

ECRI REPORT ON HUNGARY

(fifth monitoring cycle)

Adopted on 19 March 2015

Published on 9 June 2015

COUNCIL OF EUROPE



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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 takes 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 2007, and those of the fourth round will be completed at the beginning of 2014. Work on the fifth round reports started in November 2012.

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

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 12 December 2014; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Hungary on 20 June 2008, progress has been made in a number of fields.

Hungary's Criminal Code provisions on incitement to hatred and violence against a community as well as its non-discrimination legislation contain explicit references to sexual orientation and gender identity. The Act on Equal Treatment and Promotion of Equal Opportunities is widely considered a good instrument. The structure and powers of the Equal Treatment Authority are now in line with the principles set out in ECRI's General Policy Recommendations No. 2 and No. 7.

An amendment to the Act on the National Assembly was introduced in 2013 allowing members of Parliament to be fined or excluded from proceedings for abusive language or expressions offending the dignity of any national, ethnic, racial or religious community.

The Hungarian Guard Association was dissolved by the Metropolitan Court of Appeal in 2009 on account of its extreme right-wing paramilitary activities. The Criminal Code now also includes the offence of abuse of freedom of assembly.

Following the "Roma murders" in 2008-2009, a specialised unit was set up in the police on hate crime and training sessions have been organised with the help of NGOs. Police constantly monitor areas at risk of conflict. They now also monitor files in cases of violence and can re-qualify an offence if any hate motivation is suspected.

As of 1 September 2015, it will be mandatory for all children to go to kindergarten from age three.

In October 2013 the Government adopted a Migration Strategy for 2014 to 2020 with a chapter on facilitating the integration of long-term residents and beneficiaries of international protection. Activities include awareness-raising campaigns to encourage a more open attitude towards migrants and promote a shift towards multiculturalism.

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

The application of criminal law provisions on incitement to hatred remains extremely limited. A radical right-wing populist party openly engages in anti-Roma, antisemitic, homophobic and xenophobic hate speech. However, hate speech is not restricted to extremist parties and groups but occurs across the political spectrum. On some occasions calling for counter speech the authorities have remained silent. As a result of the climate of impunity, derogatory remarks about Roma, Jews, LGBT persons, asylum seekers and refugees have become commonplace in the public sphere.

Some media publish or broadcast blatantly racist material. Cyberhate poses a particular challenge and Hungary has still not ratified the Additional Protocol to the Convention on Cybercrime.

Racist violence against Roma is one of the most important problems in Hungary. Paramilitary groups have been marching and organising demonstrations and illegal patrols in villages, harassing and intimidating the Roma community in their own neighbourhoods. Between January 2008 and September 2012, 61 separate attacks took place resulting in the death of nine Roma, including two minors, and dozens of injuries. The situation improved in 2013.

The Budapest Pride parade has been the target of homophobic attacks by neo-Nazi groups. More recently, migrants, asylum seekers and refugees have been victims of racist violence.

Hungary's National Social Inclusion Strategy has had little impact so far. It does not address segregation in education. Disproportionate numbers of Roma children continue to be placed in schools for pupils with learning disabilities. Roma occupy the most disadvantaged position in the labour market. The shortage of social housing persists and efforts by the Government to improve access to housing are sometimes obstructed by local authorities; Roma are often forced out of social housing in order for apartments or land to be sold at a profit.

The current measures for beneficiaries of international protection are ineffective in equipping them with the skills and support necessary for integration. Refugees face many problems in practice, notably homelessness; sleeping in certain public places can now lead to criminal sanctions.

Around 22% of all asylum seekers are deprived of their liberty, mostly in asylum detention facilities with very poor living conditions, harsh treatment by guards and lack of access to legal aid or assistance from civil society.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

The authorities should take a less restrictive approach to the provisions against incitement to hatred to allow for due prosecution and punishment of hate speech. Political leaders on all sides should take a firm and public stance against the expression of racist and homophobic hate speech and react to it with a strong counter-hate speech message. The National Crime Prevention Strategy should be revised to include measures aimed at combating crime motivated by racial and homo/transphobic violence.

The authorities should develop a policy against segregation in education and take steps to eliminate it. They should also ensure that all Roma children have the possibility to benefit from the new rules concerning compulsory pre-school attendance at age three. The practice of placing Roma children without genuine disabilities in schools for the mentally disabled should be definitively stopped.

The central Government should take action in all cases where local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly or indirectly discriminatory rules in respect of housing.* The authorities should conduct an evaluation of the implementation of the National Social Inclusion Strategy to measure its impact and redefine its goals where necessary.

The authorities should revise their integration measures for beneficiaries of international protection to ensure that they have access to language courses, increased access to vocational training and assistance with employment and housing. Open reception facilities should be used to accommodate asylum seekers, in particular families with children.*

An action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, should be drawn up and adopted.

* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism¹ and racial discrimination²

- Protocol No. 12 to the European Convention on Human Rights

1. Hungary signed Protocol No. 12 in 2000 but has still not ratified it. With the setting up of the Equal Treatment Authority in 2003, the authorities stated that they did not see any need to ratify the protocol. However, with a new Government and Parliament since the elections in May 2014, they stated that there could be a fresh consideration of the issue. ECRI considers ratification of this instrument, which provides for a general prohibition of discrimination, to be vital in combating racism and racial discrimination.

2. ECRI reiterates its recommendation for Hungary to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

- Fundamental Law (Constitution)

3. Hungary enacted a new Fundamental Law on 25 April 2011, which entered into force on 1 January 2012. Article XV (2) covers the principle of equal treatment; fundamental rights are guaranteed “to everyone without discrimination ... on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.” Contrary to what ECRI generally recommends,³ the article lacks an express reference to citizenship. However, as the list of grounds is non-exhaustive, this element should in principle be covered.

4. Furthermore, a Fourth Amendment to the Fundamental Law entered into force on 1 April 2013. Article IX (5) states: “The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community”. The new provisions thus provide specifically for civil law remedies against hate speech, which ECRI notes have been translated into the new Civil Code (see § 19 of this report). Moreover, the amendment seems effectively to contradict several leading freedom of expression rulings of the Constitutional Court, which provide that recourse to criminal law to restrict free expression is only admissible in extreme cases which pose a clear and present danger of breach of the peace. ECRI hopes, therefore, that the amendment might pave the way for a less restrictive approach to prosecuting hate speech. At the same time, it reiterates concerns raised by the Venice Commission,⁴ in particular that the terms used in the amendment have potential for a wide scope of application and that they might also be applied to curtail criticism of Hungarian institutions and office holders.

¹ According to ECRI’s General Policy Recommendation (GPR) No.7, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons.

² According to GPR No. 7 “racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

³ ECRI GPR No. 7 § 2.

⁴ See Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), Opinion 720 / 2013, Strasbourg, 17 June 2013, CDL-AD(2013)012, paras 48-53.

- **Criminal law**

5. In its fourth report, ECRI strongly recommended the Hungarian authorities to keep the adequacy of the criminal law provisions against racist expression under review, taking into account its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. This was one of ECRI's interim follow-up recommendations. In its conclusions published on 8 December 2011, ECRI noted that some amendments had been introduced into the Criminal Code. Specifically, Article 174/B had been modified to prohibit assaults against a person belonging to "certain groups of the population". However, ECRI considered the amendments insufficient and concluded that the recommendation had not been implemented.
6. ECRI notes that on 1 July 2012, Hungary enacted a new Criminal Code, which entered into force on 1 July 2013. The following analysis compares the new provisions with the standards set in ECRI's GPR No. 7.
7. Article 332 of the Criminal Code criminalises incitement to hatred against a community, including a national, ethnic, racial or religious group, as well as certain groups of the population based on disability, gender identity and sexual orientation, with up to three years' imprisonment.⁵ There is no reference to incitement to discrimination or violence, as per ECRI's GPR No. 7 § 18 a. ECRI considers that the term "national group" does not exclude the prohibited ground of citizenship, although there is no case law to confirm this. However, there is no reference to the prohibited ground of language.
8. Article 226 criminalises defamation, but with no mention of any grounds, contrary to what is recommended in GPR No. 7 § 18 b.
9. Article 216 criminalises violence towards a member of a community, which is defined as anyone belonging to a national, ethnic, racial or religious group, or based on disability, gender identity or sexual orientation. Paragraph 1 punishes with up to three years' imprisonment the commission of openly anti-social behaviour, liable to create fear, towards members of a community, both real and perceived. ECRI considers that public insults could be covered under this provision, in line with its GPR No. 7 § 18 b. Paragraph 2 punishes, with one to five years' imprisonment, threats of violence as well as violence towards members of the same groups, in accordance with GPR No. 7 § 18 c. However, the ground of language is not explicitly included.
10. ECRI recommends amending the Criminal Code to include: incitement to discrimination and incitement to violence in Article 332; a racism-specific defamation offence in Article 226 including all the grounds mentioned in its General Policy Recommendation No. 7 § 18 b; and the prohibited ground of language in Articles 332 and 216. They should also assess the need for further changes should an analysis of the case law show gaps in connection with citizenship and public insults.
11. In addition, ECRI regrets that the new Criminal Code lacks a reference to the public expression, with a racist aim, of an ideology which claims the superiority or, or which depreciates or denigrates, a group of persons on grounds of their race, colour, language, religion, nationality, or national or ethnic origin, as per GPR No 7, § 18 d. There is also no mention of the public dissemination, distribution, production or storage, with a racist aim, of written, pictorial or other material containing racist manifestations (§ 18 f); the creation or the leadership of a group which promotes racism, support for such a group and participation in

⁵ At the time of ECRI's fourth report, this was Article 269 on incitement against a community, including a national, ethnic, racial or religious group.

its activities (§ 18 g); racial discrimination in the exercise of one's public office or occupation (§ 18 h); and the liability of legal persons (§ 22).

