. A bűncselekmény megalósul akkor is, ha a sértő kifejezés a körülmények folytán nem jár annak veszélyével sem, hogy egyéni jogokon sérelem esne. A köznyugalom ilyen elvont veszélyeztetése nem elégséges érv ahhoz, hogy a véleménynyilvánítási szabadságot büntetőjogi büntetéssel alkotmányosan korlátozni lehessen.

3. A szabad véleménynyilvánításhoz való jog a véleményt annak érték- és igazságtartalmára tekintet nélkül védi. Egyedül ez felel meg annak az ideológiai semlegességnek, amelyet az Alkotmánynak az 1990. évi XL. törvénnyel való módosítása azzal fejezett ki, hogy törölte az Alkotmány 2. §-ából az 1989. októberében - éppen a pluralizmus példájaként - szerepeltetett fő eszmei irányzatokat is. A

véleménynyilvánítás szabadságának külső korlátai vannak csak; amíg egy ilyen alkotmányosan meghúzott külső korlátba nem ütközik, maga a véleménynyilvánítás lehetősége és ténye védett, annak tartalmára tekintet nélkül. Vagyis az egyéni véleménynyilvánítás, a saját törvényei szerint kialakuló közvélemény, és ezekkel kölcsönhatásban a minél szélesebb tájékozottságra épülő egyéni véleményalkotás lehetősége az, ami alkotmányos védelmet élvez. Az Alkotmány a szabad kommunikációt - az egyéni magatartást és a társadalmi folyamatot - biztosítja, s nem annak tartalmára vonatkozik a szabad véleménynyilvánítás alapjoga. Ebben a processzusban helye van minden véleménynek, jónak és károsnak, kellemesnek és sértőnek egyaránt - különösen azért, mert maga a vélemény minősítése is e folyamat terméke.

Az általa helyesnek tartott véleményeket mindenki - az állam is - támogathatja, s a helytelennek tartott ellen felléphet, mindaddig, amíg ezzel valamely más jogot nem sért olyan mértékben, hogy az előtt a véleményszabadságnak is vissza kell lépnie. A Btk 269. § (2) bekezdése azonban nem külső korlátot állít, hanem valójában a vélemény értéktartalma alapján minősít - s ehhez a köznyugalom sérelme csak feltételezés és statisztikai valószínűség révén kapcsolódik.

Nem alkotmányossági, hanem a büntetőjogra tartozó kérdés, hogy mihez képest minősül a kifejezés sértőnek vagy lealacsonyítónak. Egyes szavak stilisztikai értéke azonban annyira szituációhoz és kulturális szinthez kötött (és változó), hogy a büncselekményi tényállásba felvett hipotetikus ("alkalmas") vagy tényleges visszacsatolás nélkül (valóban megzavarta a köznyugalmat) a gyalázkodással a köznyugalomban okozott sérelem olyan feltételezés csupán, amely a szabad véleménynyilvánítás korlátozását kielégítően nem indokolhatja. Itt ugyanis a külső korlát megléte, azaz más jog sérelme, maga is bizonytalan. Ezzel a véleménynyilvánításhoz való jog korlátozása elkerülhetetlenségének és arányosságának vizsgálata idő előttivé válik.

A "köznyugalom" ráadásul maga sem független a véleményszabadság helyzetétől. Ahol sokféle véleménnyel találkozhatnak az emberek, a közvélemény toleráns lesz; míg zárt társadalmakban sokkal inkább felkavarhatja a köznyugalmat egy-egy szokatlan hang is. Másrészt a véleménynyilvánítás szükségtelen és aránytalanul szigorú korlátozása a társadalom nyitottsága ellen hat.

Az Alkotmánybíróság tekintettel van az egyes ügyek történelmi körülményeire. A rendszerváltás elkerülhetetlenül társadalmi feszültségekkel jár. E feszültségeket kétségtelenül fokozhatja, ha egyesek büntetlenül adhatnak kifejezést nagy nyilvánosság előtt bizonyos csoportokkal szembeni gyűlöletüknek, megvetésüknek vagy ellenérzésüknek.

A sajátos történelmi körülményeknek azonban van egy másfajta hatása is, s éppen ezért szükséges különbséget tenni a gyűlöletre uszítás és a sértő vagy lealacsonyító kifejezés használata között. A "nagy nyilvánosság" - a gyűlésektől eltekintve - gyakorlatilag a sajtónyilvánosságot jelenti. A létrejött sajtószabadságban senki nem hivatkozhat külső kényszerre, aki a nyilvánosság elé lép, minden sorral, amit leír, magát adja és teljes erkölcsi hitelét kockáztatja. Politikai kultúra és egészségesen reflektáló közvélemény csakis öntisztulással alakulhat ki. Aki tehát gyalázkodik, magát bélyegzi meg, s lesz a közvélemény szemében "gyalázkodó". A gyalázkodásra bírálat kell hogy feleljen.

E folyamatba tartozik az is, hogy számolni kelljen magas kártérítésekkel. Büntetőjogi büntetésekkel azonban nem a közvéleményt és a politikai stílust kell formálni - ez paternalista hozzáállás -, hanem más jogok védelmében az elkerülhetetlenül szükséges esetekben szankcionálni.

4. A Btk 269. § (2) bekezdése a fent kifejtettek alapján alkotmányellenes és ezért azt az Alkotmánybíróság megsemmisíti. A köznyugalom fenntartásához nem elkerülhetetlen, hogy a magyar nemzetet, valamely nemzetiséget, népet, felekezetet vagy fajt sértő vagy lealacsonyító kifejezés nagy nyilvánosság előtti használatát önmagában véve (illetve az ezzel egyenértékő cselekményt) büntetőjogi büntetéssel fenyegesse a törvény. Ez a törvényi tényállás szükségtelenül, és az elérni kívánt célhoz képest aránytalanul korlátozza a szabad véleménynyilvánításhoz való jogot. A köznyugalom elvont, esetleges fenyegetettsége nem elégséges indok arra, hogy a véleménynyilvánításhoz való alapjogot, amely a demokratikus jogállam működéséhez nélkülözhetetlen, a büntetőtörvény a 269. § (2) bekezdése szerint korlátozza. Az Alkotmánybíróság határozata szerint a közösségek méltósága a véleménynyilvánítási szabadság alkotmányos korlátja lehet. Nem zárja ki tehát a határozat azt, hogy erről a törvényhozó akár a gyűlöletre uszítás tényállásán túlmenő büntetőjogi védelemmel is gondoskodjék. A közösségek méltóságának hatékony védelmére azonban más jogi eszköz, például a nem vagyoni kártérítés alkalmazási lehetőségeinek bővítése is alkalmas.

5. A Btk 269. § (2) bekezdése alapján folyt, jogerősen lezárt büntetőeljárások felülvizsgálatának elrendelése az AB tv 43. § (3) bekezdésén alapul.

Budapest, 1992. május 18.

Dr. Sólyom László

előadó alkotmánybíró
az Alkotmánybíróság elnöke

Dr. Ádám Antal
alkotmánybíró

Dr. Herczegh Géza
alkotmánybíró

Dr. Kilényi Géza
alkotmánybíró

Dr. Lábady Tamás
alkotmánybíró

Dr. Schmidt Péter
alkotmánybíró

Dr. Szabó András
előadó alkotmánybíró

Dr. Tersztyánszky Ödön
alkotmánybíró

Dr. Vörös Imre
alkotmánybíró

Dr. Zlinszky János
alkotmánybíró

Első / előző / következő / utolsó dokumentum Becsuk

12. Hungary

12.1 Legislation prohibiting incitement to national, racial and religious hatred

The present constitutional position with respect to the balance to be found between freedom of expression and the prohibition of hate speech make it impossible to predict when the Additional Protocol to the Convention on Cybercrime will be ratified.
Amendments to Article 269 of the Criminal Code adopted in December 2003 were struck down by the Constitutional Court, which considered that they infringed the acceptable limits on freedom of expression as protected by the Constitution. In its decision (No. 18/2004), it reaffirmed its previous case-law (Decisions Nos. 30/1992 and 12/1999, themselves relying on positions taken by the Supreme Court at the turn of the twentieth century), reasoning that the legislator could limit freedom of speech through criminal sanctions only in cases of the most dangerous conduct, i.e. behaviour capable of whipping up such intense emotions in the majority of the people that, upon giving rise to hatred, they could result in the disturbance of the public peace; moreover, the Court stressed that an abstract threat is insufficient to meet this threshold: the danger to the public peace must be "clear and present".

As a result of this judgment – and whereas, in the views of many actors involved in combating racism, the Constitution could be interpreted differently – incitement against specific communities is not criminalised, and only the most extreme forms of hate speech, i.e. incitement liable to provoke immediate violent acts, are presently outlawed under Article 269 of the Hungarian Criminal Code. Moreover, as currently interpreted by the Constitutional Court, the Constitution appears to leave only a very narrow margin to legal draftsmen in defining what action may constitute a criminal offence when the freedom of speech has to be balanced against the protection of others' rights. Two new attempts have been made since this judgment was delivered to introduce broader prohibitions on hate speech into Hungarian law. In early 2008, on the initiative of six of its members, Parliament enacted a new amendment to the Criminal Code, taking a new approach based on abuse, and which would allow the prosecutor to initiate an investigation on broader grounds, including non-verbal abuse (such as the use of Nazi salutes). In October 2007, at the government's initiative, Parliament had also already amended the Civil Code. Previously, only identifiable individuals who were personally targeted by insulting or defamatory statements could seek civil law remedies such as damages; under the 2007 amendments, this right would be extended to individuals or associations belonging to a group of people generally targeted by broadly defined insults based on national, ethnic or racial identity.

However, neither of these sets of provisions has come into force, as they were each referred to the Constitutional Court for review prior to their promulgation. The Court was asked to examine the provisions from a number of angles, including possibly disproportionate limits on freedom of expression, questions as to whether the provisions were sufficiently clear to ensure legal certainty, possible discrimination against persons who are not members of minority groups protected by the provisions, and possible infringements of the right to selfdetermination of members of civil society organisations

who did not feel insulted by a given statement but whose association decided to initiate legal proceedings. On 30 June 2008, the Constitutional Court found the 2008 amendments to the Criminal Code unconstitutional. At the time of writing, the result of the review of the Civil Code was not yet known.

Article 269B of the Criminal Code prohibits the use of certain totalitarian symbols. However, beyond this specific prohibition, none of the additional forms of racist expression listed above are prohibited under the criminal law in Hungary. Criminal law provisions: Article 174B of the Criminal Code defines specific offences, notably acts of violence, cruelty, or coercion by threats, committed against persons who are members or supposed members of national, ethnic, racial or religious groups. These offences are subject to more severe penalties than similar offences committed against persons not belonging to such groups. There is no specific form of crime or aggravating circumstance related to acts committed against property with a hate motivation; property is protected regardless of any special characteristics of the victims.

The Hungarian authorities have indicated that the overall scheme of specific, hate-motivated offences in Hungary includes the offences of genocide (Article 155 of the Criminal Code) and apartheid (Article 157), as well as the offences of violence against a member of a national, ethnic, racial or religious group (Article 174/B), incitement against a community (Article 269), and use of symbols of despotism (Article 269/B), mentioned above. In addition, certain articles of the Criminal Code, such as those covering murder or grievous bodily harm, expressly grant judges discretion to take account in sentencing offenders of the latters' "base motivations", where these are averred, and the Supreme Court has given guidance to judges on such matters. It is thus open to the judge in each such case to consider an offender's racist motivation as a form of base motivation and take it into account as an aggravating circumstance. Racist motivation is not, however, expressly listed in the relevant provisions as a form of base motivation, and no general provision exists in Hungarian law under which, for all ordinary criminal offences, racist motivation constitutes an express aggravating circumstance. ECRI observes that as a result, it is practically impossible to monitor the situation with respect to racially motivated offences in Hungary; moreover, the absence of such a provision may mean that ordinary offences committed with racist motivations are not systematically prosecuted or punished as such. the fact that the harsher penalties provided for under Article 174B of the Criminal Code mean alleged perpetrators have a strong interest in not admitting to any racist elements in the acts they committed. As regards hate speech in particular, many NGOs voice deep disappointment at the highly restrictive interpretation applied by the courts to the limits that may be imposed on free speech in this context.

Many argue that the existing provisions of the Constitution could be interpreted differently and a different balance struck between freedom of expression and freedom from hate speech. Others observe that even when conditions exist in which the present interpretation of Article 269 of the Criminal Code could have been used as a basis for bringing criminal charges, reliance has instead been placed on provisions concerning simple breaches of the peace. In early 2008, the Chief Prosecutor's Office of the capital brought proceedings for the dissolution of a newly created radical right-wing group. It

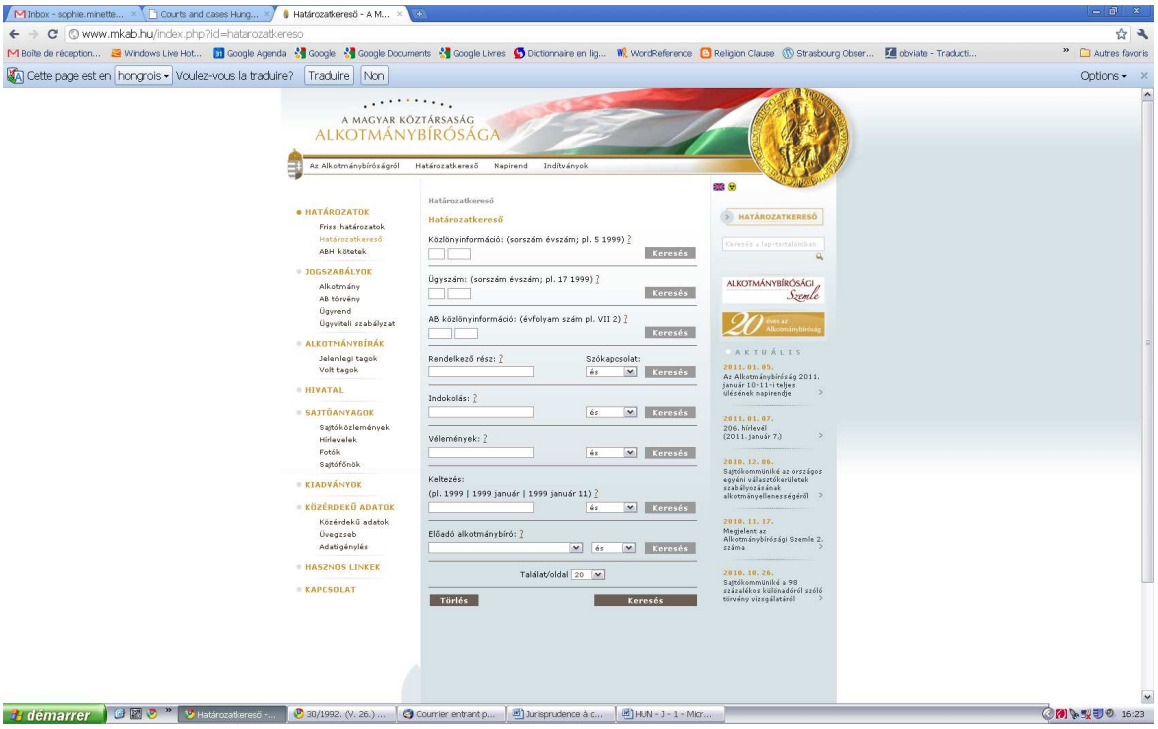
seems that these proceedings are not based on the provisions of the Criminal Code, however, but on the Associations Act; the key question for the court is whether the organisation is acting contrary to its own articles of association or to the Associations Act, for example by restricting the liberty of other groups or by arming its members. The authorities have observed that similar proceedings were brought several years ago against another extreme right-wing organisation, which was dissolved by the Budapest Court on 1 December 2004.

Source: ECRI Report on Hungary, 2009, available at: http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/hungary/HUN-CbC-IV-2009-003-ENG.pdf

[Input to OHCHR Expert workshops on prohibition of incitement to national, racial or religious hatred while ensuring respect of the freedom of expression (Addendum), pp. 18-20]

Hungary

Constitutional Court: http://www.mkab.hu/index.php?id=hatarozatkereso



Public Policies

Kisebbségekért Díj 2010

2010-12-20

A Kisebbségek Napján, december 18-án átadták a Kisebbségekért Díjat a Sándor-palotában. Az ünnepségen Dr. Kállai Ernő kisebbségi biztos is részt vett.

tovább

Szimpózium a romák társadalmi felzárkózásáról

2010-12-16

Dr. Kállai Ernő előadást tartott a Magyar Tudományos Akadémia szimpóziumán.

tovább

Ombudsmani látogatás Komárom-Esztergom megyében

2010-12-13

Dr. Kállai Ernő a nemzeti és etnikai kisebbségi jogok országgyűlési biztosa országjáró körútja során, 2010. december 9-10. között Komárom-Esztergom megyébe látogatott, ahol több településen tájékozódott a megyében élő kisebbségek helyzetéről.

tovább

Dr. Kállai Ernő gondolatai az Emberi Jogok Napján

2010-12-10

Az Emberi Jogok Egyetemes Nyilatkozatát az ENSZ Közgyűlése 62 évvel ezelőtt a mai napon fogadta el. December 10. azóta az Emberi Jogok Napja is.

tovább

A kisebbségi ombudsman fogadta a Washingtoni Külügyminisztérium roma ügyekkel foglalkozó tanácsadóját

2010-12-08

Daniel Nadel, az Amerikai Egyesült Államok Külügyi Államtitkárságának roma ügyekkel foglalkozó szakértője látogatást tett a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosánál.

tovább

Kállai Ernő találkozója a Szlovák Köztársaság nagykövetével

2010-12-07

Peter Weiss, a Szlovák Köztársaság budapesti nagykövete látogatást tett a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosánál.

tovább

Találkozó a Cseh Szenátus delegációjával

2010-12-02

Példaértékű és inspiráló a magyarországi kisebbségvédelmi rendszer a Cseh Szenátus Oktatási, tudományos, kulturális, emberi jogi és petíciós bizottságának delegációja szerint, akikkel Dr. Kállai Ernő kisebbségi biztos folytatott megbeszélést.

tovább

„A romák felzárkózása európai dimenzióban”

2010-11-25

Dr Kállai Ernő előadást tartott a Polgári Magyarországért Alapítvány szervezésében megrendezésre kerülő nemzetközi romakonferencián.

tovább

Kerekasztal konferencia a romák társadalmi beilleszkedéséről

2010-11-23

Dr. Kállai Ernő részt vett a romák társadalmi beilleszkedéséről szóló kerekasztal konferencián.