12. ECRI recommends that the authorities amend the Criminal Code in order to remedy the gaps identified in § 11 of this report.

13. In its fourth report, ECRI recommended that the authorities make specific provisions in the criminal law for racist motivations for ordinary offences to constitute an aggravating circumstance, corresponding to its GPR No. 7 § 21. Article 80 of the Criminal Code sets out the "principles of punishment", which is a general framework for aggravating and mitigating circumstances with no specific mention of racist motivation. A number of offences, such as homicide and battery, if committed with "malice aforethought or malicious motive", give rise to higher penalties. The authorities have stated that racist motivation always qualifies as malicious motive. ECRI considers that this should be explicitly stated in the Criminal Code and should apply to all criminal offences.

14. ECRI reiterates its recommendation to include in the Criminal Code racist motivation as a specific aggravating circumstance for all criminal offences.

- **Civil and administrative law**

15. The Act on Equal Treatment and Promotion of Equal Opportunities (hereafter the Act) was passed in 2003 and has been amended several times, most recently in 2013. The Act prohibits both direct and indirect discrimination and sets out an open-ended list of protected grounds, including all those specified in ECRI's GPR No. 7 (race, colour, language, religion, nationality and national/ethnic origin), as well as sexual orientation and gender identity. ECRI is pleased to note that the Act is widely considered a good instrument. The analysis below focuses only on areas which could be improved in order for it to function as a comprehensive and effective tool against racial discrimination.

16. While Article 7 of the Act states that direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation and any orders issued to carry out the aforementioned constitute a violation of the principle of equal treatment, there is no reference to discrimination by association,⁶ inciting another to discriminate or aiding another to discriminate, as per ECRI's GPR No. 7 § 6. As concerns announced intention to discriminate, this is mentioned in Article 21 of the Act but it only applies in the area of employment. The Civil Code provides that any contract incompatible with the law shall be null and void, as per GPR No. 7 § 14.

17. ECRI recommends amending the Act on Equal Treatment and Promotion of Equal Opportunities to remedy the gaps identified in § 16 of this report.

18. The Act does not set out an obligation to suppress public financing of organisations which promote racism or the possibility of dissolution of such organisations, as recommended in GPR No. 7 §§ 16-17. However, ECRI notes that the decree-laws giving effect to the International Covenant on Civil and Political Rights⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination⁸ provide for these possibilities.

⁶ The authorities have informed ECRI that, while not explicitly mentioned in the Act, it is within the competence of the Equal Treatment Authority to decide on cases of discrimination by association, following Resolution No. 288/2/2010 (IV.9) TT of the Equal Treatment Advisory Board.

⁷ Law-Decree no. 8 of 1976 (Article 20).

⁸ Law-Decree no. 8 of 1969 (Article 4).

19. Finally, as observed above, the new Civil Code of 2013, which entered into force on 15 March 2014, provides a civil law response to hate speech against a community, developing further the Fourth Amendment to the Fundamental Law. According to section 2:54 (§ 5) of Act V, “Any member of a community is entitled to enforce his or her personality rights within a thirty day term in the event of any false and malicious statement made publicly against the Hungarian nation or a national, ethnic, racial or religious community, which is recognised as an essential part of his/her personality, and which is manifested in conduct seriously violating or attempting to damage that community’s reputation”. Thus, hate speech targeting a community amounts to a violation of the rights of its members. Any member of the community affected may ask the court to declare a violation, to issue an injunction to stop the violation, or to seek damages.

- **Independent authorities specifically entrusted with the fight against racism and intolerance**

20. The Equal Treatment Authority (hereafter the Authority) was established by the Act on Equal Treatment and Promotion of Equal Opportunities (the Act) and has been functioning since February 2005. Following legislative amendments in 2011 and 2013, the Authority is now an autonomous administrative body; it is independent and cannot be instructed in the performance of its duties; and its budget constitutes a separate title within the budget chapter of Parliament. The Authority is headed by its president, who is appointed by the President of Hungary for a term of nine years. The vice-president is appointed by the Authority’s president for an indefinite period. Civil servants and other employees of the Authority are also appointed by its president.

21. The Authority is a quasi-judicial body whose main task is to make legally binding decisions in cases of alleged violation of the Act either at the request of an injured party or ex officio. If it establishes a violation, a number of remedies are available, including the imposition of fines ranging from 50 000 to six million HUF (around 160 to 19 000 Euros). The proceedings are entirely free of charge.

22. ECRI is pleased to note that the structure and powers of the Authority are now in line with the principles set out in its GRP No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and the key components of its GPR No. 7. ECRI concludes with satisfaction that the general legal framework for a national specialised body is complete.

23. Moreover, ECRI welcomes the creation of a network of equal treatment consultants across the country; there are 20 in total, one in each of Hungary’s 19 counties and one in Budapest. They offer advice free of charge, record all complaints and assist victims of discrimination in compiling submissions and forwarding them to the Authority. They are responsible for assisting local authorities in preparing local equal opportunity plans, as required under the Act, as well as raising awareness of non-discrimination requirements and disseminating information concerning equal treatment.

2. Hate speech⁹

24. Hate speech is covered by the criminal offence of incitement to hatred against a community (Article 332 of the new Criminal Code - see § 7 above). The new Civil Code also provides for the enforcement of personality rights of members of a community (see § 19).

⁹ This section covers racist and homo/transphobic speech. For a definition of “hate speech” see Recommendation No. R (97) 20 of the Committee of Ministers to the member States on “hate speech”, adopted on 30 October 1997.

- **Data**

25. According to the OSCE's Office for Democratic Institutions and Human Rights, data on hate-motivated offences are collected by the prosecutor's office and the police and are published as part of general crime statistics with no recording of bias motivation. Data protection laws generally do not allow the recording of data on ethnic origin or religion. The authorities informed ECRI that between 2009 and 2013, the police recorded 201 incidents as possible violations of Article 332. They were also able to state that 62% of these incidents involved alleged hate speech against Roma, 20% against Jews, 7% against LGBT persons and the remainder concerned ethnic origin and skin colour (see also § 37).

- **Extremist groups and political discourse**

26. The rise of the radical right-wing populist party, Movement for a Better Hungary, better known as Jobbik, along with its open anti-Gypsyism and antisemitism, have generated negative headlines about Hungary in recent years. Jobbik was registered in 2003 and by 2010 had become the country's third largest party. In the April 2014 parliamentary elections, it secured 20.54% of the votes and currently holds 23 of the 199 seats, representing 11.56% of the Parliament. In the October 2014 local elections, Jobbik came in second in 18 out of 19 counties. It describes itself as a conservative and radically patriotic Christian party whose fundamental purpose is the protection of Hungarian values and the only party representing the interests of ethnic Hungarians, especially on the issue of "Gypsy crime" (a term it coined). It has been described variously as fascist, neo-Nazi, extremist, racist and homophobic. Its rhetoric fuels existing prejudices against Roma and Jews in particular and has contributed to the current climate of resentment and hostility towards these communities.
27. ECRI notes that antisemitism is extensively documented in the political discourse of Jobbik. In 2012, a Jobbik member of Parliament called for lists to be drawn up of people with Jewish ancestry, particularly members of the Government and Parliament with dual Israeli-Hungarian citizenship, claiming they could present a national security risk. In February 2014, a Jobbik politician speaking at a public event referred to the Holocaust as the "Holoscam". Research conducted at the Central European University¹⁰ showed that the proportion of respondents expressing anti-Jewish views shot up from 10 to 28 % in 2010 (the year Jobbik first won seats in Parliament) and has never fallen below 20 % since then.
28. Homophobic speech is also part of Jobbik's agenda. In April 2012, its members attempted to introduce a bill into Parliament that would amend the Criminal Code and the laws on media and advertising to punish anyone who "promotes their deviant sexual relations with another person of the same sex, or other disturbances of sexual behaviour, before the wider public". ECRI notes that the draft legislation failed to pass.
29. In 2013, following a sudden and large influx of asylum seekers, Jobbik began to stoke intolerance towards migrants; it announced a protest to demand the removal of the Debrecen reception centre (see also the section on Topics specific to Hungary, Detention of asylum seekers). Asylum seekers then became the target of extremely xenophobic public discourse and social media invoked stereotypes of them bringing infectious diseases into the country, as well as being "lazy", "uncivilised" and "criminals". In August 2014, a Jobbik

¹⁰ <http://www.reuters.com/article/2014/05/21/us-hungary-antisemitism-idUSKBN0E10E420140521>.

member called for tougher policies towards refugees who put a great financial burden on the country, reduce public safety standards and cause health risks.¹¹

30. ECRI notes that a number of extremist and neo-Nazi groups not registered as political parties exist in Hungary, some of which have links with Jobbik. They operate in areas inhabited mainly by Roma and carry out organised activities to intimidate them. The years 2011 to 2012 saw the worst of such action in several towns across Hungary (see the next section on Racist violence). LGBT people have also been the targets of hate speech by such groups. During the Budapest Gay Pride Parade of June 2011, neo-Nazi groups officially organised counter-demonstrations with several hundred participants gathered at a large square on the route of the march. Group activists held up signs calling for the extermination of gays (the signs showed a rope, a pink triangle referring to the persecution of homosexuals in Nazi Germany and the words: "New treatment for the gays") and shouted "dirty faggots".
31. ECRI is, moreover, concerned that hate speech is not restricted to extremist parties and groups but occurs across the political spectrum. State officials and members of mainstream parties have been implicated. For example, a prominent journalist, co-founder and member of the ruling Fidesz party, published an article in the Magyar Hírlap newspaper in January 2013 in which he asserted that a significant portion of Roma are "animals" that "should not exist".¹² This caused outrage in Hungary and across Europe.¹³ Similarly, in May 2014, the Prime Minister's personal representative for cultural matters stated publicly that the theatre world should be liberated from the "lobby of the fags".

- **Other forms of public discourse**

32. ECRI has been informed about a disturbing incident, in March 2014, in which the presiding judge in the Regional Court of Gyula justified her decision to refuse dissolution of an extreme right-wing paramilitary group for its unlawful anti-Roma activities in Gyöngyöspata in 2011, by making stereotypical and derogatory remarks about "Gypsy crime" and Roma lifestyle.¹⁴ Roma organisations and NGOs submitted complaints, finding it unacceptable that a member of the judiciary, acting in her official capacity, openly expressed her racist and discriminatory views (see also § 46).

- **Traditional media and Internet**

33. Research published in 2013¹⁵ revealed intolerant discourse not only from the radical right media but from the conservative media as well. In the latter, Roma were often characterised as biologically different with an innate inclination for crime. A regular columnist for the Magyar Hírlap conservative daily has a

¹¹ <http://www.politics.hu/20140813/jobbik-urges-strictor-refugee-policies/>.

¹² The article contained the following passage on Roma: "A significant portion of the Gypsies are unfit for co-existence, not fit to live among human beings. These people are animals and behave like animals... If he finds resistance, he kills... He wants what he sees. If he doesn't get it, he takes it and he kills... From his animal skull only inarticulate sounds come out and the only thing he understands is brute force... These animals should not exist. No way. This must be solved, immediately and in any way possible."

¹³ See the article published in Deutsche Welle: <http://www.dw.de/moving-right-in-hungary/a-16563266>.

¹⁴ The judge stated: "Being a Roma should not be primarily interpreted as a racial category, rather as a way of life led by a group of people who stand apart from the traditional values of majority society, and whose lifestyle is characterised by the avoidance of work and the disrespect of private property and the norms of living together". Her comments on "Gypsy crime" were the following: "It cannot be denied that a relatively high proportion of criminals are of Gypsy origin. Although the circle of Gypsies and criminals is not identical ... the overlap between the two justifies the use of "Gypsy crime" for describing the anomaly."

¹⁵ Accept Pluralism Research Project, New Knowledge about Hungary. Available at: http://cadmus.eui.eu/bitstream/handle/1814/26116/2013-04-New_Knowledge_Hungary.pdf?sequence=1.

journalistic track record of attacking Jews; he once referred to them as “stinking excrement”. A television channel called Echo TV, founded in 2005 and reported to be “favoured among neo-fascists”,¹⁶ broadcasts blatantly racist material. One of its well-known presenters regularly spreads antisemitic conspiracy theories during his shows and on one occasion he called Roma “apes”. In an astonishing move, the Minister for Human Capacities awarded him the Tancsics Prize (the country’s top journalism award) on Hungary’s national day in 2013. Following a public outcry and condemnation from the Israeli and US ambassadors, the prize was withdrawn by the same minister four days later. According to a 2013 survey¹⁷, 71% of respondents in Hungary felt that antisemitic reporting in the media was “a very big problem”.

34. The issue of cyberhate poses a particular challenge for the Hungarian authorities. For example, kuruc.info, an openly racist, xenophobic, anti-Roma, antisemitic and homophobic web portal is one of the most active and significant hate groups in the country. It has strong ties to Jobbik, with the party’s campaign ads and activity updates hosted on the portal. The Metropolitan Chief Prosecution Office in Budapest has investigated the website but was unsuccessful in shutting it down because the server is located in the United States.¹⁸ It should be noted that Hungary has not signed or ratified the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, although it ratified the Convention on Cybercrime in 2003. In view of the changes introduced by the Fourth Amendment to the Fundamental Law setting new limitations on free speech, ECRI considers that Hungary could now envisage ratification of this instrument which might provide assistance in combating on-line hate speech.

35. ECRI recommends that Hungary ratifies the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

- **Response of the authorities**

36. ECRI considers hate speech particularly worrying because it is often a first step in the process towards actual violence. Appropriate responses to hate speech include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as self-regulation, prevention and counter speech.

37. In its fourth report, ECRI urged the authorities to intensify their efforts to ensure a more vigorous application of criminal law provisions relating to the fight against racism. It regrets that the application of provisions on incitement to hatred remains extremely limited. As mentioned above (§ 25), only 201 incidents have been recorded over a period of five years; six cases were heard in the criminal courts and all resulted in convictions. ECRI is aware that the major difficulty for prosecutors is the strict interpretation of the Constitutional Court on what constitutes incitement to hatred. This can only be established when a person incites to a violent act that leads to a clear and present danger, described by the authorities as “active hatred”. In ECRI’s view, this very high threshold means, in practice, that there is no appropriate criminal law response to forms of expression which spread, incite, promote or justify racial hatred (see

¹⁶ As reported in Le Monde on 29 March 2013 in the article “Prime au fascisme en Hongrie”.

¹⁷ Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, European Union Agency for Fundamental Rights, November 2013.

¹⁸ The US authorities were unable to provide legal assistance in this case due to the provisions of the First Amendment to the US Constitution on free speech.

footnote 5). This has led to a situation of impunity and could explain why various forms of hate speech continue to occur. ECRI hopes that a new interpretation will be given to Article 332 in light of the Fourth Amendment to the Fundamental Law (see § 4), which will provide genuine opportunities to combat hate speech through criminal law.

38. ECRI strongly recommends that a less restrictive approach is taken to the criminal law provisions against incitement to hatred to allow for due prosecution and punishment of hate speech.
39. On the other hand, ECRI is pleased to note that the Criminal Code (Article 333) punishes public denial of the crimes of National Socialist and Communist regimes and the use of symbols of such regimes. The first person to be convicted received an unconventional punishment; in addition to an 18 month suspended prison sentence, he was ordered to visit the Budapest Holocaust Memorial Centre, Auschwitz-Birkenau or the Yad Vashem memorial in Israel and record his observations.
40. As far as civil law is concerned, ECRI notes that the new provisions mentioned in § 19 of this report have not yet been applied.
41. Regarding administrative law, Act CIV of 2010 on the freedom of the press and the fundamental rules on media content sets out that media content may not incite hatred or discriminate against any nation, community, national, ethnic, linguistic or other minority or any majority, as well as against any church or religious group. There is no explicit reference to sexual orientation or gender identity, but the authorities assert that these are covered under “community”.
42. The above-mentioned Act empowers the Media Council to investigate cases of infringement, both ex officio and following a complaint, and to impose sanctions. These include fines, an obligation to publish the decision on the violator’s webpage, and temporary suspension from providing media services. Since 2011, only 15 cases have been heard by the Council, four of which ended with a decision of violation. One of these concerned the TV presenter mentioned in § 33 who was fined 500 000 HUF (around 1 600 Euros) for derogatory remarks about Roma. ECRI is very concerned, therefore, that hate speech in the media also seems to go largely unpunished. It notes, in this context, that doubts about the independence of the five-member Council have been expressed: the appointment system gives the Government de facto control over it.¹⁹ Legislative amendments in 2013 have changed the procedure for appointing its president in a satisfactory manner but there have been no changes in respect of the other members.²⁰
43. ECRI strongly recommends that the authorities amend the appointment procedures for all members of the Media Council to ensure political plurality; it encourages it to be more pro-active in cases of dissemination of hate speech.
44. As for self-regulation, ECRI also notes that there are various codes of ethics for media professionals containing provisions on hate speech. The Code of Ethics of the Hungarian Association of Journalists, for instance, states: “Journalists ... must not incite hatred or propagate racial discrimination against peoples, nations or ethnicities. They must not spread libel about anyone, or attempt to

¹⁹ See the Opinion of the Council of Europe Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media, CommDH(2011)10.