tovább

Előadás a Corvinus Egyetemen

2010-11-23

Dr. Kállai Ernő kisebbségi biztos előadást tartott a Budapesti Corvinus Egyetem Közigazgatás-tudományi Karának Államigazgatási Továbbképző Intézetében.

tovább

Kállai Ernő találkozója Pordány Lászlóval

2010-11-23

Pordány László, a Magyar Köztársaság jövőbeni kanadai nagykövete bemutatkozó látogatást tett a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosánál.

tovább

II. Egri Roma-zenei fesztivál

2010-11-19

Dr. Kállai Ernő nyitotta meg a II. Egri Roma-zenei fesztivált.

tovább

XI. Regionális Német Nemzetiségi Kulturális Gála

2010-11-13

Dr. Kállai Ernő nyitotta meg a XI. Regionális Német Nemzetiségi Kulturális Gálaműsort, Budaörsön.

tovább

Kállai Ernő és Morten Kjaerum találkozója

2010-11-11

Dr. Kállai Ernő hivatalában fogadta Morten Kjaerum urat, az Európai Unió Alapjogi Ügynökségének igazgatóját.

tovább

Szociális EXPO

2010-11-11

Dr. Kállai Ernő rész vett a Szociális Expo „Roma felzárkóztatás" címmel megrendezésre kerülő kerekasztal beszélgetésén.

tovább

Multikulturális Magyarország a médiában

2010-11-10

Dr. Kállai Ernő ombudsman előadást tartott Egerben, a Független Médiaközpont által szervezett műhelyfoglalkozáson.

tovább

Évzáró a Független Médiaközpontban

2010-10-26

Dr. Kállai Ernő kisebbségi biztos részt vett a Független Médiaközpont roma újságíró-gyakornoki program évzáró ünnepségén.

tovább

Több nyelven egy hazában

2010-10-26

Kállai Ernő kisebbségi biztos, az MTA Jogtudományi Intézete valamint a Társalgó Galéria „Több nyelven egy hazában" címmel könyvbemutatóval egybekötött konferenciát szervezett.

tovább

Konferencia Burgenlandban

2010-10-22

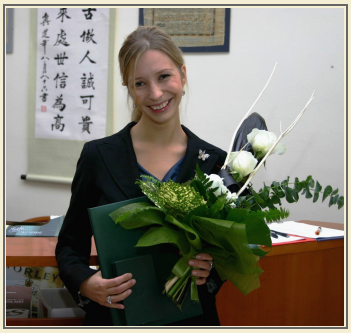
***„Zur aktuellen Situation der Roma in Ungarn"* címmel tartott előadást Dr. Kállai Ernő Burgenlandban.**

tovább

Magyar Köztársasági Ezüst Érdemkereszt kitüntetés Dr. Szajbély Katalinnak

2010-10-21

Dr. Szajbély Katalin, a Nemzeti És Etnikai Kisebbségi Jogok Országgyűlési Biztosának munkatársa színvonalas munkájának elismeréseként a Magyar Köztársasági Ezüst Érdemkereszt kitüntetésben részesült.



tovább

Kisebbségi érdekképviselet - Haszonszerzés vagy közösségi érdek?

2010-10-21

A nemzeti és etnikai kisebbségi jogok országgyűlési biztosának jelentése a 2010. évi települési kisebbségi önkormányzati választásokról.

tovább

Kállai Ernő találkozója Bayer Mihállyal

2010-10-06

Bayer Mihály a Magyar Köztársaság kijevi nagykövete bemutatkozó látogatást tett a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosánál.

tovább

Az aradi vértanúk

2010-10-06

„Legyenek a szentemlékű vértanúk megáldottak poraikban, szellemeikben a hon szabadság Istenének legjobb áldásaival az örökké valóságon keresztül;..."

Kossuth Lajos

tovább

Kövér László és Kállai Ernő találkozója

2010-08-30

Kövér László, az Országgyűlés elnöke hivatalában fogadta Kállai Ernő kisebbségi biztost.

tovább

Dr. Kállai Ernő kisebbségi ombudsman hivatalában fogadta Andrzej Mirgát, az Európai Biztonsági és Együttműködési Szervezet (EBESZ) romaügyi főtanácsadóját.

2010-08-24

A nemzeti és etnikai kisebbségi jogok országgyűlési biztosa hivatalában fogadta Andrzej Mirga urat, az Európai Biztonsági és Együttműködési Szervezet (EBESZ) romaügyi főtanácsadóját.

tovább

A roma holokauszt nemzetközi emléknapja

2010-08-02

Dr. Kállai Ernő kisebbségi biztos gondolatai a roma holokauszt nemzetközi emléknapja alkalmából.

tovább

Jelentés a 2009. november 15-16-i sajóbábonyi eseményekről

2010-07-28

A nemzeti és etnikai kisebbségi jogok országgyűlési biztosának jelentése a 2009. november 15-16-i sajóbábonyi eseményekről és az azzal összefüggő jogértelmezési problémáról

tovább

Manuel Sarrazin látogatása Kállai Ernőnél

2010-07-21

Manuel Sarrazin látogatást tett hivatalunkban.

tovább

Utolsó frissítés:
2010.12.20. 09:54:11

lap tetejére

1051 Budapest, Nádor u. 22. Tel. (06-1) 475-7100
info@kisebbsegiombudsman.hu

Nagy kontrasztú változat vakok és gyengénlátók számára

TÁMOP-5.5.5/08/1 - A diszkrimináció elleni küzdelem - a társadalmi szemléletformálás és a hatósági munka erősítése

Törvény az egyenlő bánásmódról
könnyen érthető nyelven

A Hatóság elérhetősége:

Budapest 1024. Margit krt. 85.
Telefon: 336-7843, 336-7851
Fax: 336-7445
Postafiók:
Pf. 672. Budapest 1539.
e-mail: ebh@ebh.gov.hu

A hatóság **hírlevele**

Virtuális könyvtár - diszkriminációval kapcsolatos tanulmányok

Tájékoztató videók

Tájékoztató a rendezett munkaügyi kapcsolatok igazolásának új rendjéről

A rendezett munkaügyi kapcsolatok **követelményének meg nem felelő munkáltatók**

Felhívás a megváltozott munkaképességű munkavállalókat foglalkoztató munkáltatók részére

Letölthető segédlet a megváltozott munkaképességű munkavállalókat foglalkoztató munkáltatók részére

Tájékoztató az esélyegyenlőségi terv elfogadására kötelezett szervezetekről

Partnerkapcsolatok

Nemzeti Erőforrás Minisztérium

Közigazgatási és Igazságügyi Minisztérium

Tájékoztatás a Hatóság ügyfélfogadásával kapcsolatban

Tekintettel arra, hogy országos hatáskörű szerv vagyunk, a bejelentéseket, panaszokat **diszkriminációs ügyekben** az egész ország területéről fogadjuk. Javasoljuk, hogy azokat elsősorban a honlapunkon megadott postafiók, vagy e-mail címre küldjék el.

Tájékoztató és letölthető bejelentés minta az EBH eljárások megindításához.

Mindazok számára, akik személyesen szeretnék felkeresni a hatóságot - pl. azért, mert segítséget kérnek a beadványok megfogalmazásához, vagy a velünk való találkozás alapján szeretnék eldönteni, hogy egyáltalán kérik az eljárás megindítását - lehetőséget biztosítunk arra, hogy az alábbi helyszíneken és időpontokban felkereshessék munkatársainkat.
Az esetleges várakozás elkerülése érdekében, javasoljuk, hogy a megadott telefonszámokon előzetesen szíveskedjenek bejelentkezni az ügyfélfogadásra.

Az egyenlő bánásmód referensek neve és elérhetősége.

A Hatóság nyilvános határozatai:

Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény 16. §-a meghatározza, hogy az egyenlő bánásmód megsértése esetén a Hatóság milyen szankciót alkalmazhat. Egyik ilyen ***szankcionálási lehetőség a jogsértést megállapító határozat nyilvánosságra hozatala.*** *A Hatóság azon határozatait hozza nyilvánosságra, amelyek az abban foglalt információkkal hozzájárulhatnak jövőbeni hasonló jogsértések megelőzéséhez, illetve, ha a közzététel hozzájárul a hátrányosan megkülönböztetett személy, vagy csoport sérelmének csökkentéséhez.*
Az alábbi határozatok ilyen rendelkezéseket tartalmaznak, ezért azokat honlapunkon közétesszük.

EBH/106/2009 (2010.07.13.-2011.01.13.)
EBH/656/2010 (2010.11.17.-2011.01.17.)
EBH/63/2010 (2010.10.27.-2011.01.27.)
EBH/804/2010 (2010.11.17.-2011.02.17.)
EBH/1144/2010 (2010.12.06.-2011.03.06.)

A korábban közzétett, archivált határozatok itt találhatóak.

Tájékoztató az Egyenlő Bánásmód Hatóság 2009. évi tevékenységéről

Tájékoztató az Egyenlő Bánásmód Hatóság 2008. évi tevékenységéről

Tájékoztató az Egyenlő Bánásmód Hatóság 2007. évi tevékenységéről

Egyenlő Bánásmód Hatóság 2009. évi tevékenysége a számok tükrében

Egyenlő Bánásmód Hatóság 2008. évi tevékenysége a számok tükrében

Egyenlő Bánásmód Hatóság 2007. évi tevékenysége a számok tükrében

A korábbi, archivált beszámolók itt találhatóak

A Tanácsadó Testület jogalkotási javaslatai:

- A Tanácsadó Testület jogszabály módosítási javaslata a munkaköri orvosi alkalmassági véleményekkel kapcsolatos jogorvoslati lehetőségre vonatkozóan
- A Tanácsadó Testület a következő jogalkotási javaslattal fordult a Magyar Köztársaság Kormányához
- A Tanácsadó Testület a jogszabály módosítási javaslata a fogyatékossággal élőket érintő ésszerű alkalmazkodás követelményének kodifikálására

A Tanácsadó Testület állásfoglalásai.

Diszkriminációval kapcsolatos tanulmányok itt olvashatók.

Bírósági döntések

Esélyegyenlőségi tervek készítésével kapcsolatos információk:
Fővárosi Esélyegyenlőségi Módszertani Iroda

2010. December 23. Csütörtök,
Viktória napja van.

Keresés

Hírek

Tájékoztató a Tanácsadó Testület 2010. december 17-ei üléséről

Tájékoztató a Tanácsadó Testület 2010. noveber 19-ei üléséről

Az Egyenlő Bánásmód Hatóság Évértékelő konferenciája

Tájékoztató a Tanácsadó Testület 2010. október 15-ei üléséről

Tájékoztató a Tanácsadó Testület 2010. szeptember 9-ei üléséről

Hírlevél regisztráció

az Ön e-mail címe

Feliratkozás

Küldés

Acrobat Reader letöltése

2007 - Egyenlő Esélyek Mindenki Számára Európai Év

Országgyűlési Biztos Hivatala

Magyar Nemzeti Vagyonkezelő Zrt.

Oktatási és Kulturális Minisztérium

Miniszterelnöki Hivatal Kisebbség- és Nemzetpolitikáért Felelős Szakállamtitkárság

Országos Esélyegyenlőségi Hálózat

RomaWeb.hu

Kormányzati Civil Kapcsolatok Főosztálya

Európai Roma Jogok Központja

Foglalkoztatási és Szociális Hivatal

Nemzeti Fogyasztóvédelmi Hatóság

Országos Munkavédelmi és Munkaügyi Főfelügyelőség

Nemzeti és Etnikai Kisebbségi Jogvédő Iroda

Kézenfogva Alapítvány

Budapest Esély

Budapesti Esélyek Háza

Jogpont hálózat

LIGA szakszervezetek

KSZK www.kszk.gov.hu

Linkek

Közadatkereső
SuliNova
Magyar emberi jogi szervezetek, Civil jogvédő irodák
Nemzetközi emberi jogi civil szervezetek
Nemzetközi emberi jogi szervek

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

CRI(2009)3

ECRI REPORT ON HUNGARY

(fourth monitoring cycle)

Adopted on 20 June 2008

Published on 24 February 2009

TABLE OF CONTENTS

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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 20 June 2008 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.

SUMMARY

Since the publication of ECRI's third report on Hungary on 8 June 2004, progress has been made in a number of fields covered by that report.

The enactment of the Equal Treatment and Promotion of Equal Opportunities Act in December 2003 introduced into Hungarian law a prohibition on discrimination in a variety of public- and private-law relationships, on nineteen grounds, including racial origin, colour, nationality, national or ethnic origin, mother tongue and religious convictions, and the subsequent establishment of the Equal Treatment Authority on 1 February 2005 provided individuals with a direct avenue of redress for violations of that prohibition. The creation of this body has generated considerable interest in Hungarian society, with nearly 500 complaints being lodged the first year, a number that has risen steadily every since. The Act also includes an important innovation in Hungarian law, in the form of the possibility for non-governmental organisations to act as plaintiffs in cases where they consider a provision to be discriminatory even though no individual has yet suffered any harm, and provisions on the sharing of the burden of proof that are designed to overcome the difficulties often experienced by victims of discrimination in proving their case. The possibility of turning to the Equal Treatment Authority – empowered to impose fines on offending parties and to publish the names of bodies that have breached the requirement of equal treatment – co-exists with other remedies such as seeking compensation through the courts, or turning to one of the Parliamentary Commissioners where public authorities are concerned.

The authorities have also enacted important new legislation which has improved the asylum system in Hungary in particular by ensuring that persons granted subsidiary protection benefit from almost the same status as refugees. Child asylum-seekers and refugees are now entitled and indeed obliged to attend compulsory schooling, under terms and conditions equivalent to those applicable to Hungarian nationals, from the day of submission of their application for recognition. Importantly, the cases in which non-citizens can be subjected to administrative detention under immigration laws have also been restricted, and maximum lengths of detention in such cases significantly reduced.

In June 2007, the Parliament approved a resolution on the Decade of Roma Inclusion Programme Strategic Plan, setting a framework for action in a series of fields where Roma experience discrimination and disadvantage in daily life. This resolution complements a large number of measures that have been taken in recent years that may serve to improve the situation of Roma in fields such as education and employment. Particularly wide-ranging measures have been taken in the field of education, with steps taken to address segregation through facilitating the access of multiply disadvantaged children to kindergarten, introducing stricter requirements on the manner in which local authorities draw the boundaries between catchment areas or may organise the composition of classes within schools, and the drawing up of new cognitive tests designed to take better account of cultural differences and socio-economic disadvantage in testing children's development. Some landmark decisions of courts in this field have also been handed down in recent years, including on the basis of the provisions of the Equal Treatment Act. A number of measures have also been taken to increase the number of Roma employed in the police force.

In the field of minority self-governments, a series of measures were taken prior to the last elections, which went some way towards preventing past abuses of the system.

ECRI welcomes these positive developments in Hungary. However, despite the progress achieved, some issues continue to give rise to concern.

As regards the Roma minority, their situation of disadvantage is such that long-term but intensive efforts will be needed to turn it around; while many of the measures taken to date may have a positive impact, they need to be continued and in some cases intensified in order to achieve lasting results. In the field of employment, many initiatives have been taken, often with a twin aim of assisting in finding employment and in developing new skills, but these measures are often short-term and can only help a small number of Roma at a time. In practice, Roma continue to face both a disproportionately high rate of unemployment and discrimination in access to employment. In the fields of education and housing, the efforts of the central authorities are frequently hampered by the manner in which local authorities translate the measures taken into practice: numerous abuses have been reported, and the central authorities appear somewhat hamstrung in their efforts to achieve change. Roma families are deprived of access to social housing by discriminatory rules and practices of local authorities; and Roma children are still confronted with segregation in schools, which has a devastating impact on education outcomes for these children and leaves them with correspondingly limited future life choices and employment prospects.

A particularly alarming development has occurred in Hungary since ECRI's third report, in the form of a sharp rise in racism in public discourse. Antisemitic articles regularly appear in the press and on the internet, and anti-Roma discourse appears to be becoming increasingly virulent and wide-spread. The creation and increasing visibility of one radical right-wing group in particular has led to grave concerns amongst members of civil society and the government, due not only to the group's openly anti-Roma and antisemitic discourse but also to its paramilitary-style uniforms and insignia that are strongly reminiscent of a right-wing party that briefly held power in Hungary during the second World War, and during whose term in power tens of thousands of Jews and Roma were killed. At least one act of racist violence appears to have been linked to the racist discourse of this group.

At the same time, the very high level of constitutional protection afforded to the freedom of expression has to date made it impossible for the authorities to legislate effectively against racist expression: under Hungarian law, only the most extreme forms of racist expression, i.e. incitement liable to provoke immediate violent acts, appear to be prohibited, a standard so high that it is almost never invoked in the first place. While it is true that legislation alone cannot turn racist attitudes around, the almost total absence of limits on free speech in Hungary complicates the task of promoting a society that is more open and tolerant towards its own members.

Refugees, asylum-seekers and migrants are also the subjects of prejudice and negative stereotyping, reporting particular difficulties in gaining access to housing and employment. Moreover, children of refugees and asylum-seekers, while entitled in theory to benefit from the same rights to compulsory education as Hungarian children, in practice have difficulty exercising their rights as they are met with resistance from schools to accepting them, and, if they are accepted, frequently do not have access to adequate assistance in learning the Hungarian language. The absence of a national integration strategy to assist these new members of Hungarian society in participating fully in it is a further contributing factor in the problems faced by this group.

There is also a real lack of data disaggregated by ethnicity that could assist the Hungarian authorities in clearly identifying problems that need to be addressed and in monitoring the effectiveness of measures already taken.

In this report, ECRI recommends that the Hungarian authorities take further action in a number of areas.

These range from making clear information available to the public concerning the various avenues of redress open to them in cases where they consider they have been the victims of a breach of the prohibition on discrimination, to awareness-raising measures aimed at officials working in various capacities with minority groups or at the general public with the aim of tackling xenophobia and intolerance head on, to implementing more vigourously the criminal law provisions already in force, to ratifying certain international instruments such as Protocol No. 12 to the European Convention on Human Rights as an extra weapon in the arsenal of the fight against racism.

ECRI strongly recommends in particular in the present report that the Hungarian authorities keep the adequacy of the criminal law provisions against racist expression under review. It strongly recommends that they take into account in this respect the recommendations on criminal law provisions contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, and paying especial attention to ensuring that, in so far as these standards may mean imposing certain limits on the freedom of expression, these limits are interpreted in line with Article 10 of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights, and requests priority implementation for this recommendation in the next two years.