²⁰ The president of the Media Council will no longer be appointed by the Prime Minister, but by the President of the Republic on the recommendation of the Prime Minister. The other four members will continue to be elected by Parliament, following a nomination procedure. <http://merlin.obs.coe.int/iris/2013/4/article17.en.html>. See also footnote 25.

defame anyone because of his/her religion, beliefs, gender, physical or mental state, age or difference in way of living.”

45. In order to combat hate speech on the political level, an amendment to Act XXXVI on the National Assembly was introduced in January 2013. This allows members of Parliament to be fined or excluded from proceedings for using abusive language or expressions offending the dignity of the National Assembly or of a person or group, in particular, any national, ethnic, racial or religious community. ECRI welcomes this development; it has been informed by the authorities that the new provisions have had a preventive effect.
46. With regard to the racist comments of a judge (see § 32), ECRI notes that the National Council of Judicial Ethics condemned her statements and the head of the Hungarian Association of Judges launched proceedings which concluded that she had violated the ethical code of judges. ECRI welcomes the above three examples of self-regulation, which send a clear anti-hate speech message and demonstrate that unfettered freedom of expression is unacceptable.
47. ECRI recognises that preventing hate speech is a complex issue. It notes that Hungary was instrumental in developing the EU Framework for National Roma Integration Strategies up to 2020 which was approved in 2011 under its Presidency of the Council of the European Union. Although there is no specific reference to combating hate speech, the Strategy does contain measures to eliminate prejudice against Roma (see the section on Integration policies).
48. However, ECRI’s attention has also been drawn to certain controversies during Hungary’s Holocaust Memorial Year 2014.²¹ A project to open the “House of Fates” (a Hungarian Holocaust memorial museum) led to the withdrawal of support by both Mazsihisz, an umbrella organisation representing around a dozen Jewish groups in Hungary, and international Jewish organisations who felt that they had not been genuinely and substantially involved.²² Further, the proposal to erect a monument commemorating the victims of the German occupation was met with opposition by Jewish leaders and historians, who accused the Government of attempting to whitewash Hungary’s role as an ally of Germany and complicity in the deportation of the country’s Jews. ECRI regrets the lack of proper consultation processes with the Jewish community and considers that greater efforts need to be made to prevent the generation of hostility.
49. As for counter speech, ECRI, in its fourth report, urged political leaders on all sides to take a firm and public stance against the expression of racist attitudes. ECRI considers that some efforts have been made in this respect. For example, the Prime Minister announced a “zero tolerance policy” towards antisemitism on the occasion of the 14th World Jewish Congress held in Budapest in May 2013, acknowledging that this was an issue of serious concern that needed to be tackled urgently. The message was reiterated by the Deputy Prime Minister at an international conference on Jewish life and antisemitism in the Parliament in October 2013. ECRI notes that, according to a survey conducted by the Fundamental Rights Agency, more than half the respondents in Hungary felt that antisemitism amounts to a “very big problem” in the country today.²³

²¹ The Holocaust Memorial Year 2014 commemorates the 70th anniversary of the deportation of Hungarian Jews in 1944 and aims “to act against forgetting and indifference”. Its programme includes concerts, conferences, tributes to victims and those who tried to help them, and other public events. <http://holocaustmemorialyear2014.gov.hu/>.

²² As a consequence of planned substantive changes to the project on the House of Fates, Mazsihisz is now cooperating with the Government.

²³ Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, European Union Agency for Fundamental Rights, November 2013.

50. However, ECRI regrets that on other occasions calling for counter speech the authorities have remained silent. For example, although the Deputy Prime Minister spoke out against the racist article mentioned in § 33, there was no official condemnation by the Government. In the case of the Jobbik member of Parliament who called for lists of people with Jewish ancestry, particularly members of the Government and Parliament with dual Israeli-Hungarian citizenship, to be drawn up (see § 27), although around ten thousand people, including representatives of all major political parties, took part in a protest, it took one week before the Prime Minister finally responded with a condemnation. As concerns the homophobic comments of the Prime Minister's personal representative for cultural matters, while there were calls for him to be removed, as far as ECRI is aware, no response has been given by the Government.
51. ECRI is concerned that by not responding to intolerant discourse, the authorities are complicit in legitimising it and aggravating intolerance towards vulnerable groups in the general population. This, together with the effective impossibility of taking any legal action against hate speech, as observed above, has led to a climate of impunity where public figures are able to air their personal views without any consequences. The result is that derogatory remarks about Roma, Jews, LGBT persons, asylum seekers and refugees have become commonplace. In ECRI's view, there is an urgent need for the Hungarian authorities to address these alarming trends. It reminds them that freedom of expression is not absolute and that they should play a key role in publicly condemning speech that incites discrimination or hostility.
52. ECRI reiterates its recommendation that political leaders on all sides take a firm and public stance against the expression of racist and homophobic hate speech and react to it with a strong counter-hate speech message.

3. Racist and homo/transphobic violence

53. Racist and homo/transphobic violence fall under Criminal Code Article 216 (violence towards members of a community). According to information provided by the authorities, between 2009 and 2013, there were 191 reported cases of alleged hate motivated violence; 94 of these resulted in convictions with 33 prison sentences handed out. The authorities informed ECRI that 54% of the victims of these offences were Roma, 8.5% were Jews and 17% involved violence against the Hungarian majority. No data was provided as to any LGBT victims.
54. Racist violence against Roma has been described as one of the most important problems faced by Hungary today. This is committed both by extremist groups and by individuals motivated by racial hatred. Between January 2008 and September 2012, there were 61 separate attacks against Roma and/or their property, with the use of Molotov cocktails, hand grenades and guns. The attacks took nine lives, including two minors and left dozens injured.
55. The most notorious of these attacks, known as the "Roma murders", were committed by a small group of individuals. In nine separate attacks over a period of 14 months in 2008-2009, six Roma were killed, and many others seriously injured. In one attack, in the village of Tatárszentgyörgy, a family fleeing their house set alight by Molotov cocktails were shot; a young father and his four-year-old son were killed.
56. ECRI notes that paramilitary groups have been marching and organising demonstrations in villages since 2006. In March 2011, such groups marched and patrolled in Gyöngyöspata over several weeks, harassing and intimidating

the Roma community and threatening them with weapons and dogs. Human rights NGOs called on state authorities to take immediate action. As a result, Roma women and children were relocated due to the threat of violence. Similar activities continued in 2012, when demonstrations were organised in Devecser, Cegléd and Miskolc. All these incidents were characterised by intimidation of Roma in their own neighbourhoods, illegal patrols, the chanting of anti-Roma slogans, death threats, and sometimes damage to Roma property. ECRI notes that the situation appears to have improved since 2013.

57. As regards antisemitic violence, ECRI notes that Jews have been attacked in the street and vandals have damaged Jewish cemeteries and Holocaust memorials and sprayed swastikas on a railway platform and synagogues. In April 2013, football hooligans beat up the president of the Raoul Wallenberg Association after he objected to them shouting “Seig heil”. The Federation of Jewish Communities in Hungary registered 95 antisemitic incidents in 2013, six of which were classified as “physical atrocity”, two as threat/harassment and 25 as vandalism. In May 2014, over 50 graves were desecrated in the Jewish cemetery of Szikszó. Some Jews reported feelings of insecurity.²⁴
58. Concerning LGBT persons, ECRI notes that harassment and various forms of violence are part of the everyday experience for many of them.²⁵ The annual Budapest Gay Pride parade, which used to be a peaceful and successful event for the city, has been the target of homophobic attacks from neo-Nazi groups since 2007. In 2013, three participants in the Budapest Pride event were assaulted by a group of around 30 uniformed neo-Nazis.
59. More recently, migrants, asylum seekers and refugees have been the targets of racist violence. For example, in October 2013, an African refugee in Bicske was beaten with sticks by two Hungarians; he suffered numerous physical injuries and partially lost his hearing.

- **The authorities’ response**

60. ECRI’s fourth report described the Hungarian Guard created by Jobbik in 2007 and its extreme right-wing paramilitary activities. ECRI notes that the association was disbanded by the Metropolitan Court of Appeal in Budapest in July 2009. This decision was later upheld by the European Court of Human Rights in the case of *Vona v. Hungary*.²⁶ The Court ruled that an association whose activities amount to widespread racist intimidation of a group can be banned lawfully without contravening Article 11 of the European Convention on Human Rights (ECHR) (freedom of association).
61. Within less than a month of the judgment, however, the New Hungarian Guard was set up. Its leadership, membership and objectives are largely identical to those of the old organisation. ECRI welcomes, in this context, the fact that the new Criminal Code includes the offence of abuse of freedom of assembly, punishing those who participate in the activities of a dissolved organisation as leaders or supporters, those whose activities are eligible to disturb the public order, and those who support the activities of such organisations. It also notes

²⁴ According to Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, of the European Union Agency for Fundamental Rights, November 2013, 90% of respondents in Hungary indicated that antisemitism has increased over the past five years and 72 % considered expressions of hostility towards Jews in the street and other public spaces to be ‘a very big’ or ‘a fairly big problem’ in the country.

²⁵ Equal Treatment Authority report on Analysis of the rise in rights awareness in the context of equal treatment between 2010-2013, p. 4.

²⁶ Application no. 35943/10, 9 July 2013.

with approval that charges have been brought in July 2014 in Bacs-Kiskun against the New Hungarian Guard under this provision.

62. Following the “Roma murders”, four fanatical right-wing extremists known to the authorities were tracked down and arrested in 2009. Until shortly before the attacks, they had been under surveillance and there are claims that some of them were associated with the intelligence services. A long-awaited verdict was finally reached in August 2013 following a two and a half year trial during which details of the crimes shocked the nation. The court found three of the defendants guilty of multiple premeditated murders carried out with particular cruelty. It acknowledged the anti-Roma bias that motivated the crime and sentenced the perpetrators to life imprisonment without the possibility of parole (the maximum sentence in Hungary). The fourth man was found guilty as an accomplice and sentenced to 13 years without parole.
63. ECRI notes that police misconduct in failing to stop the violence and protect the victims, lack of coordination between the national police and the national security service, as well as serious procedural errors by police were found during the investigation of the “Roma murders”, and later confirmed by the Independent Police Complaints Board. It was only after the Tatarszentgyörgy tragedy mentioned above, which was the seventh attack in the series of nine, that the police began to understand that they were dealing with serial killers motivated by ethnic hatred.
64. The police shortcomings in the “Roma murders” led to some important changes. A specialised unit was set up in the police on hate crime. In addition, one officer in every county (there are 20 including Budapest) is now specialised in hate-motivated crime. Training sessions have been organised with the help of NGOs, focusing on the identification of evidence, awareness raising and support to victims. Police now monitor files in cases of violence and can re-qualify an offence if any hate motivation is suspected. Officers have good contacts with civil society, Roma organisations and LGBT groups. This is seen as a very positive development and the police have been commended by numerous NGOs. Furthermore, ECRI was informed that since the Gyöngyöspata incident (see § 56), the police constantly monitor areas at risk of conflict. Anti-terrorism authorities also monitor the communications and activities of paramilitary groups. ECRI welcomes these steps taken to remedy past failings and ensure a better response to racially motivated violence in future.
65. On the other hand, ECRI regrets that the new National Crime Prevention Strategy, adopted in September 2013, and Action Plan for 2013 to 2015, do not include any specific measures aimed at combating crime motivated by hate.
66. ECRI recommends that the National Crime Prevention Strategy should be revised to include measures aimed at combating crime motivated by racial and homo/transphobic violence.
67. ECRI would also like to point out that on a number of occasions, Article 216 of the Criminal Code has been used to convict Roma for violence committed against the majority population. For example, in Miskolc in 2009, during the period of intimidation of Roma, 11 Roma who had formed a self-defence group attacked a suspicious-looking car driving in the Roma neighbourhood and lightly injured two passengers. A wooden club found at the site was inscribed with the words “Death to Hungarians”. In 2012, the defendants were found guilty of violence against members of a community, in this case Hungarians, and were sentenced to prison terms ranging from 30 to 48 months. NGOs argued that the use of criminal law provisions to punish members of the groups they had been enacted to protect was highly controversial. In 2013, the Miskolc Regional Court

of Appeal downgraded the convictions to the offence of disturbing the peace, stating that members of the New Hungarian Guard and skinhead groups should not be protected by hate crime laws.

68. Finally, ECRI notes that in May 2014 Hungary's Parliament²⁷ voted in, as one of its five deputy speakers, the former leader of a skinhead group who had been given a suspended sentence in 1992 for assaulting a Roma. ECRI is astonished by this decision which, in its view, indicates a certain tolerance for racist attitudes and a flagrant disregard for the country's most vulnerable group.

4. Integration policies

- Historical ethnic and linguistic minorities

69. Hungary officially recognises 13 "nationalities".²⁸ According to the Third Opinion on Hungary of the Advisory Committee on the Framework Convention for the Protection of National Minorities,²⁹ the representatives of national minorities other than Roma did not report intolerance towards their communities.
70. This report concentrates on the most vulnerable group, the Roma, which does suffer from considerable racial discrimination and intolerance. ECRI notes that a series of key integration policies concerning the Roma have been adopted: in 2007, the Decade of Roma Inclusion Strategic Plan for 2005-2015; in 2011, the National Social Inclusion Strategy "Extreme Poverty, Child Poverty and the Roma" (NSIS) for 2011-2020³⁰; and, also in 2011, the Framework Agreement between the Government and the National Roma Self-Government (NRSNG).
71. As already observed, the European Union Framework for National Roma Integration Strategies was developed and adopted under the Hungarian Presidency of the Council of the European Union. Hungary's NSIS targets those living in extreme poverty, children in poverty and the Roma, under the EU's principle of "explicit but not exclusive targeting".³¹ It aims "to pay particular attention to the ethnic group of the Roma as experiences show that they are the poorest of the poor and have been least reached by the various inclusion programmes". The NSIS integrates previous strategies and is accompanied by a short-term Governmental Action Plan for the period 2012-2014. ECRI notes that the NRSNG reviewed the draft of the NSIS and agreed with the objectives, actions, means and methods.
72. Besides chapters on education, employment, health care and housing, the NSIS includes a chapter with goals on awareness raising and combating discrimination. Inclusion is referred to as a complex two-sided social process that must engage the majority as well as the minority. The importance of changing negative attitudes is emphasised along with the need to convince the majority population that integration and equal opportunities for Roma are in the interest of the entire society. The chapter also talks about creating a complex crime prevention and public security system and preventing the spread of

²⁷ The ruling party has a two-thirds majority in the Hungarian Parliament (133 seats out of the total of 199).

²⁸ Armenians, Bulgarians, Croatians, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians.

²⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Hungary, adopted on 18 March 2010, ACFC/OP/III(2010)001.

³⁰ The NSIS was revised and updated in 2014. However, as the new version was not available at the time of drafting this report, ECRI's analysis takes account of the NSIS adopted in 2011.

³¹ Principle No. 2 of the 10 Common Basic Principles on Roma Inclusion. Explicit but not exclusive targeting, instead of singling out the Roma as distinct group, aims at improving the living standards and environment of all those living in similar conditions.

racially or ethnically motivated crime.

73. The Framework Agreement concluded in 2011 between the Government and the NRSG³² sets as its priority goal to create a discrimination-free, inclusive society ensuring the social inclusion of the Roma community. It puts great emphasis on job creation and education. The Agreement sets out a joint decision-making system and the parties agree on a series of common targets to be achieved by 2015. These include, for example, the involvement of 100 000 unemployed Roma in the labour market, the education of 10 000 Roma pupils in secondary schools and the preparation of 5 000 talented Roma individuals to take part in the higher education. ECRI notes that it is the only policy document consisting of concrete, measurable indicators relating to Roma inclusion. The Agreement also sets out that the NRSG is the key stakeholder and main counterpart in implementing and monitoring the interventions (see also § 95).

- **Non-nationals**

74. Until very recently, Hungary did not have any overall policy document on migration and integration. However, in October 2013 the Government adopted a Migration Strategy for the years 2014 to 2020, setting out actions and goals in the fields of admission, residence, integration, international protection and return. The strategy emphasises, among others, the requirement of fair treatment and the human rights dimension of migration and aims to decrease prejudice related to immigration. The chapter on integration, which clearly sets out that this is a two-way process, aims to facilitate the integration of long-term residents and beneficiaries of international protection. Planned activities include the organisation of awareness-raising campaigns to encourage a more open attitude towards migrants and promote a shift towards multiculturalism.
75. According to the 2013 document, Hungary still needs a proper integration strategy for non-nationals with earmarked funds for its implementation; such a strategy should be drafted to increase the effectiveness of integration, with measures addressing, among others, the promotion of intercultural education; the development of adult education training programmes to assist entry into the labour market; and the development of support in housing (including migrant-specific social housing).