ECRI also recommends that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; it considers that this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice, and requests priority implementation for this recommendation in the next two years.

ECRI also recommends in this report 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, and that 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; ECRI also requests priority implementation for this recommendation in the next two years.

FINDINGS AND RECOMMENDATIONS

I. Existence and Implementation of Legal Provisions

International legal instruments

1. In its third report, ECRI urged Hungary to ratify Protocol No. 12 to the European Convention on Human Rights.

2. The Hungarian authorities informed ECRI that, as the everyday work of the Equal Treatment Authority set up under the Equal Treatment and Promotion of Equal Opportunities Act 2003[1] was closely linked to the ratification of Protocol No. 12, the experience of the Authority needed to be taken into account in setting the date of ratification of the Protocol. ECRI notes with interest that the authorities consider that sufficient experience has now been gathered for a step forward to be taken, and that, while the ratification of the Protocol does not yet appear in the legislative schedule of Parliament, the ramifications of its ratification are currently being analysed. ECRI hopes that this analysis will be carried out expeditiously and that a timetable for ratification will soon be established.

3. ECRI strongly encourages Hungary to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

4. In its third report, ECRI also urged Hungary 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 encouraged Hungary to sign and ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. It furthermore recommended that Hungary ratify without delay the Revised Social Charter and the Convention on the Participation of Foreigners in Public Life at Local Level.

5. As regards the Additional Protocol to the Convention on Cybercrime, the authorities have indicated that certain acts covered by the Protocol are not currently punishable under Hungarian law. They have also indicated that, despite their legislative efforts in this direction, the present constitutional position with respect to the balance to be found between freedom of expression and the prohibition of hate speech[2] make it impossible to predict when the Protocol may be ratified.

6. As of April 2008, the procedure for ratifying the Revised Social Charter was well under way, and the authorities planned to table the relevant Bill in Parliament before the summer. In addition, since ECRI's third report, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families has been translated into Hungarian and made available for consultation; however, little progress has been made towards ratifying the Convention on the Participation of Foreigners in Public Life at Local Level.

7. ECRI encourages Hungary to ratify the Revised Social Charter without delay and reiterates its recommendation that Hungary ratify as soon as possible the Convention on the Participation of Foreigners in Public Life at Local Level and

[1] See below, *Anti-discrimination bodies and other institutions.*

[2] See below, *Provisions covering racist expression.*

the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

8. It urges the Hungarian authorities to find a solution as soon as possible so as to open the way towards ratifying the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.

Provisions covering racist expression

9. In its third report, referring to amendments to Article 269 of the Criminal Code adopted in December 2003, ECRI recommended that the authorities actively implement this new legislation aimed at reinforcing the fight against racism, at the same time drawing attention to the need to apply these provisions in conformity with Article 10 ECHR and the related case-law of the European Court of Human Rights. Subsequently, however, these amendments were struck down by the Constitutional Court, which considered that they infringed the acceptable limits on freedom of expression as protected by the Constitution. In its decision (No. 18/2004), it reaffirmed its previous case-law (Decisions Nos. 30/1992 and 12/1999, themselves relying on positions taken by the Supreme Court at the turn of the twentieth century), reasoning that the legislator could limit freedom of speech through criminal sanctions only in cases of the most dangerous conduct, i.e. behaviour capable of whipping up such intense emotions in the majority of the people that, upon giving rise to hatred, they could result in the disturbance of the public peace; moreover, the Court stressed that an abstract threat is insufficient to meet this threshold: the danger to the public peace must be "clear and present". As a result of this judgment – and whereas, in the views of many actors involved in combating racism, the Constitution could be interpreted differently – incitement against specific communities is not criminalised, and only the most extreme forms of hate speech, i.e. incitement liable to provoke immediate violent acts, are presently outlawed under Article 269 of the Hungarian Criminal Code. Moreover, as currently interpreted by the Constitutional Court, the Constitution appears to leave only a very narrow margin to legal draftsmen in defining what action may constitute a criminal offence when the freedom of speech has to be balanced against the protection of others' rights.

10. Two new attempts have been made since this judgment was delivered to introduce broader prohibitions on hate speech into Hungarian law. In early 2008, on the initiative of six of its members, Parliament enacted a new amendment to the Criminal Code, taking a new approach based on abuse, and which would allow the prosecutor to initiate an investigation on broader grounds, including non-verbal abuse (such as the use of Nazi salutes). In October 2007, at the government's initiative, Parliament had also already amended the Civil Code. Previously, only identifiable individuals who were personally targeted by insulting or defamatory statements could seek civil law remedies such as damages; under the 2007 amendments, this right would be extended to individuals or associations belonging to a group of people generally targeted by broadly defined insults based on national, ethnic or racial identity. However, neither of these sets of provisions has come into force, as they were each referred to the Constitutional Court for review prior to their promulgation. The Court was asked to examine the provisions from a number of angles, including possibly disproportionate limits on freedom of expression, questions as to whether the provisions were sufficiently clear to ensure legal certainty, possible discrimination against persons who are *not* members of minority groups protected by the provisions, and possible infringements of the right to self-determination of members of civil society organisations who did not feel insulted by a given statement but whose association decided to initiate legal

proceedings. On 30 June 2008, the Constitutional Court found the 2008 amendments to the Criminal Code unconstitutional.[3] At the time of writing, the result of the review of the Civil Code was not yet known.

11. ECRI notes that, whatever the final evaluation made of any possible technical flaws in the remaining civil law provisions at issue, unless there is a significant development in constitutional case-law, it would appear that there is little chance that these or any future attempts to strengthen the legislation against hate speech in Hungary may come into force. In this context, ECRI recognises the efforts made by the Hungarian legislative and executive powers to strengthen the legislation applicable in this field. ECRI notes with particular concern that the present situation in Hungary may not be in conformity with the case-law of the European Court of Human Rights.

12. ECRI recalls in this context the standards set forth in its own General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in which it recommends the prohibition under the criminal law of a wide range of acts including, inter alia, public incitement to violence, hatred or discrimination, public insults and defamation, or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.[4] ECRI also recalls that in the same recommendation, the criminalisation of the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin is also recommended.[5]

13. ECRI strongly recommends that the Hungarian authorities keep the adequacy of the criminal law provisions against racist expression under review. It strongly recommends that they take into account international standards in this respect, including the recommendations on criminal law provisions contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, according to which the law should penalise racist acts including public incitement to violence, hatred or discrimination as well as public insults, defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin. It recommends that the authorities pay special attention in this regard to ensuring that, in so far as these standards may mean imposing certain limits on the freedom of expression, these limits are interpreted in line with Article 10 of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights. ECRI further recommends that the Hungarian authorities take measures to increase awareness among judges of international standards against racist expression.

14. In its third report on Hungary, ECRI also encouraged the Hungarian authorities to take into account the recommendations on criminal law provisions contained in its General Policy Recommendation No. 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.

---

[3] Decision No. 236/A/2008. AB

[4] ECRI General Policy Recommendation No. 7, paragraphs 18a-c (and paragraphs 38-40 of the Explanatory Memorandum).

[5] ECRI General Policy Recommendation No. 7, paragraph 18d (and paragraphs 38-39 of the Explanatory Memorandum).

15. ECRI notes that in addition to the provisions examined above, proscribing the most extreme forms of racist expression,[6] Article 269B of the Criminal Code prohibits the use of certain totalitarian symbols. However, beyond this specific prohibition, none of the additional forms of racist expression listed above are prohibited under the criminal law in Hungary.

16. ECRI again encourages the Hungarian authorities to take into account the recommendations on criminal law provisions contained in its General Policy Recommendation No. 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 participation in the activities of a group which promotes racism. It recalls in this respect its recommendation made above with respect to the ratification of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.

Criminal law provisions covering racially motivated offences

17. Article 174B of the Criminal Code defines specific offences, notably acts of violence, cruelty, or coercion by threats, committed against persons who are members or supposed members of national, ethnic, racial or religious groups. These offences are subject to more severe penalties than similar offences committed against persons not belonging to such groups. There is no specific form of crime or aggravating circumstance related to acts committed against property with a hate motivation; property is protected regardless of any special characteristics of the victims.

18. The Hungarian authorities have indicated that the overall scheme of specific, hate-motivated offences in Hungary includes the offences of genocide (Article 155 of the Criminal Code) and apartheid (Article 157), as well as the offences of violence against a member of a national, ethnic, racial or religious group (Article 174/B), incitement against a community (Article 269), and use of symbols of despotism (Article 269/B), mentioned above. In addition, certain articles of the Criminal Code, such as those covering murder or grievous bodily harm, expressly grant judges discretion to take account in sentencing offenders of the latters' "base motivations", where these are averred, and the Supreme Court has given guidance to judges on such matters. It is thus open to the judge in each such case to consider an offender's racist motivation as a form of base motivation and take it into account as an aggravating circumstance. Racist motivation is not, however, expressly listed in the relevant provisions as a form of base motivation, and no general provision exists in Hungarian law under which, for all ordinary criminal offences, racist motivation constitutes an express aggravating circumstance. ECRI observes that as a result, it is practically impossible to monitor the situation with respect to racially motivated offences in Hungary; moreover, the absence of such a provision may mean that ordinary offences committed with racist motivations are not systematically prosecuted or punished as such.[7]

19. ECRI recommends that the Hungarian authorities make specific provision in the criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance, taking account of the recommendations contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

---

[6] See above, paragraphs 9-13.

[7] See below, *Implementation of existing provisions of criminal law.*

Implementation of existing provisions of criminal law

20. In its third report on Hungary, ECRI reiterated its recommendation concerning the need for more vigorous implementation of criminal law provisions relating to the fight against racism. It recommended 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, and 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 criminal legislation addressing racism and racial discrimination.

21. Statistics do not appear to be readily available concerning the application of the criminal law provisions described above,[8] whether as regards convictions recorded, prosecutions initiated or complaints lodged. In addition, as Article 174B of the Criminal Code applies only to certain racist offences against the person, figures on the application of this provision could not in any case provide any indication as to the prevalence of racially motivated crimes against property. The Hungarian authorities have also indicated that, as regards ordinary offences for which judges may have exercised their discretion to impose a heavier sentence due to the racist motivation of the offender, such verdicts would list the broader "base motivation" as the aggravating factor, not racism, meaning past cases involving racism would again not be easy to identify.

22. Doubts continue to be reported as to whether all cases in which crimes may have been committed for racist motives are systematically investigated and prosecuted as such. Reasons advanced for this situation include the reluctance of some victims to pursue the issue,[9] the fact that the harsher penalties provided for under Article 174B of the Criminal Code mean alleged perpetrators have a strong interest in not admitting to any racist elements in the acts they committed, as well as the usual difficulties experienced in proving racist motivations. It has been reported that in some instances, even where there was strong enough evidence of racist motivations to support an indictment for racist violence, the offence was finally treated by the courts as having arisen solely out of a conflict situation rather than as having had racist motivations.

23. As regards hate speech in particular, many NGOs voice deep disappointment at the highly restrictive interpretation applied by the courts to the limits that may be imposed on free speech in this context. Many argue that the existing provisions of the Constitution could be interpreted differently and a different balance struck between freedom of expression and freedom from hate speech. Others observe that even when conditions exist in which the present interpretation of Article 269 of the Criminal Code could have been used as a basis for bringing criminal charges, reliance has instead been placed on provisions concerning simple breaches of the peace.

24. In early 2008, the Chief Prosecutor's Office of the capital brought proceedings for the dissolution of a newly created radical right-wing group.[10] It seems that these proceedings are not based on the provisions of the Criminal Code, however, but on the Associations Act; the key question for the court is whether the organisation is acting contrary to its own articles of association or to the Associations Act, for example by restricting the liberty of other groups or by arming its members. The

[8] See above, *Provisions covering racist expression*, *Criminal law provisions covering racially motivated offences.*

[9] See also below, *Racist violence*.

[10] See below, *Racism in Public Discourse*.

authorities have observed that similar proceedings were brought several years ago against another extreme right-wing organisation, which was dissolved by the Budapest Court on 1 December 2004.[11]

25. ECRI urges the Hungarian authorities to intensify their efforts to ensure a more vigourous implementation of criminal law provisions relating to the fight against racism.

26. In this context, ECRI reiterates its recommendation 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.

27. It also reiterates its recommendation 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 criminal legislation addressing racism and racial discrimination.[12]

28. ECRI recommends that the Hungarian authorities take steps to introduce systematic and comprehensive monitoring of all incidents that may constitute racist offences, covering all stages of proceedings, including complaints lodged, charges brought and convictions recorded. It draws the authorities' attention in this respect to ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, and in particular to Part III of the Recommendation, concerning the role of the police in combating racist offences and monitoring racist incidents.

Legislation to combat racial discrimination

29. In its third report on Hungary, ECRI welcomed the enactment of the Equal Treatment and Promotion of Equal Opportunities Act (hereinafter: "Equal Treatment Act") in December 2003 and recommended that the Hungarian authorities implement it swiftly and monitor its application closely. It encouraged the authorities to inform the general public about the content and scope of the Act. It also encouraged 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.

30. ECRI recalls that the Equal Treatment Act prohibits both direct and indirect discrimination on 19 express grounds, including racial origin, colour, nationality, national or ethnic origin, mother tongue and religious convictions. The Act covers a broad range of fields such as employment, social security, health care, housing, education and training, and supply of goods and services, and applies to a wide range of actors in both the public and private sectors. Positive measures of temporary duration aimed at promoting equal opportunities for certain disadvantaged groups are expressly permitted. The Act provides for the burden of proof to be shared between the victim and the discriminator in administrative and civil law. In addition, the Act provides for the setting up of an Authority in charge of ensuring compliance with the principle of equal treatment.[13]

31. Since its enactment, the Equal Treatment Act has been amended on several occasions. It now expressly prohibits unlawful segregation. In order to bring the Act into line with Council Directive 2000/43/EC, it is now provided that the

[11] As regards the atmosphere surrounding the hearings in the present case, see below *ibid*.

[12] See below, § 174.

[13] See below, *Anti-discrimination bodies and other institutions*, for more details regarding the Authority.

general exemption clause contained in Article 7(2) of the Act can no longer be invoked in cases of direct discrimination on the grounds of race, colour, nationality or national or ethnic origin; only certain specific exemption clauses enumerated in the Act and related to the particular legal relation in question may be invoked in cases of direct discrimination on these grounds. In the field of employment, the payment of different salaries, wages or other benefits to individuals on the basis of their sex, colour, race, nationality or national or ethnic origin is now always considered to violate the principle of equal treatment (i.e. it cannot be justified in any circumstances). Institutions financed by the State budget and employing more than 50 people, as well as legal entities in which the state has a majority ownership, are also now required to adopt an equal opportunities plan, and the Equal Treatment Authority is entitled to monitor whether or not such a plan has been adopted.[14]

32. At the procedural level, another significant innovation is the possibility for NGOs and other organisations representing special interests to institute public interest (*actio popularis*) claims, not only where they consider there has already been a violation of the principle of equal treatment based on an essential characteristic of an individual (i.e. one of the grounds listed under Article 8 of the Act) and affecting a larger group of persons that cannot be accurately identified, but also where there is an imminent threat of such a violation. As regards the shared burden of proof, some initial problems, where first instance courts did not apply the mechanism correctly, were rectified at second instance and ECRI has not been informed of any subsequent similar cases. In addition, the new rules no longer require complainants to demonstrate that they have in fact been treated differently from another individual not possessing the relevant characteristic: it is sufficient for complainants to show that in a hypothetically comparable situation, such a person would be treated more favourably.

33. ECRI welcomes the above-mentioned improvements to the Equal Treatment Act, which constitute an important part of the fight against racial discrimination in Hungary and generally reflect the standards contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

34. ECRI recommends that the Hungarian authorities ensure that sufficient financial and human resources are available to the Equal Treatment Authority to allow it to fulfil its terms of reference, especially taking into account the Authority's new powers with respect to the monitoring of the adoption of equal opportunities plans by employers.

Anti-discrimination bodies and other institutions

35. In its third report, ECRI examined the powers, functioning and co-ordination between the various existing or soon to be created specialised bodies involved in the fight against racism and racial discrimination and made a number of recommendations in these respects. It recommended, inter alia, that the Hungarian authorities grant sufficient human and financial resources to each of the existing and future bodies involved in the fight against racism and racial discrimination adequate powers to enable them to operate in the best possible conditions.

36. Below, issues specific to each of the various bodies are dealt with in turn, followed by over-arching questions concerning co-ordination and co-operation.

[14] See below, *Anti-discrimination bodies and other institutions*, for more details regarding the monitoring by the Equal Treatment Authority of equal opportunities plans.

- *Equal Treatment Authority*

37. In its third report, in addition to its recommendation that adequate resources be granted to this body, ECRI strongly encouraged the authorities to consider guaranteeing full independence to the Equal Treatment Authority, with due regard to ECRI's General Policy Recommendations Nos. 2 and 7.

38. The Equal Treatment Authority commenced functioning on 1 February 2005, and its case-load has increased significantly each year since then. 491 cases were filed with the Authority in 2005, 592 in 2006, and 756 in 2007.[15] Of the cases filed in 2006, 202 were closed by a binding decision.[16] Amongst these, infringements of the requirement of equal treatment were found in 13% of cases; arrangements were found between the complainant and the party complained against in 6% of cases; 35% were dismissed as unfounded after an examination on the merits; a further 20% were dismissed without an investigation on the merits as they fell outside the Authority's powers; and 26% were dismissed on procedural grounds.[17] The Authority has noted that many individuals introduce complaints without having first received legal advice; it provides information to these complainants to help increase their understanding of the law. It also provides information on the availability of free legal advice and refers complainants to the Anti-Discrimination Lawyers' Network of the Ministry of Justice and Law Enforcement where appropriate.

39. In parallel with its key role in dealing with individual complaints, the Authority has taken a number of steps to increase public awareness of its work and of the important issues that fall within its remit. These include the launch of its official website (www.egyenlobanasmod.hu) and of a second site (www.antidiszko.hu) aimed at making antidiscrimination information available to the general public in more accessible form, as well as the publication of a short pamphlet outlining the Authority's powers and procedural rules and the distribution of a regular newsletter to several thousand recipients. The Authority's members and staff participate regularly in conferences and other awareness-raising events organised by both public bodies and civil society actors; they also appear regularly in the media. ECRI welcomes these initiatives and observes that the continually rising number of cases lodged with the Authority no doubt indicates a growing level of public awareness of the existence of this body. However, the high proportion of cases (a total of 55% in 2006) dismissed either as unfounded on the merits or because they fell outside the Authority's remit would seem to indicate that, for the moment at least, there remains a certain lack of understanding in Hungary of the concept of discrimination, as well as a certain lack of knowledge of the Authority's fields of competence. In this context, ECRI regrets that no follow-up appears to have been given to the Authority's proposal that both the obligation to observe the principle equal treatment and the relevant legal avenues of redress available to members of the public form part of the compulsory training of public servants.[18]

---

[15] All figures given for 2005 and 2006 were drawn from the relevant annual reports of the Equal Treatment Authority. At the time of writing, full figures for 2007 were not yet available; where these appear, they are based on information provided in writing by the Equal Treatment Authority to ECRI during its visit. Questions of substance (fields in which discrimination occurs, grounds on which it is based) are dealt with below, under *Discrimination in Various Fields* and *Vulnerable/Target Groups*.