- **Policies' assessment and results**

76. The NSIS was submitted for review to the European Commission in December 2012. The analysis, including assessment by civil society organisations, concluded that it lacked a human rights-based approach and concrete provisions on combating racial discrimination and hate crime. In the area of education the strategy needed more focus on desegregation measures and integrated education. In employment and health care the strategy needed more concrete and measurable targets with a clear timeline for implementation. In housing, much more attention should be dedicated to tackling access to social housing. Generally, the strategy was criticised for lack of precision, absence of a clear monitoring and evaluation system and budgetary resources. Moreover, since the NSIS is not exclusively for the Roma community, many of its members

³² Created in 1993, the Minority Self Government (MSG) system in Hungary allows for any of the country's 13 recognised minorities to establish local, regional, and national self-governments. These elected bodies have the right to make decisions in the areas of local education, language use in public institutions, printed and electronic media, and the protection of their traditions and culture. The local MSG representatives have the right to provide input on all public policy matters through guaranteed access to local council committee meetings, though they have no other special rights in this regard. The NRSG serves as the political representation of Roma voters in Hungary, and in almost all voting cycles it has been led by a prominent personality supported by one of the parties, currently the ruling party. Many Roma have said that they do not perceive their leaders as representing the views of all Roma in Hungary.

have complained that funds earmarked for them are used for other disadvantaged people as well.

77. As regards education, ECRI recalls that it made a number of recommendations in its fourth report, including the following: intensify efforts to reintegrate Roma children enrolled in special schools into mainstream schools; improve the access of Roma children to the full cycle of kindergarten education; and pursue efforts to promote equal access of Roma to secondary and tertiary education.
78. Many of the concerns underlying these recommendations persist, including those about the enrolment of Roma children in special schools, an issue dealt with in the section of this report on Topics specific to Hungary. In addition, although segregation is officially illegal, more than 20% of Roma pupils attend “segregated” schools in Hungary:³³ these are understood to be non-specialised schools in which an ethnic minority constitutes the majority in the school or class; a 50% threshold is commonly applied. According to the authorities, the main cause of school segregation is the concentration of the Roma population in certain areas. A lighter curriculum is followed in these schools or classes; thus, the education provided is inferior compared with mainstream schools.³⁴
79. On 12 July 2013, the Act on Equal Treatment and Promotion of Equal Opportunities was amended, introducing the principle that “social catching-up” is first and foremost a state commitment. Roma rights groups expressed concern that providing for “catch-up opportunities” - an approach supported also by the NRSG – could confer legitimacy to the above-mentioned practice of de facto segregation which affects Roma children. The authorities deny any such intention.
80. ECRI, which shares these concerns, notes that, in a landmark judgment in February 2014, the Greek Catholic Church in Hungary lost the right to keep open a primary school in a predominantly Roma neighbourhood in the town of Nyiregyhaza. Human rights activists successfully argued that the school segregated Roma children from the non-Roma majority. The judge ruled that the functioning of the school violated both Hungarian laws on equal opportunity and Council of Europe standards. ECRI welcomes this ruling and hopes that it will prompt the authorities to address segregation in education and take steps to eliminate it. Some developments related to the transfer of responsibility for schools from local authorities to central government, described in § 105, seem to provide a window of opportunity in this connection.
81. ECRI strongly recommends that the authorities develop a policy against segregation in education and take steps to eliminate it.
82. As for kindergartens, the NSIS states that there is insufficient available capacity. A substantially higher proportion of Roma children start going to kindergarten at the age of five, in contrast to non-Roma children, the majority of whom begin at the age of three. On national average, 88% of children aged between three and five attend kindergarten, while only 42% of Roma children in the same age

³³ Although official statistics are unavailable, the 2011 UNDP/World Bank/European Commission regional Roma survey data make it possible to measure numbers of pupils who report attending schools or classes where the majority are Roma. NGO’s estimate that only a third of Roma children attend normal mixed schools; another third are in schools with predominantly or exclusively Roma pupils (segregated schools), while the remainder are in schools for the handicapped.

³⁴ See, inter alia, the Updated Civil Society Monitoring Report on the implementation of the National Roma Integration Strategies and Decade Action Plan in 2012 and 2013 in Hungary, prepared by a civil society coalition comprising the following organisations: Partners Hungary Foundation (lead organisation), Autonomia Foundation, Chance for Children Foundation, Habitat for Humanity Hungary, Hungarian Women’s Lobby, Hungarian Helsinki Committee, Romaversitas Foundation, and the Metropolitan Research Institute.

group.³⁵ ECRI is pleased, therefore, that, as of 1 September 2015, it will be mandatory for all children to go to kindergarten from the age of three.

83. ECRI strongly recommends that the authorities ensure that all Roma children have the possibility to benefit from the new rules concerning compulsory pre-school attendance at the age of three.
84. NGOs have also reported that early school leaving and a low level of participation in tertiary education have not improved. 51% of Roma drop out while still in compulsory school³⁶ and barely 20% of Roma pupils take the secondary school final examinations. Therefore, ECRI is concerned that from 1 January 2013, the compulsory school leaving age dropped from 18 to 16, thus legitimising early school leaving for Roma pupils and increasing the number of young Roma without qualifications and with even fewer chances in the labour market.
85. Regarding employment, ECRI recommended in its fourth report that the authorities continue their efforts to improve the situation of the Roma community with the introduction of special measures to overcome prejudice and negative stereotypes. The NSIS states that the employment rate of the Roma population barely reaches 20%, and for Roma women it is only 10%. However, according to the 2013 Roma survey of the Fundamental Rights Agency, Roma women in Hungary now have a better rate of labour market participation (32%) than Roma men (26%).³⁷ Despite this significant improvement, ECRI notes that Roma continue to occupy the most disadvantaged position in the labour market.³⁸
86. The NSIS was criticised for focusing on increasing employment mainly by public works instead of through the job market. Indeed, ECRI notes that a new law on public employment entered into force in September 2011 creating a new system for this type of work and launching various programmes. One of these is the Start Work Programme, which provides public employment work as a first step to finding employment in the private sector. The wages for public employment are higher than social benefits but, in order to encourage a return to the competitive sector, lower than the minimum wage at any given time. Public workers in the programme are required to participate in compulsory agricultural training in gardening, small animal farming and food conservation. In 2013 more than 300 000 people participated in various forms of public works.
87. While ECRI welcomes these opportunities, it notes that a report of the Commissioner for Fundamental Rights in 2012 questioned the relevance of agricultural training since there is limited labour market demand in that sector. In addition, ECRI notes that there is no mention in the NSIS of the need to reduce labour market discrimination of Roma nor any programmes to this effect.
88. ECRI recommends that the authorities amend the National Social Inclusion Strategy and its Action Plan to include specific anti-discrimination measures aimed at reducing prejudice against Roma in the labour market.

³⁵ According to the 2014 Roma survey - Data in focus, Education: the situation of Roma in 11 EU Member States, European Union Agency for Fundamental Rights, Hungary has the highest rates of Roma children with some pre-school experience (92%).

³⁶ Roma survey – Data in focus, Education: the situation of Roma in 11 EU Member States, European Union Agency for Fundamental Rights, 2014.

³⁷ Analysis of FRA Roma survey results by gender, European Union Agency for Fundamental Rights, 2013.

³⁸ According to the European Commission's 2014 Roma Health Report, Health status of the Roma population, "Particularly stark differences between Roma and non-Roma levels of employment have been found in [...] Hungary."

89. ECRI also recommended, in its fourth report, that the authorities continue to address segregation in housing through measures designed to facilitate Roma moving into more mixed neighbourhoods, to ensure that Roma are not arbitrarily deprived of social housing and to ensure that discrimination by local authorities is not tolerated. The NSIS states more than 60% of Roma live in rural environments, mostly in segregated residential zones with poor conditions. There are around a hundred localities in Hungary (mostly in northern and eastern regions) which have become impoverished and overcrowded³⁹ Roma ghettos, situated in areas significantly affected by social and economic problems.⁴⁰ One of the most fundamental housing policy problems is the shortage of social housing. The other is the problem of segregated localities. ECRI notes that the NSIS does not address these issues adequately; programmes are limited to the improvement of the situation in segregated areas or assistance to move from these areas, and no substantial measures have been taken in the field of social housing.
90. Moreover, reports continue to indicate that efforts by the central government to improve access to housing are obstructed by local authorities. One method brought to ECRI's attention is to force Roma out of social housing in order to sell apartments or land at a profit. ECRI is also very concerned about the planned evictions of hundreds of Roma families in the "Numbered Streets" neighbourhood of Miskolc, allegedly to make way for a sports stadium, without provision for alternative accommodation.⁴¹
91. ECRI also expresses its concern about the recent amendment of a municipal decree, also in Miskolc, regulating the rental of local government-owned housing. This sets out that when rental agreements are terminated, tenants renting "low comfort" housing can now also receive compensation for vacating accommodation, whereas previously only those moving out from "high comfort" housing were entitled to it. However, a condition has been added only in respect of tenants of low comfort housing; they must agree to use the compensation to purchase property outside the municipality and not return to Miskolc for five years. According to the authorities, since low comfort housing will be renovated, the tenants will not be able to afford the corresponding rise in rent. Therefore, if they renounce their right to rent they receive compensation to buy property outside the boundaries of Miskolc where prices are lower. They insist that this is only an option and there is no constraint. Local Roma consider this another attempt to get rid of them and fear that if they do not agree to the conditions, they will be forced to leave their homes anyway. ECRI considers that the provisions could represent indirect discrimination against Roma because the vast majority of low comfort housing is rented by Roma. Furthermore, the mayor of a neighbouring town announced that he would not accept the Roma from Miskolc in his municipality, raising doubts about alternative accommodation.
92. ECRI strongly recommends that the central Government takes action in all cases where local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly or indirectly discriminatory rules in respect of housing.

³⁹ According to the survey Eurofound, Living conditions of the Roma: substandard housing and health (2012), overcrowding is most severe in two member States, including Hungary. Roma live on average with two persons per room. Overcrowding is a known risk factor for the spread of infectious diseases.

⁴⁰ According to the UNDP/World Bank/European Commission regional Roma survey (2011), 91% of Roma live in severe material deprivation, of which 4% live in absolute poverty and 71% live at the relative poverty rate.

⁴¹ <http://www.neurope.eu/article/hungarian-mayor-wants-replace-roma-slum-football-stadium>

93. In general, therefore, ECRI considers that the NSIS has had little impact so far. It encourages the authorities to review the strategy in light of the various criticisms, in consultation with all interested parties, in particular, the Roma themselves, and amend it accordingly.
94. ECRI recommends that the authorities conduct an evaluation of the implementation of the National Social Inclusion Strategy in order to measure its impact and redefine its parameters and goals where necessary, paying attention to the shortcomings noted in this report, including in the fields of education, employment and housing.
95. As for the Framework Agreement, according to NGOs, few initiatives have been taken to reach the target figures. Furthermore, as noted above (§ 84), negative developments have taken place in education which go against its goals.
96. Regarding the new Migration Strategy, as observed above, this has only recently been adopted and sets as an objective the drafting of an integration policy for non-nationals. ECRI encourages the authorities to pursue this goal. At the same time, ECRI notes that, in practice, specific integration measures have been taken in respect of beneficiaries of international protection. Significant changes have been introduced as of 1 January 2014 to this regime, according to the UNHCR. Beneficiaries of international protection may now sign an individual integration contract with the Office of Immigration and Nationality, which sets out a personal development plan, to receive additional support and obtain financial aid for a period of two years. Compulsory Hungarian language courses are no longer available but can be arranged under the contract, and assistance with finding accommodation should also be provided. The authorities have informed ECRI that so far almost 500 integration contracts have been concluded. The social integration of beneficiaries is evaluated every six months and the personal development plan revised if needed.
97. However, beneficiaries of international protection must move out of reception centres within two months of obtaining international protection. While the move away from “camp-based” integration towards a community-based system has generally been welcomed, refugees face problems in practice. It takes several months before they start to receive financial support and this progressively decreases at the end of each six-month period down to 25% of the original amount. Most have no jobs when they leave the reception facilities and do not speak Hungarian.
98. As a result, one of the most serious problems faced by refugees is the risk of homelessness. ECRI notes that recent amendments to the Fundamental Law authorise the criminalisation of sleeping in public places; Hungary adopted amendments to the Act on Misdemeanor in 2013 to this effect, despite strong criticism expressed by the UN Special Rapporteurs on extreme poverty and on adequate housing.⁴² The new legislation is particularly harsh for refugees, since their financial support is insufficient to rent an apartment and cover subsistence expenses. The UNHCR points out that some beneficiaries of international protection have re-applied for asylum in Germany in order to avoid homelessness, and possible criminal sanctions, in Hungary.
99. All in all, ECRI considers that the current set of measures is ineffective in providing beneficiaries of international protection with the support necessary for integration. Moreover, the system suffers from lack of adequate state financing.

⁴² <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=13206&LangID=E>.

100. ECRI recommends that the authorities revise their integration measures for beneficiaries of international protection, in particular as concerns housing.

101. The Migration Strategy refers to the negativity, intolerance and suspiciousness against migrants and also to the fact that the Government has done little to generate community understanding, awareness and acceptance of migrants. Although it refers to the need for awareness-raising, there is no evidence that a communication strategy will be put in place in the near future. ECRI considers that developing integration measures as highlighted above would lead to better acceptance of refugees and would help to reduce the widespread xenophobia that exists towards them in Hungary today.⁴³ In ECRI's view, action needs to be taken in the communication field as a matter of urgency; the authorities cannot afford to wait for the integration strategy to be developed in this connection.

102. ECRI reiterates the recommendation made in its fourth report that the authorities run awareness-raising campaigns to promote a positive image of asylum seekers and refugees ensuring that the need for international protection is understood.

II. Topics specific to Hungary

1. Interim follow-up recommendations of the fourth cycle

103. ECRI refers to § 5 of this report concerning its conclusions on the implementation of its first interim follow-up recommendation. Since then, as already pointed out, some new elements have been included in the Criminal Code corresponding to ECRI's GPR No. 7. Nevertheless, as certain important aspects are still missing in the legislation (see the recommendations made in §§ 10, 12 and 14), ECRI now considers that the recommendation has been partially implemented.

104. ECRI, in its second interim follow-up recommendation, strongly recommended that the 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 of segregation is respected in practice. In its conclusions, adopted on 8 December 2011, ECRI considered that the response of the authorities had been only partial. While it welcomed certain developments, including the requirement for local authorities to adopt a public education equal opportunity plan, paying particular attention to the prevention and elimination of unlawful segregation in education, it was concerned that these were yet to prove effective in practice. It also pointed out the lack of an effective central inspection system.

105. Since then an important change has occurred; in January 2013 responsibility for schools was transferred from local authorities to central government. With the aim of reducing inequalities due to decentralisation, a central school maintenance institute with 198 local units now organises basic and upper-secondary education. A new school inspectorate system has also been set up and will start to operate in 2015. Inspections should be carried out every five years, based on schools' self-evaluation. Furthermore, ECRI was informed that school catchment areas have been redrawn on the basis of data on the numbers of disadvantaged pupils, which will be reviewed annually. Some NGOs consider that centralisation could ensure that disadvantaged pupils receive quality education of a uniformly high standard, but have seen no signs so far of this taking place. ECRI refers to § 78 which indicates that segregation is still

⁴³ According to a poll by the TÁRKI Social Research Institute in 2013, 36% of the population would not allow any refugees in the country, 53% would allow some refugees but exclude others, while only 11% would accept all refugees.

very much part of the education system in Hungary, and to § 84 which highlights other negative developments in education. It has made a recommendation relating to segregation in § 81 of this report.

106. In its third interim follow-up recommendation, ECRI recommended that ways of measuring the situation of vulnerable 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. In its conclusions, adopted on 8 December 2011, ECRI noted that new methodological tools had been applied in respect of the 2011 census to make it easier for individuals to indicate their ethnic origin. It also noted that the authorities were working on devising ways of developing data collection systems and were planning to conduct detailed research into the situation and exclusion of Roma communities alongside other socially disadvantaged groups in order to design adequate programmes to improve the situation. ECRI welcomed these developments as a first concrete step towards more effective monitoring of the situation as regards racial discrimination. However, it concluded that more needed to be done.
107. ECRI has received no information about any further developments regarding this issue although it notes that, as part of the NSIS monitoring process, data collection concerning the Roma has started with respect to some of the projects, but not all, and is based on self-identification by participants.
108. ECRI reiterates its recommendation that a monitoring system is set up to enable the collection of disaggregated equality data for the purpose of combating racial discrimination, ensuring that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.

2. Placement of Roma children in schools for the mentally disabled

109. The common practice of streaming Roma children into “special” schools or classes results in Roma over-representation in schooling that is meant for children with disabilities or special needs. Although elsewhere in this report a technical distinction has been drawn between this problem and segregation, ECRI should stress that in reality, this special schooling constitutes another form of segregated education because activities in these facilities are separated and different from those associated with regular education. They also offer reduced curricula and rarely enable pupils to enter mainstream schools.
110. ECRI is very concerned that Hungary continues to place disproportionate numbers of Roma children in schools for pupils with learning disabilities, thereby perpetuating the cycle of under-education, poverty and exclusion. According to the Roma Education Fund,⁴⁴ research estimates that Roma account for between 20 and 90 % of pupils in special schools in Hungary. According to another estimate,⁴⁵ around 90 % of children in special schools are Roma and very few have any actual disabilities. It is claimed that local committees, made up of teachers, psychologists and psychiatrists, often rush decisions, sometimes without proper testing, or even without the child or the parents being present.
111. Therefore, ECRI welcomes the judgment of the European Court of Human Rights (the Court) of 31 January 2013 in the case of Horvath and Kiss v. Hungary. The applicants - two ethnic Roma - argued that, due to their ethnic origin, they had been wrongly placed in a school for the mentally disabled

⁴⁴ Roma Education Fund (2012), Pitfalls and bias: entry testing and the overrepresentation of Romani Children in Special Education.