[16] The remaining 390 cases were either referred to another authority (49) or still pending at the end of the year (35), or were dealt with through the provision of advice rather than by initiating an investigation (306).

[17] Withdrawal of the complaint, lack of action by the complainant, procedure already commenced before another competent body, etc.

[18] Equal Treatment Authority, Annual Report 2005, pp. 55-56.

40. As part of the recent amendments to the Equal Treatment Act,[19] the Equal Treatment Authority was given the power to investigate whether employers obliged to do so have approved an equal opportunities plan. ECRI understands, however, that this power is limited to examining whether or not such a plan exists, and to imposing a fine if not; it does not appear to extend to investigating the adequacy of the contents of the plan. Even so, the new power imposes a considerable new workload on the Authority, with all the financial and human resource implications that entails.[20]

41. Since ECRI's third report, the legal status of the Equal Treatment Authority has changed, in that it is no longer subject to ministerial supervision but to ministerial direction.[21] This would appear to signal a diminishing of the Authority's independence. ECRI notes that, as regards preservation from interference in the substance of the Authority's work, Article 13(2) of the Equal Treatment Act, which previously provided that the Authority worked "under the instruction of the government, under the supervision of a member of the government",[22] has been repealed, and the Act now simply provides (Article 13(3)) that "[t]he Authority shall not be instructed in relation to exercising its duties defined in this Act". In budgetary terms, however, the situation is not so clear, as the Authority's budget is now placed (albeit with its own budgetary line) within the budget of the Ministry of Social and Labour Affairs. It may be noted in this context that the Authority continues to have jurisdiction throughout the territory of Hungary; however, it does not have regional or local branches. In the majority of cases occurring outside the capital, the investigating officers of the Authority are therefore obliged to travel to the seat of the local government where the applicant resides in order to hold a hearing. The Authority has drawn up a proposal to formalise its present arrangements with the Houses of Equal Opportunities[23] and in particular to ensure that a certain number of procedures are completed at local level before applications are sent to the Authority itself. However, despite these measures and despite an increase in staff previously granted by the government, in the light of the Authority's continually increasing workload, further resources may again be needed in future.

42. ECRI recalls its recommendation above with respect to the resources available to the Equal Treatment Authority. It further recommends that the Hungarian authorities take measures to raise awareness among national and ethnic minority groups of the anti-discrimination legislation now in force – including as to what is meant by discrimination – and the mechanisms available for invoking this legislation.

- *Parliamentary Commissioner for the Rights of National and Ethnic Minorities*

43. In its third report, referring to its earlier recommendation on the possibility of granting the Parliamentary Commissioner for the Rights of National and Ethnic Minorities the power to lodge complaints before the courts, ECRI urged the Hungarian authorities to extend the Commissioner's mandate 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

[19] Introduced by Articles 3 and 12(1) of Act CIV of 2006; in force since 1 January 2007.

[20] Concerning further possible sanctions against offending employers, see below, *Discrimination in Various Fields – Employment*.

[21] Amendment of Government Decree No. 362/2004 (XII.26) by Government Decree No. 332/2006 (XII.23).

[22] ECRI, Third Report on Hungary, § 34.

[23] See below, *Co-operation and co-ordination between the various specialised bodies involved in the fight against racism and racial discrimination.*

General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

44. ECRI notes from the outset that the Commissioner continues to provide a highly valuable avenue of recourse to members of national and ethnic minorities regarding unconstitutional practices essentially in the public domain.[24] This body's powers, based on the Hungarian Constitution, have remained as strong as they were at the time of ECRI's third report. The creation of the Equal Treatment Authority and the absence of any clear legislative delineation of the limits of the two bodies' respective powers has not reduced the scope of action of the Parliamentary Commissioner but means that in some cases, concerning public authorities in particular, applicants who belong to a national or ethnic minority may have a choice of avenues of redress, providing different remedies: whereas the Equal Treatment Authority can impose a fine on parties that have breached the requirement of equal treatment, the Parliamentary Commissioner primarily seeks an amicable solution and may make recommendations for broader change.

45. ECRI observes that the two other Parliamentary Commissioners (for Civil Rights and Data Protection respectively), while they do not specialise in the fields covered by ECRI's mandate, may from time to time be called upon to deal with matters relevant to ECRI. The Parliamentary Commissioner for Civil Rights released a report in April 2008 concerning a complaint lodged with respect to Debrecen Reception Centre,[25] and questions related to the protection of personal data are often of direct interest to members of national and ethnic minorities.[26] ECRI therefore welcomes the good relationship established between the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Data Protection Commissioner,[27] and hopes that all three institutions will continue to maintain open and constructive working relationships with each other.

46. Finally, ECRI notes that the Parliamentary Commissioner for the Rights of National and Ethnic Minorities has a specific role to play in protecting the rights to which members of national and ethnic minorities may be entitled, and which is distinct from the antidiscrimination role played by the Equal Treatment Authority.

- *Co-ordination and co-operation between the various bodies involved in the fight against racism and racial discrimination*

47. While ECRI welcomed in its third report the establishment of many new bodies working in the field of its mandate, it drew the authorities' attention to the vital need for coordination and cooperation between all existing bodies and for the continuity of programmes that have demonstrated their effectiveness. It hoped that the new institutions would 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.

---

[24] For detailed information on the Commissioner's work, see his annual reports.

[25] See below, *Vulnerable/Target Groups, - Migrants, refugees and asylum-seekers.*

[26] See throughout the present report, and in particular below, *Monitoring Racism and Racial Discrimination.*

[27] Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Annual Report 2004, Chapter VI.1.

48. An additional source of overlaps may arise due to the possibility for individuals to choose to refer their complaint both to the Equal Treatment Authority and to a competent court. Many sources have pointed out that there is not a complete overlap between these two bodies, as the remedies that may result from the two types of proceedings are not the same: whereas the Equal Treatment Authority may impose a fine on an offending party, the courts are empowered to award compensation to the victim. A complainant may prefer to turn first of all to the Authority, where proceedings are simple and fast, seeking the imposition of a fine against another party, and then to present the Authority's findings as persuasive evidence to a court in order to support and expedite a subsequent claim of damages. If, however, the complainant turns to a court while his or her complaint is still pending before the Authority, the latter must suspend its proceedings until the court has decided the case, and the court's conclusions are binding on the Authority. ECRI observes that, while these arrangements may appear obvious to lawyers, complainants less well versed in procedural issues may not find them so easy to grasp. It is thus particularly important –in order to ensure both the effective protection of individuals and the efficient functioning of the institutions set up in this field – that complainants (who are not required to have legal representation before the Equal Treatment Authority) have access to clear and simple information explaining the different remedies that may be granted by the different bodies, and the effect in practice of lodging a number of complaints simultaneously.

49. ECRI notes with interest that in late 2006, in order to improve accessibility for people outside Budapest, the Equal Treatment Authority signed a formal co-operation agreement with the Houses of Equal Opportunities now operating in each of Hungary's 19 counties. Under the agreement, the Authority will provide legal and practical training to staff of the Houses, to enable them to provide local complainants with legal advice and refer any apparent cases of discrimination to the Authority. The Houses are to provide rooms for holding hearings where necessary, as well as a weekly customer service for complainants. To date the Authority has run one training event attended by all the Houses, and several sessions with representatives of Houses in various counties.

50. ECRI recommends that the Hungarian authorities make available clear and comprehensive information to the public regarding the various avenues of redress available to individuals where they feel that they have been victims of violations of the principle of equal treatment or, where applicable, of their rights as members of national or ethnic minorities; this information should cover the rights and grounds protected, the various remedies available, the procedures to be followed and the effects of bringing several sets of proceedings simultaneously.

51. ECRI reiterates its recommendation that the Hungarian authorities ensure that sufficient human and financial resources are given to the anti-discrimination network to enable it to act as an efficient tool to help combating any form of discrimination against Roma throughout Hungary.

Provisions governing the rights of national and ethnic minorities

52. In its third report on Hungary, 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 recommended 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. ECRI also encouraged 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.

- *Minority self-government system*

53. In making the above recommendations, ECRI acknowledged the efforts already made in the area of the rights of national and ethnic minorities and noted that Act No. LXXVII of 1993 on the Rights of National and Ethnic Minorities was generally regarded as a comprehensive and progressive tool for the protection of the rights of minorities. However, it also noted that it was generally argued that there was a need to review certain shortcomings identified in the practice of minority self-government. Key shortcomings under the provisions in force at the time of ECRI's third report included serious abuses with respect to candidacies in the 2002 minority self-government elections, with many candidates standing in elections for local self-governments of minorities with which they had no links. Minority self-governments were also reported to have only rarely exercised their right to co-manage or co-run public institutions such as schools, museums and cultural centres, in part due to the lack of available public funding to cover such transferred activities. Difficult relationships were also reported between minority self-governments and local authorities, again due partly to questions of funding.[28]

54. Large-scale amendments were made to the law governing minorities in 2005 (Law No. CXIV/2005). These amendments introduced a three-tier system, providing for minority self-governments to be created at regional level as well as at the existing local and national levels. In addition, in order to remove barriers to voter turnout, voters are now able to cast their votes locally for all minority self-government elections, including those at national level. Specific measures were also taken with the aim of ensuring that in future, only persons belonging to national and ethnic minorities would be able to elect their self-governments and stand as candidates in the relevant elections: voters are now required to register on specific electoral rolls set up for the duration of the minority self-government elections (in order to protect personal data, these rolls are not published but are kept by the local notary and are maintained only until the final results of the elections have been established); candidates must also be registered on these electoral rolls and can no longer be nominated by individuals but must be nominated by an organisation whose charter includes the representation of the relevant national or ethnic minority and which has been operating for at least three years; candidates must also make a statement that they are familiar with the language and culture of the national or ethnic minority they seek to represent.

55. Notwithstanding the scale of these changes, a number of actors in the field of national and ethnic minority rights have voiced concerns about the new rules. In particular, the reliance on individuals' self-declaration as a member of a national or ethnic minority, coupled with the fact that electoral bodies are not entitled to investigate the truth of such declarations, means that abuses of the right to vote may still occur. At the same time, fears have been expressed that the requirement that voters register their ethnicity in writing with the local authorities, rather than registering with their minority self-governments, may discourage voters from enrolling to vote. In this respect it has been noted that considerably fewer persons registered as voters in the 2006 minority self-government elections than the number having declared their affiliation to a minority in the 2001 census. Allegations were also made that in some cases, local authorities had acted to impede the registration of a sufficient number of

[28] Advisory Committee on the Framework Convention for the Protection of National Minorities: Second Opinion on Hungary, adopted on 9 December 2004 (ACFC/INF/OP/II(2004)003), §§24-29, 113-119.

voters to elect a minority self-government. Furthermore, concerns remain under the new system with respect to the participation of minority representatives in local government decision making, as well as with respect to financial management issues.[29] These concerns led the Parliamentary Commissioner for National and Ethnic Minority Rights to propose the introduction of a series of new safeguards, to guarantee the proper involvement of minorities in the election process and to exclude abuses.[30] The authorities have noted that consultations continue in this field, and that a legal working group has been set up under the auspices of the State Secretariat for the National and Minority Policy, which includes representatives of the national and ethnic minorities. Over and beyond legal matters, the authorities have also emphasised that, in addition to general operational support, task-based financial support is now provided for, allowing minority self-governments to apply for funding to implement specific activities for the protection and promotion of minority interests.

56. ECRI recommends that the Hungarian authorities continue to keep the minority self-government system under review in order to identify and address any new or remaining shortcomings, either in the relevant legislation or existing practice, and so as to increase the efficiency and the credibility of such institutions and ensure that they are able to fulfil the positive role for which they were conceived.

- *Representation of national and ethnic minorities in Parliament*

57. Since ECRI's third report, no changes have been made to the laws governing elections to the national Parliament in order to provide specifically for the representation of national and ethnic minorities in that forum. Some members of national or ethnic minorities have been elected to the national and European Parliaments on mainstream party lists. However, some minority representatives have argued that the current situation does not suffice to ensure the proper representation of minority interests at national level.

58. In recent months the Prime Minister's Office and the Parliamentary Commissioner for National and Ethnic Minority Rights have drawn up proposals to improve the situation. At the time of writing, political consultations with the parliamentary parties had not yet begun, however. It may be noted in this context that a broad consensus will be required to achieve any change, as, in accordance with Article 71(3) of the Constitution, a two-thirds majority of members voting in Parliament is needed to change the laws governing elections to Parliament.

59. ECRI encourages the Hungarian authorities to pursue their efforts so as to open the way, as soon as possible, for national and ethnic minorities to exercise their legally guaranteed right to be represented in Parliament.

II. Racism in Public Discourse

60. In its third report on Hungary, ECRI strongly encouraged 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.

[29] See in particular Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report for 2006.

[30] Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report for 2006.

61. Since then, and apparently building on, at least in part, from a series of highly charged anti-government demonstrations at the end of 2006, there has been a disturbing increase in racism and intolerance in public discourse in Hungary. In particular, the creation and rise of the radical right-wing Hungarian Guard (*Magyar Garda*) – a group bearing close ties to a well known radical right-wing political party – is consistently cited as a cause for deep concern. Since its creation in August 2007 and the public swearing in of several hundred new members in October 2007, the Hungarian Guard has organised numerous public rallies throughout the country, including in villages with large Roma populations; despite apparently innocuous articles of association, amongst the group's chief messages is the defence of ethnic Hungarians against so-called "Gypsy crime". Members of the Hungarian Guard parade in matching, paramilitary-style black boots and uniforms, with insignia and flags closely resembling the flag of the Arrow Cross Party, an openly Nazi organisation that briefly held power in Hungary during World War II, and during whose spell in power tens of thousands of Jews and Roma were killed or deported.

62. In January 2008, the Prosecutor General initiated court proceedings to ban the Hungarian Guard; at the time of writing, these proceedings were still pending.[31] As reported by eyewitnesses, an ugly atmosphere prevailed, however, at the hearing held in spring 2008. No police were present outside the courtroom, and dozens of uniformed members of the group blockaded the room, filling it with their own supporters and physically preventing members of the public not wearing the group's colours from entering. A complaint, which is also still pending, was lodged against the judge for failing to keep order.

63. Other extremist marches and rallies have also been held in recent months, along with increasingly strong counter-demonstrations. In February 2008, an annual rally commemorating the attempt by German and Hungarian troops to break out of a besieged Budapest in 1945 was held in the Budapest city centre. During the march, a wooden cross displaying the words "Blood and Honour" (the name of the banned extremist group[32] of which the organiser of the rally was formerly a leader) was erected. At the same time, hundreds of anti-fascists protested nearby. In March, a neo-Nazi rally outside a Budapest ticket office attracted around 1000 demonstrators; close by, around 3000 people, including the Prime Minister, held a counter-demonstration.[33]

64. Beyond the contents of the message propounded by the Hungarian Guard, civil society actors have emphasised their concern that some mainstream political parties have made little or no effort to distance themselves from the group, sending at least an implicit message to the broader public that there is nothing disquieting in its stance. Some NGOs have also underlined that by repeatedly giving prominent coverage to this group – which, though active and highly vocal, at present remains relatively small –, the Hungarian media is contributing to its rise. Moreover, latent racist and xenophobic attitudes are already reported to be strong and deeply rooted. This is reflected, for example, in a survey carried out in February 2007 in which 68% of the respondents said they would not accept in Hungary immigrants and refugees from Pyresia, a fictitious country.[34] It is also reflected in at least some instances of the media's reporting of crimes in which the accused is a member of the Roma minority,[35] as well as

[31] See above, *Implementation of existing provisions of criminal law*.

[32] See above, *Implementation of existing provisions of criminal law*.

[33] See also below, *Antisemitism.*

[34] See also below, *Antisemitism.*

[35] See below, *Vulnerable/Target Groups – Roma communites.*

in reactions in some villages to the arrival of Roma residents.[36] Overall, many actors emphasise a trend in which racist and xenophobic discourses are increasingly seen as legitimate by Hungarian society.

65. ECRI is deeply concerned at this turn of events in Hungary. It observes that a vital part of the fight against racism and intolerance is the need not only to develop clear and effective legal provisions and to implement them in practice, but also to take preventive action to change racist, antisemitic and xenophobic attitudes and to promote an open, more tolerant and inclusive society. It emphasises that the authorities, public figures and the media have a key role to play in this field.

66. ECRI strongly recommends that the Hungarian authorities step up their efforts to raise public awareness of human rights and of the need to combat racism and intolerance, not only in the capital and the large cities, but also in small local communities and less populated regions. It emphasises that such campaigns should target all sectors and ages of the population, and stresses that political leaders on all sides should take a firm and public stance against the expression of racist and xenophobic attitudes in both words and deeds.

III. Racist Violence

67. No specific figures were available regarding racist violence in Hungary, and reliable information is hard to come by given both the lack of statistics relating to the application of relevant provisions of the Criminal Code and the lack of relevant data disaggregated by ethnicity.[37] Isolated incidents of particularly severe racist violence have, however, been reported by the media, and further incidents reported by numerous actors in civil society – including some incidents of police brutality against Roma,[38] and one incident in which, only a few days after the group had held a march there, two Roma women in a small town were beaten by two sympathisers of the Hungarian Guard, who openly stated that they assaulted the women because they were Roma. ECRI notes with concern that such anecdotal evidence does not provide a reliable basis for building up a true picture of the prevalence or otherwise of racist violence in Hungary, or for taking effective preventive action against such violence or combating it adequately when it occurs. NGOs emphasise in this respect that a rarity of reports of racist violence is not in itself an indication that such acts are not committed, as victims of such acts may often be reluctant to come forward at all or to report the racist elements of violent offences against the person, whether owing to a sense of shame, due to fear of retribution, or because they feel it is unlikely that serious follow-up will be given to this aspect of a crime.

68. ECRI reiterates its recommendation, made earlier in this report, that the Hungarian authorities take steps to introduce systematic and comprehensive monitoring of all incidents that may constitute racist violence, and draws the authorities' attention in this respect to ECRI's General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, in particular to Part III of the Recommendation, concerning the role of the police in combating racist offences and monitoring racist incidents. It also refers in this context to its recommendations elsewhere in this report[39] concerning the monitoring of racism and racial discrimination.

---

[36] See below, *Discrimination in Various Fields – Housing.*

[37] See above, *Implementation of existing provisions of criminal law*, and below, *Monitoring Racism and Racial Discrimination.*

[38] See also below, *Conduct of Law Enforcement Officers*.

[39] See below, *Monitoring Racism and Racial Discrimination*

IV. Antisemitism

69. In its third report on Hungary, ECRI recommended 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.

70. Since then, the Government has taken certain steps to combat antisemitism. A permanent Holocaust Memorial Centre was opened in February 2006, and efforts have been made to determine the status and whereabouts of Hungary's Holocaust records. In addition, Act XLVII of 2006 created an opportunity for individuals whose immediate relatives were killed in the Holocaust or were sent to Soviet forced labour camps to seek compensation. A lump sum of 400 000 HUF (around 1 500 €) may be awarded to eligible individuals for each parent, sibling or child who was killed. The Act took effect on 31 March 2006 and, though initially scheduled to remain in force for only four months, was subsequently extended so as to expire in January 2007. 97 500 claims were made, many of which are still being processed. On a more symbolic level, the name of a former high-ranking Nazi official was removed from the title of the National Epidemiology Centre.

71. Overall, however, the situation does not appear to have improved. As regards the expression of antisemitic views, two weekly newspapers regularly publish antisemitic material. In March 2008, a particularly virulent antisemitic article was published by one of the major daily newspapers, and led to considerable protest. Numerous far-right web-sites that include antisemitic material also exist. The content of these is reported to be subject to some monitoring by the authorities, due to the prohibition on the use of certain Nazi symbols;[40] however, ECRI is not aware of any steps taken by the authorities against any of these sources, or indeed whether any of them have in fact contravened Hungarian law.

72. Whereas antisemitic attacks against persons appear to be rare, incidents of vandalism against synagogues and Jewish cemeteries are not uncommon. Amongst the most serious incidents reported, in June 2005, 130 graves were vandalised in the largest Jewish cemetery in Budapest. The investigation into this incident is still open, although no developments have been reported for two years. A police investigation into another such incident at a synagogue in Vac (north of Budapest) – in which the synagogue's fence was painted black, then sprayed with antisemitic graffiti, swastikas and other fascist symbols – was closed in November 2006 as no suspects could be identified. In early 2008, two youths were arrested for painting fascist symbols on Jewish gravestones in Kaposvar (southwest Hungary).

73. Antisemitism has also been openly espoused by certain political parties,[41] which used xenophobic and antisemitic slogans during the April 2006 elections for the National Assembly. Groups such as the Hungarian Guard also openly express antisemitic views,[42] and NGOs report that even some mainstream parties do little to distance themselves from such opinions. Overall, the sense is that the expression of antisemitic views is currently on the rise in Hungary.

74. ECRI recommends that the Hungarian authorities continue and intensify their efforts to address all manifestations of antisemitism in Hungary. In this respect, ECRI reiterates the recommendations made elsewhere in this report relating to

[40] See above, *Criminal law provisions covering racially motivated offences.*

[41] Notably the radical right-wing Hungarian Justice and Life Party (MIEP-Jobbik).

[42] See above, *Racism in Political Discourse*.

implementation and development of criminal law provisions and countering racism in public discourse. It stresses the role to be played by various opinion leaders in society, in particular politicians and the media, in consistently speaking out against any manifestations of antisemitism and in taking action to ensure that their own bodies present an unambiguous and consistent stand against this phenomenon.

V. Discrimination in Various Fields

Education

75. Discrimination suffered by Roma in the field of education – and in particular, segregation in the field of education – was a subject of particular concern in both ECRI's second and third reports on Hungary. As detailed in particular in ECRI's third report, segregation is known to take a variety of forms: from the disproportionate channelling of Roma children into "special" education designed for children with mental disabilities; to schools attended entirely, or not at all, or by disproportionately high or low numbers, of Roma children; to segregated classes within schools; to the removal of Roma children from schools by channelling them into "private" (at home) education; to low attendance of Roma children at kindergartens. All of these practices or phenomena have a devastating impact on education outcomes for Roma children, who experience high drop-out rates at secondary level and low enrolment at tertiary level, as well as correspondingly limited future life choices and employment prospects.[43]

76. Against this background and as a matter of general principle, ECRI welcomes the inclusion in the Equal Treatment Act[44] and Public Education Act 1993 of an express prohibition on unlawful segregation, and notes with satisfaction that the authorities have taken a wide range of measures in recent years with the aim of addressing these issues. However, bearing in mind the extent of the problems to be addressed, sustained efforts will be required for a considerable time to come in order to achieve lasting improvement. Below, each of the above-mentioned forms of segregation or discrimination in education, as well as measures so far taken to redress them and recommended future action, are examined in turn.

- *Disproportionate representation of Roma children in special schools for children with mental disabilities*

77. In its third report, ECRI urged 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 were not culturally biased and the training of teachers and other involved persons to ensure that they made appropriate decisions. ECRI also recommended that measures be taken to facilitate the integration of Roma children then in special schools into the mainstream school system.

78. In 2003 a programme was launched to fight the practice of classifying Roma and socially disadvantaged children, without just cause, as children with mental disabilities. According to information provided by the authorities, 2100 children who had been classified as having mental disabilities were reassessed by independent medical experts (the Rehabilitation Expert Committees Examining

[43] According to the background information provided in the Parliamentary Resolution on the Decade of Roma Inclusion Programme Strategic Plan, 82.5% of Roma aged 20-24 had completed primary school; only 5% of Roma aged 20-24% had completed secondary schooling (compared with a national average of 54.5% of 18-year-olds); and only 1.2% of Roma aged 20-24 attended higher educational institutions.

[44] See Article 7(1) of the Equal Treatment Act.

Learning Skills) in 2004 and 11% of these children, who were found to be mentally sound, were reintegrated into the school system.

79. Despite these advances and the financial means provided to support them, the authorities have observed that no radical improvements or breakthroughs have been achieved in the field of equal opportunities for these children. Thus, in the last two years, the authorities' focus has shifted from a review and reintegration approach to influencing broader processes, such as financing and diagnosis. A new cognitive assessment instrument ("WISC-IV"), designed to take account of socio-cultural differences, has thus been introduced for use by rehabilitation committees from 2008 onwards. These processes are financed under the New Hungary Development Plan.

80. Actors outside the education system stress two key points of concern. First, the local rehabilitation committees – which assess, upon referral of a child by their kindergarten teacher, whether the child should be oriented towards the special school system, and whether children already attending special schools should remain there – are also the bodies that run the special schools, for which funding increases with the number of children, and is higher per capita than in mainstream schools. They thus have a vested interest in maintaining, or even increasing, the number of children attending their schools. While some safeguards have been put in place, such as the requirement of parental consent to enrol a child in a special school, many parents who accept the placement of their child in a special school may not understand the long-term implications of that decision for their child, and doubts may be raised as to whether their consent is in all cases genuine and informed. Moreover, the significant number of children who were returned to mainstream schools following the 2004 rehabilitation programme would seem to confirm that decisions to place children in special schools need to be carefully monitored.

81. Second, of the three levels of disabilities into which children in special schools may fall ("very serious" (requiring residential care), "medium-severe" or "mild disability"), the vast majority of children assessed as having a "mild disability" could, in the view of many NGOs, be integrated relatively easily in the ordinary school system: many children are misdiagnosed due to a failure to take due account of cultural differences or of the impact of socio-economic disadvantage on the child's development, and others suffer from only very minor learning disabilities that do not warrant the child's removal from the mainstream system. ECRI repeatedly heard that investments in teacher training should primarily be directed towards ensuring that teachers in the mainstream school system are equipped to deal with diverse, integrated classes, rather than towards perpetuating a system from which children, once streamed into it, are unlikely to break out, and which overwhelmingly results in low levels of educational achievement and a high risk of unemployment. Some actors have suggested that – bearing in mind that the best way of ensuring that children do not wrongly become trapped in special schools is to ensure that they are never sent down that track in the first place – the category of children with mild disabilities should simply be deleted from the Education Act and all children with mild disabilities integrated in the mainstream school system.

82. ECRI notes that the efforts made to date to combat the disproportionate representation of Roma children in special schools for children with mental disabilities, though they have had some positive effects, cannot be said to have had a major impact in practice so far. It stresses that, in parallel to assisting wrongly diagnosed children already in the special school system to return to the mainstream system, putting an end to this form of segregation also implies ensuring that children are not wrongly streamed into special schools.

83. ECRI urges the Hungarian authorities to intensify their efforts to reintegrate Roma children currently enrolled in special schools into mainstream schools. It urges them in this context to monitor carefully the effectiveness of the new cognitive assessment instrument (WISC-IV) in taking account of socio-economic disadvantage and cultural diversity, and to adapt it further if necessary. ECRI furthermore strongly urges the Hungarian authorities to ensure that only those children who cannot cope with education in an integrated classroom are sent to special schools. To this end, all possible avenues should be explored, including the option of removing from the Education Act the possibility of placing children with "mild disabilities" in special schools.

84. ECRI recommends that the Hungarian authorities intensify their efforts to train teachers working in mainstream schools to deal with diverse classes including children from different socio-economic, cultural or ethnic backgrounds.

85. ECRI strongly urges the Hungarian authorities to review the procedures by which children's aptitude for commencing or returning to mainstream schools is examined, in order to eliminate all possible conflicts of interest of persons involved in the process.

- *Separate or remedial classes in mainstream schools including solely or mainly Roma children*

86. In its third report, ECRI urged the Hungarian authorities to take all necessary steps to end the segregation resulting from certain catch-up or remedial programmes involving the channelling of Roma children into separate special classes in mainstream schools.

87. An important judgment in this field was delivered by the Budapest Court of Appeal in October 2004 against the local authorities and a school in Tiszatarjan. The court found that these bodies had wrongly kept a number of children – mostly Roma – in separate classes of a lower academic standard for several years, without any legal or medical basis. It found that this practice would have a long-term impact on the children and that, in deciding to put them in classes of a lower academic level, the school had failed to recognise properly or to address their learning difficulties. The families of the nine children were awarded a total of approximately 650 000 forints (14 600 €) in compensation.[45]

88. Since 2003, the authorities have introduced new measures, targeting the integration of multiply disadvantaged children. These are children whose parents meet two criteria: first, that they receive welfare benefits, and second, that they did not themselves progress beyond primary education. Many – though by no means all – of these children are Roma.[46] Children are recognised as falling into this category on the basis of a voluntary declaration made by their parents. Schools that have adopted equal opportunity plans can apply for (financial) integration support if the proportion of multiply disadvantaged children in their various classes remains below 50% (with the exception of one class, for which the proportion of multiply disadvantaged children must not exceed 70%). The difference between the ratios of multiply disadvantaged children in parallel classes must furthermore not exceed 25%. Subsidies granted can be used for creating a child- and pupil-friendly environment, for training pupils individually, for acquiring the necessary development equipment, for compensating social disadvantages and for setting up and operating pedagogical development groups. The National Education Integration Network (OOIH) – the basic tasks of which are to promote the integrated education of

[45] Decision of the Budapest Court of Appeal (Fovarosi Itelotabla) of 7 October 2004.

[46] See also below, *Monitoring Racism and Racial Discrimination.*

multiply disadvantaged pupils, provide professional services with the aim of ensuring the successful education and further education of such pupils, and establish a professional network based on the horizontal co-operation of teachers and their institutions – concludes co-operation agreements with the schools having joined the programme and provides professional support to them. Schools that are not entitled to apply for integration support because over 50% of their students are multiply disadvantaged children may apply for skill development support. More than 2 billion HUF (€8 million) were allocated to these programmes and to kindergarten development programmes in 2007. The number of institutions having participated in the program has moreover grown each year, from 9 935 in the 2003-2004 school year to more than 25 000 in 2007-2008.

89. ECRI welcomes these measures, which, though not explicitly targeted at Roma children, should benefit them. However, it notes that the way in which the funds provided by the central authorities are used in practice depends on the local authorities responsible for administering the schools, which appear to be subject to little effective subsequent monitoring. Monitoring is not carried out by the central authorities but at local level, by experts appointed by the local authorities themselves, leaving civil society with little confidence in the impartiality or objectivity of the exercise. ECRI has moreover received reports that in practice, schools granted funds under the programme described above have not always used them to create integrated classes, meaning that in these cases, at least, the expected desegregation was not achieved.

90. ECRI strongly encourages the Hungarian authorities to continue their efforts to desegregate classes within mainstream schools, and to monitor the effectiveness in practice of the measures currently targeting multiply disadvantaged children in ensuring the integration of Roma pupils in mainstream classes. It draws attention in this context to its recommendation elsewhere in this report that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.

- *Schools attended solely or mainly by Roma children*

91. In its third report, ECRI recommended 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. The need for more effective measures in this field was subsequently highlighted in a case brought against the local authorities of Miskolc, which had merged seven schools into three, but without also merging their catchment areas; children of different ethnic backgrounds thus continued to go to school in physically separate buildings of what was an “integrated” school in nothing but name. In a landmark judgment under the Equal Treatment Act in 2006, the Debrecen Appeal Court found that the authorities had violated the prohibition on segregation on the basis of ethnic origin. However, several sources reported that, in 2007, the local authorities once again separated the catchment areas of the merged schools.

92. Two main causes for the phenomenon of segregated mainstream schools are widely referred to. First, as the proportion of the Roma population in small, declining villages and in the poorer urban areas increases, Roma are becoming increasingly isolated, meaning that schools in many areas where they live are more and more frequently attended only by Roma pupils. Second, the system of granting parents free choice of schools has allowed parents to request to enrol their children in any school, and has in the past also allowed schools to accept

or reject whichever pupils they wished. In practice, segregation has actually worsened in recent years.[47] Serious disparities in the quality of schooling available to children depending on their socio-economic status have in turn been reported. Schools with high proportions of Roma students are in particular reported to have lower quality infrastructures – in some cases, with no running water, toilets or heating – and sometimes unqualified, frequently less well trained teachers than schools with few or no Roma pupils.

93. The Government has acted in recent years to counteract this situation and achieve a more even balance of multiply disadvantaged children between schools. Thus, amendments to the rules on school catchment areas in Article 66 of the Public Education Act came into force as from 2007, taking as their starting point that a place must be available in public education for every child. School maintainers (the authorities responsible for running schools) are now required to ensure that there is no more than a 25% disparity in the proportions of multiply disadvantaged children attending the various schools within their remit; should such a disparity arise, the authorities are required to redraw the boundaries of the relevant catchment areas to bring them back into line with the above requirement.

94. At the same time, schools' rights to choose among children having applied for first-grade places have been drastically limited, without changing the principle of parents' freedom to apply to schools they choose. Schools are now required to accept children in clear priority order: first, all applicants from within their catchment area; second, if places remain, any multiply disadvantaged children that apply; third, if places still remain, special situations should be taken into account (for example, children having a sibling already attending the school); finally, if any places still remain, the school must apply a lottery system. It should be noted, however, that this obligation applies only to public (state-funded) schools, and not to church-run schools, although these too receive state funding. Villages have been cited where practically all non-Roma children attend a church-run school, leaving only Roma in the state-funded school. The Public Education Act, while imposing less stringent conditions on church-run schools, now requires them to provide at least 25% of their places to local children; they also cannot refuse entry to any multiply disadvantaged child.

95. ECRI welcomes the steps taken to reduce disparities between schools as to the socio-economic background of their pupils, which should serve to benefit Roma students falling within the category of multiply disadvantaged children. Nonetheless, it observes that in the field of education, the high degree of autonomy granted to local authorities in Hungary would unfortunately appear to leave little sense of collective responsibility for quality education for all children. In one well known case, when a local authority closed the only school it ran, attended by mostly Roma children, none of the neighbouring authorities agreed to accept the Roma children in their schools; it took the intervention of the Parliamentary Commissioner for National and Ethnic Minority Rights to resolve the issue. Moreover, there does not appear to be effective monitoring of the implementation of the centrally enacted legislation to reduce segregation, for the reasons given earlier (§ 89). ECRI emphasises that autonomy does not entitle local authorities to ignore nationally applicable standards, and can never justify a breach of the prohibition on segregation.

[47] Official (research-based) figures, indicate that the number of homogeneous non-Roma classes rose from 5.6% in 2000 to 10.1% in 2004, and the number of homogeneous Roma classes rose from 10.6 to 13.6%. See National Institute for Public Education, Hungary, *Education in Hungary 2006*, http://www.oki.hu/oldal.php?tipus=kiadvany&kod=eduhun2006, Table 9.5 (accessed 28 May 2008).

96. ECRI strongly encourages the Hungarian authorities to pursue their efforts to desegregate schools, and to monitor the effectiveness in practice of the measures currently targeting multiply disadvantaged children in ensuring the integration of Roma pupils in mainstream schools.

97. ECRI strongly recommends that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.

- *Channelling of Roma children into "private" (at home) education*

98. In its third report, ECRI urged the Hungarian authorities to monitor closely 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.

99. The authorities have indicated that amendments made to the Public Education Act in 2003 make it possible to take into account in the process of registering a child as a private pupil the opinion not only of the school principal but also of the guardians of the child and the child care authorities. The latters' opinion must be sought in all cases where a disadvantaged child is to be registered. The authorities have stated that there has been no increase in the number of private pupils, perhaps because of the introduction of these more stringent rules.

100. ECRI encourages the authorities to continue to monitor closely the impact of the new rules on registering children as private pupils, in order to ensure their effectiveness in eliminating past discriminatory practices in this area.

- *Access to kindergarten education*

101. In its third report, ECRI recommended that the Hungarian authorities develop and restructure kindergarten education to ensure that all Roma children attend kindergarten. ECRI also urged the Hungarian authorities to take further measures to ensure that poverty did not prevent children from attending kindergarten.

102. Since 2003, and recognising the importance of effective access to kindergarten education in ensuring better outcomes for Roma children, the government has adopted wide-ranging measures in this field. First, in order to promote the attendance of multiply disadvantaged children at kindergartens, school maintainers are obliged to provide admission to all multiply disadvantaged children in their area. Three-year kindergarten education must therefore be put in place even in villages that previously had no kindergarten. Around 120 billion HUF (nearly € 500 million) has been allocated in recent years to developing the necessary infrastructure. To ensure that multiply disadvantaged children start attending kindergarten as early as possible, maintainers of kindergartens can also apply for state support, provided at least 70% of multiply disadvantaged children in their districts attend kindergarten, and provided that these children form at least 15% of the children in kindergarten. Free meals have also been provided, and it is also planned to introduce kindergarten admission support, to be paid to parents of kindergarten-aged multiply disadvantaged children, to allow them to buy the necessary clothes and supplies for their children.

103. ECRI welcomes these measures, and stresses the importance of continuing to invest in increasing the attendance of Roma children at kindergarten level in order to ensure better long-term educational outcomes for them. Increasing

Roma children's access to the full three-year pre-school programme may in particular be an influential factor in reducing the number of Roma children wrongly oriented into special schools when they reach primary school age. ECRI further notes in this context that not all children are assessed for streaming into the special schools described at the beginning of this section: only children selected by their kindergarten teachers are obliged to undergo the tests. ECRI observes that the basis on which children are referred for assessment seems unclear. Greater awareness on the part of teachers of the impact that cultural factors and socio-economic disadvantage may have, without constituting a learning disability, on children's educational development may constitute a further key to reducing the number of Roma children wrongly directed from kindergarten into special schools.

104. ECRI strongly encourages the authorities to continue their efforts to improve the access of multiply disadvantaged children, including Roma, to the full cycle of kindergarten education, as a cornerstone of any measures to eliminate long-term discrimination against Roma in the field of education; these measures should cover all the relevant practical aspects, including infrastructures, teachers' skills and financial support to parents.

105. ECRI further recommends that the authorities take measures, with a view to reducing the numbers of children required to undergo cognitive testing, to raise the awareness of all kindergarten teachers to the impact that cultural factors and socio-economic disadvantage may have, without constituting a learning disability, on children's educational development

- *Access to secondary and tertiary education*

106. In its third report, ECRI recommended that further measures be taken to encourage the participation of Roma children in education at the secondary and tertiary level. It indicated that such measures should include financial subsidies to ensure that children from poorer families are able to continue their studies, as well as awareness-raising initiatives among Roma communities concerning the importance of education for their children.

107. Several programmes are currently in place to promote equal opportunities for disadvantaged pupils and encourage them to pursue their education beyond primary level. 17 000 pupils in 2006-7 and 11 000 in 2007-8 received grants and tutorial assistance under the "Provision for Pupils" grant programme, aimed at helping them to reach and complete secondary level education. A further 3 450 especially disadvantaged pupils participated in Arany János programmes to prepare them to enter secondary education, and an additional facet of these programmes was launched in the 2007-8 school year, covering vocational schooling. Finally, a programme was launched in 2005 to assist disadvantaged young persons in entering and pursuing higher education, under which the students' course fees are paid and tutorial assistance is provided.

108. ECRI welcomes these steps taken to promote access to secondary and tertiary education of disadvantaged students, particularly Roma.

109. ECRI encourages Hungarian authorities to pursue their efforts to promote equal access to secondary and tertiary education, and recommends that they monitor closely the impact of the measures in improving outcomes for Roma students in particular, in order to allow them to be revised and fine-tuned if necessary.

- *Combating prevailing prejudices and stereotypes and other transversal issues*

110. In its third report, ECRI recommended 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.

111. The authorities have stated that social awareness-raising and integration promotion training continue to form part of the training organised for teachers in the framework of two overarching programmes to ensure equal opportunities for disadvantaged children in the educational system and to ensure integration. ECRI welcomes these initiatives but emphasises the importance of ensuring that they produce an impact in practice, as it is all too easy for teachers to leave this training at the door once they return to the school environment. In one telling case, a headmaster who had followed such training nonetheless ran a segregated school.

112. ECRI encourages the Hungarian authorities to continue incorporating social awareness-raising and integration promotion in the training programmes organised for teachers; it further recommends that follow-up assessments be carried out with teachers having undergone such training, in order to assess the degree to which it has had a practical impact on their work and adjust training programmes if necessary.

Employment

113. In its third report on Hungary, ECRI recommended that further efforts be made to improve the employment situation of the Roma community. It considered that, given the long-term and endemic nature of the disadvantage Roma experienced on the labour market, special measures were necessary to place them in a position in which they could compete on an equal footing with members of the majority population.

114. The unemployment rate of Roma in Hungary remains extremely high.[48] Hungary's rapidly changing and increasingly competitive economy has left many Roma with few or no educational qualifications marginalised, and with few prospects of finding employment. But Roma also continue to experience both indirect and direct discrimination in seeking employment – with many employers not afraid to admit to openly discriminatory attitudes, saying clearly that they have refused to hire a Roma solely because of their ethnic origin. Direct discrimination experienced by Roma has been documented in empirical studies but also recognised in the decisions of the Equal Treatment Authority. The latter reports that since its inception the majority of complaints it has dealt with have concerned the field of employment, and many of these complaints are lodged by Roma.[49]

115. The antidiscrimination provisions in the Labour Code and the Equal Treatment Act – including the power granted to the Equal Treatment Authority to publish a list of employers who have been fined for violating the principle of equal treatment, which disqualifies these employers for two years from benefiting from state aid – at least theoretically constitute a deterrent, and do provide a basis in practice for seeking redress in individual cases. However, as NGOs point out,

[48] Whereas in the early 1990s the employment rate of male Roma was only 4 or 5% lower than that of male members of the majority population, by the mid-1990s the gap had leaped to 45%. See Gabor Kertesi, *Budapest Working Papers on the Labour Market; The Employment of the Roma – Evidence from Hungary*, Institute of Economics of the Hungarian Academy of Sciences, Budapest 2004, p. 19.

[49] Equal Treatment Authority, Annual Reports for 2005 and 2006.

these provisions alone cannot suffice to advance the situation of Roma with respect to employment, not least because they cannot address the broader causes for inequality experienced by large groups of people in a disadvantaged position.

116. The government has taken a number of initiatives in recent years to reduce exclusion from the labour market, including through specific programmes targeting disadvantaged people or long-term unemployed, many of whom are Roma. Some of these programmes aim to give unskilled workers new skills; others, such as some public works programmes, combine short-term employment and education. Still others provide incentives to employers, in the form of reduced employer contributions, to employ workers from specific groups; an example of the latter is the Start-Extra programme, targeting long-term unemployed who either are over 50 or have completed no more than 8 years of school education. A Roma Employment Network has also been set up to ensure that there is a Roma desk officer in each labour exchange centre and employment office. Moreover, the authorities have pointed out that employment is a key chapter of the Decade of Roma Inclusion Programme Strategic Plan, and the government will be required to report to Parliament on progress achieved with respect to all the tasks set out in the Strategic Plan.

117. ECRI notes that the initiatives taken are generally well received, but that civil society actors nonetheless point out that their impact is limited and not lasting: the programmes provide helpful and rewarding experiences in the short term for the participants concerned, but the solutions they provide are only temporary and concern only a limited number of participants (a few thousand in each case). In short, they constitute positive steps, but are not enough on their own to remedy the widespread long-term unemployment of disadvantaged groups such as the Roma. Moreover, their overall impact remains difficult to evaluate due to a lack of available data disaggregated by factors such as ethnicity; government estimates in fact rely on census figures as to the proportions of the population that are Roma in the various counties of Hungary in order to build a picture of how many Roma may have benefited from a given measure.

118. ECRI strongly encourages the authorities to continue their efforts to improve the employment situation of the Roma community and reiterates the view that, against the background of the long-term and endemic nature of the disadvantage Roma experience on the labour market, special measures continue to be necessary to place them in a position in which they can compete on an equal footing with members of the majority population. These measures should also be directed towards overcoming prejudices and negative stereotypes on the part of employers.

119. ECRI recommends that the authorities keep under review the effectiveness of the measures taken in improving the situation of Roma with respect to employment, refine their monitoring of the impact of the measures taken if necessary, and adapt the measures where needed to improve their effectiveness.

Housing

120. In its third report, ECRI recommended that urgent measures be taken to improve the housing situation of Roma, and particularly to ensure that no arbitrary forced eviction of Roma families took place. ECRI strongly encouraged the authorities to develop a social housing policy that could benefit members of the Roma community living in poor conditions. In particular, it recommended that Roma families who were living without access to even basic amenities be provided with a decent standard of housing and infrastructure.

121. ECRI also stressed 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 that contributed to such segregation, and considered that the principal objective of housing policy should be to allow Roma communities to live as a part of majority communities.

122. Since ECRI's third report, Roma families have continued to face disproportionate numbers of evictions. According to one study, victims were identified as Roma in 55% of eviction or threatened eviction cases reported by the media, though Roma constitute only around 6% of the population of Hungary.[50] Forced evictions are now widely and frequently reported in Hungary: since May 2000, local government notaries have been entitled to order the eviction of tenants without official papers, and appeals against such decisions do not have a suspensive effect. While this provision applies to all tenants, it has been found to have a disproportionately adverse effect on Roma, due to their difficult socio-economic situation.[51]

123. The majority of Roma in Hungary live outside the main cities and towns, with large numbers living in unfavourable or even slum-like conditions, a phenomenon that has worsened over the past decade.[52] The authorities have stated that their primary aim in the present context is to reduce segregation in housing by eliminating Roma ghettoes. They have thus introduced a programme to refurbish social housing and encourage Roma living in segregated settlements outside towns and villages to move into the refurbished social housing inside the town or village. In addition, in order to ensure that the principle of desegregation is taken into account in the award of state or European Union funding for various projects, the authorities are introducing an equal opportunities subsidy policy. Thus, in order to receive funding for urban development projects, whether or not these are directly related to desegregation efforts, a town will be required to submit a desegregation plan aimed at the elimination of segregated living in the town. There are, however, reports of occasional resistance from local authorities and individuals when a Roma family has sought to move into a new neighbourhood; these have involved members of the local population causing physical damage to, or even destroying, houses bought by Roma; locals forming human chains to prevent Roma families from moving in; or local authorities acting to prevent Roma families from moving in, following petitions by local inhabitants.

124. Access by Roma to social housing is also hindered, partly by the sale in recent years of significant proportions of public housing stocks (including social housing),[53] and in some areas by the adoption by local authorities of arbitrary rules as to eligibility for public (including social) housing, which in practice result in indirect discrimination against Roma. In some cases, access to social housing has, for example, been made conditional on demonstration by the applicants that they possess large amounts of money, thereby, almost by definition, excluding persons who are unemployed, reliant on social welfare or otherwise in situations of poverty or extreme poverty from gaining access to

---

[50] Data from the European Parliament's Country Profile on Hungary, available at http://www.europarl.eu.int/enlargement_new/applicants/pdf/hungary_profile_en.pdf.

[51] European Committee on Social Rights, Conclusions XVIII-1, Hungary, Article 16.

[52] In 1993-94, "13.9% of the Roma population (about 70 000 people) lived in segregated settlements or colony-type neighbourhoods with insufficient utility supply, and low infrastructure, or in urban colonies in poor conditions. Another study carried out in 2000 found that approximately 20% of the Roma population (100 000 people) lived in segregated settlements." See Joint Memorandum on Social Inclusion of Hungary, 18 December 2003, Brussels, p. 13. Available at http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/hu_jim_en.pdf (accessed 28 May 2008).

[53] Joint Memorandum on Social Inclusion of Hungary, 18 December 2003, Brussels, p. 13.

social housing. This impacts many Roma, who are disproportionately represented in these groups. In other cases, the rental of social flats is auctioned off, with bids outreaching the resources of many Roma families who are most in need of such flats, or auctions of social flats are notified only to a select few, again excluding Roma from access to such housing.

125. Many local governments have also enacted provisions barring persons caught squatting in property from having access to social housing for a number of years, generally between three and five years (ten in Debrecen). These provisions result in indirect discrimination against Roma, who are proportionally far more often unable to afford even nominal housing costs, forcing them into occupying homes without legal authorisation. Their impact may be especially negative on the neediest families, as the refusal of social housing may lead to the removal of children from their families. One such provision was struck down as unconstitutional by the Hungarian Constitutional Court on 22 February 2005, and in March 2006 the Hungarian Housing Act was amended to include as an explicit requirement that of retaining social criteria for the allocation of social housing. ECRI notes that the impact in practice of this amendment remains to be seen, and observes that, as in the field of education, the principal source of the discrimination experienced in everyday life by Roma in the field of housing is not the contents of legislation enacted at central level, but appears rather to be the manner in which local authorities exercise their powers.

126. ECRI strongly encourages the Hungarian authorities to continue addressing segregation in housing through measures designed to facilitate their moving into more mixed neighbourhoods, and, in parallel, to intensify their efforts to combat negative community attitudes towards Roma neighbours.

127. ECRI recommends that the authorities intensify their efforts to ensure that Roma are not arbitrarily deprived of social housing; it recommends in particular that the authorities take all the necessary measures to ensure that local authorities, in applying legislation enacted at central level, do so in accordance with the law, and in conformity with the prohibition on discrimination.

128. ECRI recommends that the authorities keep under review the impact in practice of the amendments made to the Housing Act in 2006 in safeguarding Roma in particular from forced and arbitrary evictions, and strengthen the measures taken if necessary to ensure their effectiveness.

Health

129. In its third report, ECRI urged 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. It recommended that measures be taken to ensure that members of Roma communities enjoyed equal access to health care. ECRI also recommended taking a series of measures to improve communication between Roma patients and hospital staff, including awareness-raising and training initiatives aimed at health care personnel to combat stereotypes and prejudices that could lead to discriminatory treatment of Roma patients, and considered that the appointment of assistants who speak the Romani language and could serve as mediators between Roma patients and health care personnel would be a positive step.

130. In 2006, the authorities launched a wide-ranging reform of the health care system in Hungary. As part of this reform, a new Health Insurance Supervisory Authority was created, with the primary goal of reducing territorial inequalities in health care. It is also responsible for dealing with complaints about the health care system, and like the Equal Treatment Authority, can impose fines on health service providers who infringe patients' rights and publish the list of

providers that have been fined. The authorities have stated that, of a total of 7000 complaints that it has received since its inception, of which proceedings were initiated in about one-sixth of the cases, direct discrimination related to ethnicity has to date been established in only one case. Indirect discrimination could be assumed to have occurred in a few dozen cases.

131. As regards measures to combat prejudices and stereotypes, the authorities have indicated that cross-cultural nursing is included as part of the training of nurses studying at college level, and health visitors who go out to see patients in their homes also have cross-cultural features in their curriculum. No Roma mediators have been appointed; the authorities have indicated that progress on this point would require a co-ordinated approach between all sectors, in order to create sufficient interest amongst possible future candidates for such jobs. A programme is also planned for 2008-9 with the aim of increasing the sensitivity of medical staff in general to cultural differences, with the specific target of increasing the percentage of Roma in the medical professions to 3-5%. In terms of improving health status, the government is also seeking to provide incentives to small communities to co-operate with each other to set up local hospitals and psychiatric clinics, with a view to reducing inequalities between regions. Bearing in mind that people with the poorest health status often have less frequent recourse to the health system than those with a better health status, and that existing demand is therefore not always a good indicator of real needs, the authorities' intention is also that as part of the overall reforms, resources are to be allocated as a function of the number and health characteristics of people in each area rather than on the basis of present use of existing facilities. The government is also placing particular emphasis on preventive measures, such as free screening for breast and cervical cancer.

132. ECRI welcomes the recent steps taken towards reducing inequalities experienced with respect to the health care system, including measures set out under the Decade of Roma Inclusion Programme Strategic Plan. It observes that the overall health status of Roma in Hungary remains for the moment, however, considerably less favourable than that of non-Roma. The average life expectancy of Roma in Hungary is more than ten years shorter than that of non-Roma.[54] Their situation continues to be compounded by difficulties in access to health care. Though nation-wide statistics are lacking, empirical studies show that Roma continue to suffer difficulties in receiving treatment in hospitals. Emergency assistance is reportedly slow, or even denied altogether, and the isolation of Roma communities in rural areas in particular means that access to a general practitioner is often more difficult. Patients report that doctors refuse to touch them, or make only cursory examinations, leading in some cases to misdiagnosis or the prescription of inadequate medicines. Patients are also subject to discriminatory attitudes or to extortion from health workers when they do receive treatment. Segregation of Roma women in maternity wards has also been reported, in one case reportedly leaving the women in a ward which they were required to clean themselves.

133. On 29 August 2006, the Committee on the Elimination of Discrimination against Women found that Hungary had breached the relevant Convention in the case of A.S. v. Hungary,[55] in which the author, a Roma woman, had been sterilised without her informed consent. The Committee recommended that the victim be awarded compensation, that the legislation allowing sterilisation to be carried out without following the standard information procedure in certain circumstances be reviewed, that all health workers be fully informed of the

[54] E/C.12/HUN/CO/3, 22 May 2007, § 25.

[55] CEDAW/C/36/D/4/2004; CEDAW/C/HUN/CO6.

Committee's standards, and that the practice in all public and private health centres be monitored. ECRI is concerned that to date, it would seem that none of the recommendations in this case has yet been followed up in practice. ECRI stresses that failing to remove the possibility, provided for by law, of performing "emergency" sterilisations on women without their informed consent is unacceptable and serves to undermine Roma women's confidence in the health system.

134. ECRI strongly encourages the Hungarian authorities to pursue their efforts to reduce inequalities in health care status and in access to health care across Hungary, and to monitor the impact on Roma of these measures, in terms of both their health status and access to health care, in order to enable them to be fine-tuned if needed to improve their effectiveness.

135. ECRI strongly encourages the authorities to implement the planned measures to increase the number of Roma working within the health care system, as a cornerstone of the efforts needed to improve the confidence of Roma in the health care system as a whole. In parallel, it encourages the authorities to continue and intensify their efforts to combat stereotypes and prejudices that can lead to discriminatory treatment of Roma patients, through continuing training aimed at all levels of the health care system.

136. ECRI urges the authorities to implement the recommendations of the Committee for the Elimination of Discrimination against Women in the case of Ms A.S. v. Hungary, and to repeal the legal provisions allowing for "emergency" sterilisations to be performed without a woman's informed consent; it emphasises that Roma women's experience of and overall confidence in the health system can only be positively affected by such a step.

Access to public places

137. ECRI did not examine, in its third report, discrimination in the field of access to public places. However, it notes that the Equal Treatment Authority has underlined in both its 2005 and 2006 annual reports the discrimination faced by Roma in this field, and that Roma NGOs also stress that it is an issue of particular concern. The Authority has particularly emphasised that the denial of services in the establishments of the commercial and catering industries (shops, bars, restaurants) not only affects members of the Roma minority, but is in fact almost exclusively experienced by them.[56]

138. ECRI draws the Hungarian authorities' attention to this phenomenon, and recalls its related findings elsewhere in this report regarding latent racist and xenophobic attitudes in Hungarian society.[57] It emphasises that, while the Equal Treatment Act has made it easier for individuals who are victims of discrimination in this field to seek redress, litigation cannot on its own provide an adequate means of overcoming entrenched negative stereotypes and attitudes.

139. ECRI recommends that the Hungarian authorities take comprehensive measures to implement the law prohibiting discrimination in access to public places, in particular as it is applied to Roma and visible minorities.

[56] Equal Treatment Authority, Annual Report 2005, p19, Annual Report 2006, p10, p55.

[57] See above, *Racism in Public Discourse.*

VI. Vulnerable/Target Groups

Roma communities

140. In its third report, ECRI stressed that discrimination by local authorities should not be tolerated by national authorities and underlined that it was essential to ensure that national policies and legislation in favour of the Roma community were understood and applied at local level. ECRI also urgently called for training of officials working within local administrations to raise awareness and combat prejudices. ECRI also recommended that further emphasis be placed on ensuring that the Roma community was involved at all stages of the planning and implementation of measures which concern them, at as local a level as possible, and stressed the importance of encouraging projects and initiatives which emanate from the Roma community itself.

141. ECRI observes that, as other parts of this report show,[58] acts or failures to act by local authorities, and in particular, failures in implementing centrally enacted legislation in conformity with the prohibition on discrimination, continue to lie at the heart of much of the discrimination experienced by Roma in daily life. It emphasises again that the autonomy granted to local authorities can never justify violations of the prohibition on discrimination, and is concerned that such violations reveal continuing high levels of prejudice and negative stereotypes amongst local government officials against Roma.

142. ECRI also notes that at a more general level, Roma are able (as are persons belonging to other minorities) to choose whether or not to identify themselves as Roma in order to benefit from specific minority rights such as minority education or enrolling to vote in minority self-government elections. The recent extension of the application of the European Charter for Regional or Minority Languages to cover the Romani and Beash languages is a welcome step forward in this field.[59] However, it appears much more difficult for Roma to realise the freedom *not* to be identified as members of the Roma minority unless they so wish, as here, other individuals' perceptions – frequently negative stereotypes – come into play.[60] ECRI stresses that fighting to overcome prejudice and negative stereotypes is essential to any strategy to eliminate discrimination against Roma and place members of this minority on an equal footing with other members of Hungarian society.

143. Finally, ECRI notes with concern reports that Roma children are substantially over-represented in the child protection system, and thereby exposed to a risk of rejection by their own community, while still being subject to discrimination by members of majority society on the basis of the latters' perceptions of them as Roma. The term "endangerment" also appears to be sometimes wrongly interpreted as authorising the removal of children on purely material grounds, meaning children in families having undergone forced evictions[61] are also at greater risk of unwarranted removal from their families. Moreover, it appears that Roma children in the child protection system are also disproportionately qualified as having mental disabilities. All of these factors are likely to have a particularly negative impact on the life-chances of children who experience them, leaving them especially vulnerable to further discrimination in later life.

---

[58] See above, *Discrimination in Various Fields.*

[59] Act No. XVIII of 2008.

[60] See also Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Annual Report for 2004, Chapter VI.3.

[61] See above, *Discrimination in Various Fields, - Housing.*

144. ECRI recommends that the Hungarian authorities intensify their efforts to ensure that discrimination by local authorities is not tolerated. In this respect it emphasises that it is essential to ensure that national policies and legislation in favour of the Roma community are understood and applied at local level.

145. ECRI reiterates its urgent call for training of officials working within local administrations to raise awareness and combat prejudices, and recommends that the Hungarian authorities implement a nation-wide awareness-raising campaign to combat negative stereotypes by promoting positive images of the Roma minority.

146. 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.

147. ECRI recommends that the Hungarian authorities investigate in depth the situation of Roma children within the child protection system and take all necessary action both to eliminate the root causes of disproportionate representation of Roma children in the system and return children to their families wherever appropriate.

- *Decade of Roma Inclusion Programme Strategic Plan*

148. ECRI observes that, in view of the particular disadvantage experienced by Roma and a broad range of fields of daily life,[62] a coherent overall framework of action in the short, medium and long term is clearly needed to give members of the Roma minority the chance of participating on an equal footing in Hungarian society.

149. ECRI is pleased to note that on 28 June 2007, the Hungarian Parliament adopted a resolution on the Decade of Roma Inclusion Programme Strategic Plan for 2007-2015. This Resolution explains the background to the Strategic Plan and sets out a series of tasks to be accomplished in the fields of education, employment, housing, healthcare and equal treatment (non-discrimination), as well as culture, media and sports. The government is required to frame two-year action plans, monitor their implementation, keep public and civil actors informed and report at regular intervals to the Parliament. Specific measures to implement the plan in 2008 and 2009 were thus set out by the government in December 2007, in its Resolution 1105/2007. In parallel, the Resolution requests other concerned parties (such as NGOs, local authorities and Roma minority self-governments) to make every effort towards the implementation of the Plan; the mass media to contribute to its dissemination and to the promotion of positive changes in social attitudes towards the Roma; and members of the Roma population to take an active role in initiating and participating in steps taken at all levels to improve their daily lives.

150. ECRI encourages the Hungarian authorities to implement the Decade of Roma Inclusion Programme Strategic Plan with due attention to involving members of the Roma community in ensuring that the measures taken are well suited to achieving the aims sought, as well as to monitoring the impact in practice of the measures taken and adjusting them if necessary.

[62] See above and *Discrimination in Various Fields*.

Migrants, refugees and asylum seekers

- *Asylum-seekers and refugees*

151. In its third report, ECRI recommended that the authorities examine possible changes to legislation and practice pertaining to refugees, asylum-seekers and "persons authorised to stay" in order to improve their general situation. ECRI urged the Hungarian authorities to swiftly take steps to resolve the problems encountered by the latter group due to the precariousness of their status, notably by granting them humanitarian residence permits.

152. In 2007, the Hungarian authorities enacted new legislation to bring the rules governing asylum procedures in Hungary into line with EU harmonisation requirements. Under the new Asylum Act (Act No. LXXX of 2007), the asylum procedure is divided into two phases. The first is a preliminary screening phase for establishing whether a Dublin procedure is to be conducted and – if the conditions for the application of the Dublin regulations do not exist – for filtering out inadmissible applications, with a new (shorter) time-limit of 15 days. This phase is followed by examination on the merits, with a time-limit of 60 days, provided that the application is considered to be admissible. Both phases can be followed by appeal procedures. Throughout these proceedings, and unless they are subject to administrative detention (see below) applicants are accommodated in reception centres, organised by stage of proceedings. They are thus housed in a (closed) centre in Békécsaba at the preliminary stage, in Debrecen Reception Centre during the examination on the merits, including during the entire length of any appeal proceedings, and then for a 6 months' "integration" phase at Bicske Admission Centre if their application is accepted. The new law, implementing Council Directive 2004/83/EC, introduced the category of "subsidiary protection" into Hungarian law, as well as the category of "temporary protection", and granted almost the same rights to beneficiaries of subsidiary protection as to refugees – in other words, they have essentially the same rights as Hungarian citizens. At the same time, the category of "persons authorised to stay" (that is, persons who do not meet the criteria for recognition as Convention refugees or as beneficiaries of subsidiary or temporary protection but who cannot be sent back to their country of origin due to other protection granted under international law (Article 33 of the Refugee Convention, Article 3 ECHR)) continues to be provided for under the Admission and Right of Residence of Third Country Nationals Act (Act No. II of 2007). Following an amendment, Article 110 of the Public Education Act also now specifies the date from which non-Hungarian minors who are asylum-seekers, refugees or the beneficiaries of temporary protection are entitled to kindergarten or compulsory school attendance in the same way as Hungarian citizens and from which these children are obliged to attend compulsory schooling. This date is the date on which the application for recognition is submitted.

153. The new Asylum Act is broadly recognised as having introduced significant improvements to the asylum regime in Hungary. ECRI shares this view. However, despite the positive steps taken, ECRI notes that some problems remain. It seems that the conditions in the centre in which asylum-seekers are required to stay during the initial screening phase, even if they have not committed a border violation, are in practice so closed as to amount to detention; in one case reported to ECRI, an asylum-seeker had been kept in such closed conditions for two months while awaiting the outcome of the screening process. At the merits stage, over 400 asylum-seekers from

41 countries are housed together in the Debrecen Reception Centre,[63] not always co-existing peacefully. Two especially violent incidents occurred on 7 and 8 March 2008, as a result of which nine men had to be hospitalised, and both of which required the intervention of the police.[64] Although single women and single mothers are housed separately from families and single men, such a climate is clearly not the most favourable one in which to help these often particularly vulnerable refugees to find their feet in their new country.

154. As regards education, asylum-seeking and refugee children are, as mentioned above, entitled to benefit from the compulsory education provided for under Hungarian law from the day on which they submit their application for recognition. ECRI is pleased to note that all the school-aged children at Debrecen Reception Centre were in fact attending school in April 2008; however, the same was not true for kindergarten-aged children at the Centre. Of the 9 children, who should, in accordance with the Public Education Act, have been attending kindergarten for four hours a day, and despite the efforts of the Parliamentary Commissioner for Civil Rights to achieve this, only one such child, who already spoke Hungarian, was able to find a place in a kindergarten.[65] ECRI notes with concern reports that educational institutions reject the enrolment of asylum-seeking and refugee children (also children in the Bicske Admission Centre) because the institutions lack the necessary funds to provide Hungarian language training and cultural orientation, or because they fear that local Hungarian parents may remove their children if refugees are allowed to attend.[66] Moreover, even when children are able to enrol, language barriers in particular make it difficult for them to follow classes; schools, teachers and municipalities are rarely equipped to deal with the children they receive, and parents are unable to assist their children, again because of language barriers. Furthermore, pupils complain of daily discrimination through racist attitudes manifested by other children and teachers, not to mention buses failing to stop at the bus-stop outside the refugee reception centre.[67]

155. ECRI strongly recommends that the Hungarian authorities act to ensure that schools comply with their obligation to provide schooling to asylum-seeking and refugee children within their catchment areas. It recommends that the Hungarian authorities provide additional resources to these schools, in order to ensure that the schools are effectively equipped to provide adequate education to these children. In this respect, it also emphasises the need to ensure that teachers are fully trained to deal with culturally diverse classrooms and to provide leadership to pupils in this field.

156. ECRI recommends that the authorities keep under review the new structure of accommodating asylum-seekers and refugees, and adapt it if needed to ensure that all asylum-seekers and refugees live in safe and secure conditions.

157. ECRI again 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 all officials working in relation with refugees and asylum-seekers

[63] Parliamentary Commissioner for Civil Rights, Report of the Parliamentary Commissioner for Civil Rights on the OBH 2004/2008 case, Debrecen Refugee Reception Centre, 2008, p1.

[64] Ibid, p5.

[65] Ibid, p6.

[66] On xenophobic attitudes in Hungary, see also above, *Racism in Public Discourse*, and below, *Prejudice and negative stereotypes with respect to non-citizens*.

[67] See below, *Prejudice and negative stereotypes with respect to non-citizens*.

- *Administrative detention of non-citizens under immigration laws*

158. Hungary applies a detention policy for foreigners, including asylum-seekers, apprehended for unlawful entry or stay. In its third report, ECRI expressed concern at the manner in which this detention policy was applied and recommended that the Hungarian authorities closely monitor the use of detention with respect to non-citizens and take steps to ensure that it would be used only as a last resort and that no discrimination on the grounds of nationality would take place in this respect.

159. Since then, the enactment of the Admission and Right of Residence of Third-Country Nationals Act (Act No. II of 2007) has introduced some important changes, which should serve to reduce any risk of arbitrary or excessively long detention of foreigners. In particular, the total maximum period of detention under Hungary's immigration laws has been reduced from one year to sixth months. A formal decision is required to order detention, and the maximum period for which a person can be detained without being brought before a judge has been reduced from 5 days to 72 hours. The competent court may extend the detention by a maximum of thirty days at a time, until the person's departure or up to the total maximum of six months. The procedures for contesting such detention have also been simplified. Moreover, under the new legislation the immigration authorities are no longer empowered to detain a third-country national subject to an expulsion order on the grounds that he or she is suspected of having committed a petty or criminal offence: only the authorities responsible for criminal proceedings may detain individuals in such cases.

160. These amendments constitute a welcome step forward; however, some actors stress that a number of problems still need to be resolved. It has been stressed that detainees who committed only a minor offence in crossing the border are often subjected to harsher conditions in detention centres than criminals in penitentiary institutions, and that women may experience harsher conditions than male detainees, especially as guards in some detention facilities are almost all men. Families are also reported often to be separated in detention, due to the separation of women and men, with alternatives to detention only being offered to separated children. Some groups have also reported that they suffer from inadequate dietary arrangements. All of these problems are compounded by language difficulties that seriously hinder communication.

161. ECRI reiterates its recommendation that the Hungarian authorities closely monitor the use of detention with respect to non-citizens and take any necessary steps to ensure that it is used as a last resort.

162. ECRI recommends that the Hungarian authorities monitor closely the detention conditions of non-citizens detained under immigration laws, and take all necessary steps to ensure that these conditions are not disproportionately harsh.

- *Prejudice and negative stereotypes with respect to non-citizens*

163. In its third report, ECRI encouraged 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. ECRI also considered that the Hungarian authorities should strengthen their efforts 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". It indicated that the integration policy should include measures designed to improve knowledge of

the Hungarian language and culture, offered to non-citizen adults as well as schoolchildren.

164. The authorities have indicated that their direct participation in the UNHCR's Age, Gender and Diversity Mainstreaming Programme has helped them to identify and make concrete changes to improve the situation of refugees and asylum-seekers in the field, such as providing assistance in improving schooling for children, renovating buildings, providing more appropriate meals, and preparing an information leaflet for release in 2008. However, as yet a sustainable integration policy for refugees, going beyond the provision of necessary Hungarian language classes, is lacking, and continues to be urgently needed. The fact that recognised refugees are housed together in a single admission centre, separate from the community of Bicske where it is based, for at least the first six months after they are recognised as refugees would moreover seem to run directly counter to the express aims of the centre, namely assisting recognised refugees in integrating into Hungarian society.

165. ECRI observes in this respect that the main problems faced by refugees and other migrants in integrating in Hungarian society appear to stem directly from the deeply entrenched negative stereotypes and attitudes of the general public towards them. In addition to problems in access of children to education, as described above, refugees report problems in gaining employment and in access to housing, both through refusals of owners to rent property to foreigners and visible minorities and refusals of banks to provide loans. While no official figures are available on departures of recognised refugees from Hungary, anecdotal evidence received by ECRI is to the effect that the departure rate is high, and that the obstacles faced by refugees in integrating in Hungarian society, due largely to prejudices towards them, are a major factor in this phenomenon. While some awareness-raising campaigns and activities are run, these are generally carried out by civil society with support from international organisations or the European Union. ECRI stresses that in an overall context where overt xenophobia and racism appear to be on the rise, it is all the more important that the authorities themselves take a clear position condemning such attitudes and play an open and active role in combating them.

166. ECRI recommends that the Hungarian authorities review the policy of accommodating all newly recognised refugees and other protected persons in a single admission centre separate from the rest of the community, and replace it with other forms of accommodation and support better adapted to allowing them to integrate rapidly in Hungarian society.

167. ECRI recommends that the Hungarian authorities assume responsibility for running awareness-raising campaigns promoting a positive image of refugees, asylum-seekers and other immigrants. It emphasises in this context that political leaders on all sides should take a firm and public stance against the expression of racist and xenophobic attitudes in both words and deeds.

National and ethnic minorities

168. In its third report on Hungary, ECRI encouraged the Hungarian authorities to monitor the 1993 legislation with a view to ensuring the rights of minorities to cultural autonomy and minority language education. It also recommended 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.

169. ECRI is pleased to note that, except in a few rare cases, members of the twelve recognised national and ethnic minorities other than the Roma community do not report discrimination in their daily lives. The main challenge faced by

members of these minorities remains the realisation of the right to cultural autonomy and minority language education. Provision is made in the Hungarian system for a variety of different forms of minority education, at various stages of schooling, where it is requested. These include minority language schools, bilingual schools, and the teaching of minority languages as a second or foreign language. However, it seems that the form most often used in practice is the last, least intensive form. Because most schools offering minority language teaching are maintained by local authorities, rather than national-level minority self-governments, joint decision-making processes are required. Many complaints in the field of minority education accordingly centre on the rights to consent and opinion. Some minorities also do not have access within Hungary to teacher training for language teachers at all levels, but only to some levels. The authorities have indicated that consultations on the rules governing national and ethnic minority education are on-going.

170. As regards awareness-raising amongst the general public and media professionals concerning the culture of national and ethnic minorities, ECRI has not received new reports of specific problems in this field. However, it draws attention to the current climate of increasing intolerance in Hungarian society and emphasises the role of the authorities in ensuring that a positive image of the diverse groups that make up Hungarian society is promoted.

171. ECRI recommends that the Hungarian authorities keep under review the legal conditions under which the right to maintain schools is transferred to national or ethnic minority self-governments, in order to ensure that the right to minority language education in its various forms can be effectively realised.

172. ECRI recommends that the Hungarian authorities keep the situation as concerns the availability of minority language education under review and take steps where necessary to ensure that students learning in minority language schools or studying minority languages in bilingual schools or as a second or foreign language have sufficient access to fully qualified teachers, reflecting the requirements of the minority to which they belong.

VII. Conduct of Law Enforcement Officials

173. In its third report, ECRI urged 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. In addition, ECRI recommended 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.

174. As regards training of the relevant institutional actors, curricula at both the Police Academy and medium-level in-service police training now include subjects related to human rights and basic freedoms, tolerance and how to deal on the spot with cases involving members of minority groups. In the county of Somogy, a reciprocal programme has also been set up in which police officers and representatives of minority self-governments learn how to deal with each other better. Other, short-term projects have also been run, one of which led to the setting up of minority desk officers in each county-level police station.

175. ECRI welcomes these measures but notes that incidents of police brutality towards Roma continue to be reported.[68] Empirical evidence also suggests that Roma are disproportionately subjected to police stop and search activities,[69] which in turn contributes to disproportionate representation of Roma within the criminal justice system.[70] Prejudice against Roma still permeates the police force, as other sectors of society. At the end of 2006, a number of anti-Roma postings were reported by two police officers to have been made on an internal web site of the national police. The web site was immediately suspended and an investigation launched. Several police officers found to be responsible for the postings were later sent to tolerance training. In parallel to these problems, low levels of confidence in the police force prevail amongst members of the Roma minority, as the number of complaints received by the Parliamentary Commissioner for National and Ethnic Minority Rights attests.

176. ECRI strongly recommends that the authorities continue to take measures to prevent the occurrence incidents of police misbehaviour and mistreatment towards members of minority groups, in particular Roma. It emphasises the need for continuing training to combat prejudices and negative stereotypes, and stresses the positive impact that can be achieved through programmes designed to build mutual confidence.

177. In its third report, ECRI considered that further impetus should be given to efforts to recruit members of minority groups, particularly Roma, as law enforcement officials, and particularly as police officers. To this end, ECRI recommended that any barriers to the recruitment of Roma into the police be identified and, where possible, removed, and encouraged the authorities to inform members of the Roma communities about the possibilities of joining the police force.

178. Measures have been in place for a number of years to boost the recruitment of Roma police officers, including measures to ensure that financial difficulties do not prevent Roma students from joining the police force – such as since 2004, scholarships to cover the boarding costs of Roma students who meet key eligibility criteria for official service. After it was observed that a disproportionate number of Roma applicants failed one or other of the aptitude tests for entry into the police force, the "107 Opportunities with Sports" programme was drawn up in spring 2008, to help disadvantaged young persons aged 10-12 gain new life skills and orient towards careers within the police. At the time of writing, the programme was being funded by the Ministry of Justice and Law Enforcement. By the end of the school year the programme had been carried out in 8 schools, with the participation of 200 pupils.

179. Following the merger of the Police and Border Guards in 2007, the number of officers in the combined force is around 45 000. Roma representatives estimate that not more than 800 (around 1-2%) of them are Roma, compared with an estimated 6-10% of the overall population. The positive measures so far put in place may not be sufficient to remedy this situation, as competitions do not benefit children living in great poverty, and scholarships for adults attending the police academy do not include a salary; in practice, young Roma adults whose parents cannot support them financially are thus excluded from such programmes. The National Organisation of Roma Police Officers has proposed

[68] Parliamentary Commissioner for the Rights of National and Ethnic Minorities, Contribution to the 5th Regular Report of Hungary to the CCPR, Article 7, p19.

[69] In one study, in which police were invited to indicate the ethnicity of persons they had subjected to stop and search procedures, they indicated in around 25% cases that they believed the person to be of Roma origin – compared with a proportion of around 6-8% of Roma in Hungarian society.

[70] See below, *Administration of Justice*.

the setting up of a technical school for policing that would take in children from the age of 14-15 years, who could obtain their high-school qualifications in parallel to preparing to enter the police force. It does not appear that the authorities have given any concrete follow-up to this proposal at this stage.

180. ECRI observes that the authorities have made considerable efforts towards increasing the diversity of the Hungarian police force. At the same time it notes that, while the authorities are well able to identify the minority groups to which candidates applying to join the force belong, in so far as candidates declare at that time their affiliation to any such groups, in contrast, no official figures are available on the composition of the police force itself, or, for example, on career paths or average lengths of time for which Roma police officers remain with the force. Given the manner in which the provisions governing data protection are currently interpreted and implemented, there also does not appear to be any intention of gathering such data in the immediate future.[71] Accordingly, it is difficult to assess the extent to which the programmes put in place have been successful.

181. ECRI strongly encourages the Hungarian authorities to pursue their efforts to recruit members of minority groups, particularly Roma, as law enforcement officials, and particularly as police officers. It recommends that the authorities seek effective means to monitor the impact of the programmes put in place, in order to allow them to be reviewed and adapted where necessary.

182. In its third report, ECRI also stressed 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.

183. ECRI notes with satisfaction that in 2007, the Hungarian authorities enacted legislation creating an Independent Police Complaints Board, which began functioning in spring 2008. The Board is composed of five members who are elected by Parliament for a six-year, non-renewable term, and eight staff members are employed to assist it in its work. Anyone who considers he or she has been a victim of a violation of their rights by a member or members of the police force may lodge a complaint with the Board. The task of the Board is then to determine whether the complainant's rights have been violated, rather than to establish individual responsibilities in such cases. At the time of writing, around 80 complaints had already been received within the first two months of operation of the Board.

184. ECRI recommends that the Hungarian authorities ensure that all the necessary human and financial resources are available to the new Independent Police Complaints Board in order that it be able at all times to carry out its functions effectively.

VIII. Administration of Justice

185. No official data disaggregated by ethnicity exist concerning the representation of various groups within the criminal justice system, and the authorities have pointed out that there is no obligation at any stage for any individuals involved in the criminal justice system to identify themselves as belonging to a particular ethnic group. However, empirical studies indicate that Roma are over-represented in the criminal justice system in Hungary. In one survey, around 45% of the members of the prison population indicated that they belonged to the Roma minority. NGOs emphasise that the fact that Roma are more often

[71] See also below, *Monitoring Racism and Racial Discrimination*.

subjected to police stop and search operations[72] increases the likelihood that they will end up in the criminal justice system. It has also been pointed out that, because Roma are often amongst the poorest members in society, they are more likely to need to rely on officially appointed defence counsel, who are poorly paid and tend to be less active in defending their clients. Moreover, in the Hungarian system, it is the investigative authority – whose interests are directly in conflict with those of the suspect – that selects officially appointed defence lawyers.[73] This compounds the chances that Roma brought before the courts will find themselves entering the prison system. Due to the lack of available data disaggregated by ethnicity, information as to trends in convictions and sentencing patterns of Roma is not available.

186. ECRI observes that the above information indicates at very least that doubts may exist as to whether the criminal justice system as a whole operates without discriminating against Roma. It emphasises that such discrimination may in turn tend to reinforce the cycle of poverty experienced by many Roma, and considers that these questions need to be examined and addressed by the authorities.

187. ECRI urges the Hungarian authorities to take steps to monitor more precisely the impact on the Roma minority, and on other disadvantaged strata of society, of the operation of the criminal justice system at every stage, from police activities to prosecution, convictions and sentencing. It also refers in this context to its recommendations elsewhere in this report that awareness-raising measures be taken to overcome prejudices and negative stereotyping in all sectors of Hungarian society, and emphasises the particular importance of overcoming such attitudes in the criminal justice system, wherever they exist.

IX. Monitoring Racism and Racial Discrimination

188. In its third report, ECRI recommended 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. It indicated that such monitoring should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination, and that 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.

189. The main reason given by the authorities for the lack of data disaggregated by ethnic origin is the high level of protection of personal data afforded by Hungarian legislation; the experience of the Second World War in particular is cited as underpinning the desire to ensure that individuals are not identifiable on the basis of their ethnicity. However, as described repeatedly, throughout this report – in the fields of education, employment, racist violence, administration of justice, to name a few – the absence of such data makes it particularly difficult for the authorities to monitor the effectiveness of the many measures they have taken in order to improve the situation of certain groups, and to adapt the measures accordingly if needed. Proxies are frequently used in designing measures, such as targeting multiply disadvantaged children in the field of education. These provide a clearly legitimate basis for improving the situation of a clearly disadvantaged group and are by no means a problem in themselves. However, they do not suffice to provide a means of assessing whether the

[72] See above, *Conduct of Law Enforcement Officials.*

[73] Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report 2005, Chapter III.3.

specific situation of children belonging to the Roma minority is in fact improving as a result of the measures taken.

190. ECRI recognises that the collection of ethnic data is a sensitive issue, but emphasises that it can also play an important role in measuring whether some groups are disproportionately adversely affected by given phenomena, whether programmes designed to assist certain groups are effectively achieving their goals, and whether new or different measures need to be taken to redress such situations. Provided that certain key requirements are met – that is, that any data collected is anonymous, confidential, used only for the purposes for which it is collected, and is collected on a voluntary basis – the collection and publication of data broken down according to ethnicity can act as a key element in effectively fighting discrimination.

191. ECRI reiterates its recommendation 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. Such monitoring should also 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.

INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the Hungarian authorities are the following:

- ECRI strongly recommends that the Hungarian authorities keep the adequacy of the criminal law provisions against racist expression under review. It strongly recommends that they take into account international standards in this respect , including the recommendations on criminal law provisions contained in ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, according to which the law should penalise racist acts including public incitement to violence, hatred or discrimination as well as public insults, defamation or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin. It recommends that the authorities pay special attention in this regard to ensuring that, in so far as these standards may mean imposing certain limits on the freedom of expression, these limits are interpreted in line with Article 10 of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights. ECRI further recommends that the Hungarian authorities take measures to increase awareness among judges of international standards against racist expression.

- ECRI strongly recommends that the Hungarian authorities introduce an independent monitoring system at national level to ensure the compliance with centrally enacted legislation of measures taken by school maintainers; this system should in particular be instrumental in ensuring that the prohibition on segregation is respected in practice.

- ECRI reiterates its recommendation 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. Such monitoring should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination, and 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.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.

BIBLIOGRAPHY

This bibliography lists the main published sources used during the examination of the situation in Hungary: it should not be considered as an exhaustive list of all sources of information available to ECRI during the preparation of the report.

European Commission against Racism and Intolerance (ECRI)

1. Third Report on Hungary, 8 June 2004, CRI (2004) 25
2. Second report on Hungary, March 2000, CRI (2000) 5
3. Report on Hungary, September 1997, CRI (97) 53
4. General Policy Recommendation No. 1: Combating racism, xenophobia, antisemitism and intolerance, October 1996, CRI (96) 43
5. General Policy Recommendation No. 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, June 1997, CRI (97) 36
6. General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies, March 1998, CRI (98) 29
7. General Policy Recommendation No. 4: National surveys on the experience and perception of discrimination and racism from the point of view of potential victims, March 1998, CRI (98) 30
8. General Policy Recommendation No. 5: Combating intolerance and discrimination against Muslims, March 2000, CRI (2000) 21
9. General Policy Recommendation No. 6: Combating the dissemination of racist, xenophobic and antisemitic material via the Internet, December 2000, CRI (2001) 1
10. General Policy Recommendation No. 7: National legislation to combat racism and racial discrimination, December 2002, CRI (2003) 8
11. General Policy Recommendation No. 8: Combating racism while fighting terrorism, March 2004, CRI (2004) 26
12. General Policy Recommendation No. 9: The fight against antisemitism, June 2004, CRI (2004) 37
13. General Policy Recommendation No. 10: Combating racism and racial discrimination in and through school education, December 2006, CRI (2007) 6
14. General Policy Recommendation No. 11: Combating racism and racial discrimination in policing, June 2007, CRI (2007) 39

Other sources

15. Constitutional Court, Case No. 236/A/2008, decision of 30 June 2008
16. Constitutional Court, Case No. 18/2004, decision of 25 April 2004
17. Constitutional Court, Case No. 12/1999, decision of 21 May 1999.
18. Parliamentary Resolution 68/2007 (VI.28.) on the Decade of Roma Inclusion Programme Strategic Plan, and Annex
19. Ministry of Health, Social and Family Affairs, Directorate-General for Employment and Social Affairs, Joint Memorandum on Social Inclusion of Hungary, Brussels, 18 December 2003
20. National Institute for Public Education, Hungarian Institute for Educational Research and Development, Education in Hungary 2006, Budapest, 2007
21. Parliamentary Commissioner for National and Ethnic Minority Rights, Contribution of the Ombudsman for National and Ethnic Minorities' Rights to the 5th Regular Report of Hungary to the CCPR, Budapest, March 2008
22. Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report 2006, Budapest, March 2007
23. Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report 2005, Budapest, March 2006
24. Parliamentary Commissioner for National and Ethnic Minority Rights, Annual Report, Budapest, 2004

25. Parliamentary Commissioner for Civil Rights, Report on the OBH 2004/2008 case, Budapest, April 2008
26. Equal Treatment Authority, Annual Report 2006, Budapest, 2007
27. Equal Treatment Authority, Annual Report 2005, Budapest, July 2006
28. European Committee on Social Rights, Conclusions XVIII-1, Hungary.
29. Advisory Committee on the Framework Convention for the Protection of National Minorities: Second Opinion on Hungary, adopted on 9 December 2004, 14 December 2005, ACFC/INF/OP/II(2004)003
30. Advisory Committee on the Framework Convention for the Protection of National Minorities, Comments of the Government of Hungary on the Second Opinion on Hungary, received on 25 April 2005, 14 December 2005, GVT/COM/INF/OP/II(2004)003
31. Office of the Commissioner for Human Rights, Follow-up Report on Hungary (2002-2005), 29 March 2006, CommDH(2006)11
32. Committee of Experts on the European Charter for Regional and Minority Languages, 3rd Report of the Committee of Experts on the application of the Charter in Hungary, adopted on 1 December 2006, ECRML (2007) 5
33. Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights, 22 May 2007, E/C.12/HUN/CO/3
34. Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women, 10 August 2007, CEDAW/C/HUN/CO/6
35. Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Sixth periodic report of Hungary to the Committee on the Elimination of Discrimination against Women, 15 June 2006, CEDAW/C/HUN/6
36. Committee on the Elimination of Discrimination against Women, Views, Communication No. 4/2004, 29 August 2006, CEDAW/C/36/D/4/2004
37. Open Society Institute, EUMAP Report on Equal Access to Quality Education for Roma, Vol. I, Monitoring Reports 2007 – Hungary, 2007
38. European Roma Rights Centre, The Glass Box: Exclusion of Roma from Employment, Budapest, February 2007
39. European Roma Rights Centre, Ambulance Not on the Way: The Disgrace of Health Care for Roma in Europe, Budapest, September 2006
40. European Roma Rights Centre, Dis-Interest of the Child: Romani Children in the Hungarian Child Protection System, Budapest, December 2007
41. National Democratic Institute, The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation, National Democratic Institute Assessment Report, September/October 2006
42. U.S. Department of State, Country Reports on Human Rights Practices 2007 – Hungary, Released by the Bureau of Democracy, Human Rights and Labor, 11 March 2008
43. U.S. Department of State, International Religious Freedom Report 2007 – Hungary, Released by the Bureau of Democracy, Human Rights and Labor, 14 September 2007

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 report on Hungary, is dated 20 June 2008, 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 authorities of Hungary. A number of their comments were taken into account by ECRI, and integrated into the report.

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

"Observations from the Hungarian authorities

as to point 18

In the Criminal Code there are other facts which regards to incitement to racial hatred, but only indirectly. These crimes are: Defamation, Libel, Desecration.

Beyond that there are other crimes which can be committed „for another malicious motive or purpose". The definition of *committed for another malicious motive or purpose* covers also the acts which are committed with hate motivation. In these cases the punishment shall be more serious than in genaral. Such crime is for example Homicide.

The acts of the fourth group can be admitted as racially motivated crimes by judges if the racist motivation is proven. In these cases the judges have discretion to impose harsher penalties.

as to point 28

Complaints are being checked annually in the period from the 1st of November of the previous year to the 31st of October of the actual year. In the objected period 10 announces were registered concerning gipsy ethnical discrimination.
Criminal actions were initiated in 3 of the cases. 2 of them are still in progress, and 1 was discontinued in lack of evidence. In the remaining 7 cases the complaints resulted to be unambiguously unfounded.
In the year 2007 statistics show that 13 complaints were made in connection with racism, while in this examined year 10 cases were registered, which shows a decreasing tendency in the number of cases.

as to point 55

We consider it important to specify the composition of the participants of the legal working group of the State Secretariat for the National and Minority Policy (hereinafter: State Secretariat) in the paragraph referring to the participants. The report gives rise to misunderstanding as it gives the impression that only the representatives of the national and ethnic minorities are included in the activity of the working group concerned while the relevant ministries, the Ombudsman for National and Ethnic Minorities' Rights and independent professionals are also involved in the work.

Nevertheless it is necessary to clarify the relationship between the working group and the State Secretariat since the „auspicies" phrase is inacurrate. The legal working group operated by the State Secretariat and working beside of it is an informal deliberative body.

as to point 123

Beside the reduction of segregation in housing as a priority the main goal is to improve the housing situation of Roma. One of the priority areas of 68/2007 parliamentary resolution on the Decade of Roma Inclusion Programme Strategic Plan is housing. Some measures of implementation of this goal:

- ensuring equal access to basic public services for people living in the most disadvantaged regions.
- expansion of the potential access's to social housing for those who are in real need.
- complex development of the most disadvantaged regions densely populated with Roma people (where the existence of settlements or settlement-like environment is fairly frequent).

as to point 132

The National Programme for the Decade of Health was launched by Decision No. 46/2003. (IV.16.) OGY of the Parliament of the Republic of Hungary. The fundamental mission of the Public Health Programme is to respond to health challanges, and to assist and accelerate the life chance of the Hungarian population, so that it may approach the European Union's average as soon as possible. The continuation of the Public Health Programme is a legal obligation and an opportunity to improve the health status of the Hungarian population. Screening for breast and cervical cancer provided for in the framework of the programme, as well as equal opportunities, as a horozontal priority, are of special significance.

as to point 150

Decision of the Government on 1105/2007 on the Government Action Plan for 2008–2009 related to the Decade of the Roma Inclusion Program Strategic Plan was adopted on December 2007. Roma NGOs are involved in the implementation of the Government Action Plan in the frame of Roma Integration Council and Roma Steering and Monitoring Committee.

as to point 158

The asylum authority shall – until the initial screening process is finally closed – place the foreigner applying for recognition as a refugee or a beneficiary of subsidiary protection in reception centres which, however, cannot be regarded as detention. We do not agree with the statement that formerly persons of certain nationalities were automatically placed in detention for the maximum period on the sole ground of their nationality, irrespective of any other criteria that should normally be taken into account. Such discriminative practice has never existed. For the above reasons we do not agrre with the content of point 158.

as to point 160

Decree No. 27/2007. (V.31.) IRM contains the rules pertaining to the enforcement of detention ordered in immigration proceedings. Section 6 (4) of this Decree provides that minimum 10 900 joule food shall be provided for each detainee on a daily basis, taking into account the detainee's health status and, so far as possible, the dietetic rules of his religion. Moreover, the Decree contains provisions on the diet of pregnant women and women with babies as well.
For the above reasons we do not agree with the following sentence: „Dietary arrangements are also inadequate for some groups."

as to point 176

In accordance with ECRI recommendations human rights and anti-discrimination are subject to the curriculum and is an integral part of the professional courses.

Budapest, 5 December 2008"