⁴⁵ See <http://www.thestar.com.my/News/Education/2014/02/09/The-rot-of-the-Roma/>.

and that their rights under Article 2 of Protocol No. 1 to the ECHR (right to education) and Article 14 (prohibition of discrimination) had been breached. They alleged that the tests used for their placement had been outdated and culturally biased, putting them at a particular disadvantage. The Court ruled in favour of the applicants on both counts, underlining that there was a long history of wrongful placement of Roma children in special schools in Hungary and that the State must change this practice by providing the necessary safeguards against misdiagnosis. The Court also expressed concerns about the more basic curriculum followed in these schools and, in particular, the segregation which the system causes.

112. The Hungarian authorities have informed the Committee of Ministers of the Council of Europe of the steps taken to comply with the judgment. These include the introduction of new tests to evaluate the learning abilities of Roma pupils; programmes promoting inclusive education of special education-needs pupils; the training of professionals engaged in their education; and legislative amendments on the diagnosis of mental handicap in children based on strict criteria and accompanied by special safeguards. Execution of the judgment (under enhanced supervision) is still pending. ECRI hopes that this case will bring about significant changes and put a stop to this long-standing practice.

113. ECRI strongly recommends that the practice of placing Roma children without genuine disabilities in schools for the mentally disabled is definitively stopped.

3. Detention of asylum seekers

114. ECRI notes that from January 2013, positive changes were introduced to the Asylum Act and detention was only to be applied to asylum seekers as an exception, whereas prior to this it was the norm. This change in policy resulted in an influx of asylum seekers; 18 900 applications were recorded in 2013 as opposed to 2 157 in the previous year, representing an increase of 776%. Reception facilities became overcrowded and hygienic conditions and security deteriorated rapidly. The Government then revised the Asylum Act, with effect as of July 2013, re-introducing grounds for asylum detention for up to six months. An alternative to detention (asylum bail)⁴⁶ was also introduced, but has rarely been applied.

115. ECRI has been informed that around 22% of all asylum seekers are now deprived of their liberty. A small number are placed in immigration detention (for irregular migrants and those awaiting deportation), but the majority are sent to asylum detention facilities. Very worryingly, this includes asylum seeking families with children. It is claimed that the actual placement of asylum seekers in open reception or detention facilities depends on where there is space at the time, indicating arbitrariness. In Debrecen, the detention facility is located in the middle of an open reception centre; this is very disturbing for the asylum seekers who do not understand why some of them are locked up but not others. It appears also that certain nationalities are more exposed to detention than

⁴⁶ According to UNHCR's 2012 Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, release on bail/bond is an alternative to detention for which asylum-seekers should be able to apply. The amount set must be reasonable given the particular situation of asylum-seekers, and should not be so high as to render bail systems merely theoretical. Governments are encouraged to explore options that do not require asylum-seekers to hand over any funds. They could, for example, be "bailed" to an NGO, either upon the NGO acting as guarantor or under agreement with the government.

others; according to UNHCR reports, Pakistanis and Kosovars⁴⁷ tend to end up in detention, while Afghan, Somali and Syrian applicants are seldom detained.

116. NGOs have reported that asylum detention involves very poor living conditions and lack of access to legal aid or assistance from civil society. Harsh treatment by guards is reported and, according to asylum seekers, physical and verbal abuse and harassment are not unusual. According to a UNHCR report,⁴⁸ asylum seekers are handcuffed and leashed when escorted outside the detention centre. In addition, detention imposed in an arbitrary manner could prejudice the application for international protection. Riots and hunger strikes in protest against detention have taken place at some facilities. ECRI notes that in October 2013, the European Commission initiated infringement procedures against Hungary due to concerns about its asylum legislation and practice, including reception conditions and use of detention; discussions with the authorities are on-going.
117. ECRI is very concerned by these developments. In view of the hardship entailed, detention of asylum seekers should normally be avoided and be a measure of last resort. Seeking asylum is not an unlawful act and detention should only be ordered where it pursues a legitimate purpose and has been judged to be both necessary and proportionate in each individual case. ECRI refers in particular to the UNHCR's Detention Guidelines, according to which it is permissible to detain asylum seekers for a limited period for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection. It also refers to Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe on detention of asylum seekers and irregular migrants in Europe which calls for States to incorporate into national law and practice a proper legal framework ensuring that alternatives are considered first.
118. ECRI strongly recommends that open reception facilities are used to accommodate asylum seekers, in particular families with children.

4. Policies to combat discrimination and intolerance against LGBT persons

- Data

119. ECRI notes that there is no official data on the LGBT population in Hungary, although legislation authorises the collection of personal data with the consent of those concerned. It recalls that Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. It is clear that without such information, there can be no basis for developing and implementing policies to address intolerance and discrimination against LGBT persons.
120. A number of studies⁴⁹ show that discrimination based on sexual orientation and negative discourse concerning LGBT people are widespread and that this has

⁴⁷ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁴⁸ Hungary as a country of asylum, Observation on the situation of asylum-seekers and refugees in Hungary, UNHCR, April 2012, § 50.

⁴⁹ These include: a general population study published by the Equal Treatment Authority; the 2013 EU LGBT Survey, Results at a glance, of the European Union Agency for Fundamental Rights, according to which 45% of respondents in Hungary said they felt discriminated against or harassed in the last 12 months on the grounds of sexual orientation; and the ILGA-Europe Annual Review 2014 on Hungary,

increased in recent years. In its 2013 report on the extent of equal treatment awareness, the Equal Treatment Authority noted that despite significant steps in the last two decades towards establishing equal rights for LGBT people, discrimination, prejudice, hate speech, and violent attacks persist.

121. ECRI encourages the authorities to undertake research and collect data on LGBT persons as well as on discrimination and intolerance against them.

- **Legislative issues**

122. ECRI welcomes Hungary's comprehensive non-discrimination legislation which explicitly includes sexual orientation and gender identity among the prohibited grounds as well as similarly specific provisions in the Criminal Code.

123. ECRI notes, however, that so far no cases have reached the criminal courts under provisions relating to incitement to hatred or violence against a community on grounds of sexual orientation or gender identity. The Equal Treatment Authority, on the other hand, has found discrimination on grounds of sexual orientation. In September 2014, for example, it found the Waldorf School in Kispest in violation of the Act on Equal Treatment for refusing entrance to a 13-year-old boy because he was being brought up by lesbian parents.

124. Article XV (2) on equality of the Fundamental Law lacks references to sexual orientation and gender identity, although, since the list of grounds is non-exhaustive, these elements should in principle be covered. However, the Fourth Amendment to the Fundamental Law allowing for restrictions on freedom of speech and the corresponding Civil Code provisions have lists of closed grounds which do not include sexual orientation or gender identity.

125. ECRI encourages the authorities to align all the relevant legislation in order to send a clear message that intolerance against LGBT persons is not acceptable.

126. A form of registered partnership similar to marriage was introduced in 2007 for same-sex couples; it does not provide for access to joint adoption or second-parent adoption. ECRI notes that the new Fundamental Law, in its Article L, proclaims the institution of marriage as the union of a man and a woman. It also states that family ties are based on marriage and/or the relationship between parents and children. The authorities insist that this provision only defines the basis of family relations and not the term family itself and does not preclude the statutory protection of family relations in a wider sense.⁵⁰

127. Hungary has explicitly recognised in its national legislation that sexual orientation is included in the notion of "membership of a particular social group". Therefore, persons fleeing persecution on grounds of their sexual orientation are able to be recognised as refugees and benefit from international protection. In 2014 there was a case of refugee recognition on the basis of transsexualism.

128. Transgender persons are able to have their new gender recognised by means of legal/administrative procedures for change of name and legal gender. Thus, official documents can be changed to match the gender identity. No compulsory medical/surgical intervention is required for legal gender recognition, nor is sterilisation or proof of infertility. However, the person who applies for a

which states that LGBTI people suffered from a general climate of increased fear and violence towards all minorities.

⁵⁰ See Opinion on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), Opinion 720 / 2013, Strasbourg, 17 June 2013, CDL-AD(2013)012, paras 15-20.

rectification of the recorded sex has to be unmarried. This entails mandatory divorce if the person is already married.

- **Promoting tolerance and combating discrimination**

129. ECRI notes that there is no government strategy or action plan to promote tolerance and combat discrimination against LGBT persons in Hungary, despite evidence of prejudice in various fields of everyday life.⁵¹ The difficulties faced by the organisers of the Budapest Pride festival in obtaining permits to hold the event in 2011 and in 2012 testify to such prejudice, although there were no problems in 2013. The Commissioner for Fundamental Rights has conducted several investigations into the Pride festival marches and the conduct of the police. These concluded that by cordoning off the entire route to prevent incidents, the police had secured the safety of participants at the expense of freedom of assembly. The 2014 festival was also held amid heavy police presence along a cordoned-off route. ECRI is pleased to note that training for police on this particular issue has been provided to some 2 500 police officers.
130. As regards health issues, ECRI has been informed that there are no clinical guidelines or medical protocols in relation to transgender issues. Hungary's health insurance cover for gender reassignment treatment is 10% of the total costs. No applications for funding have been denied so far, but the lack of specialised surgeons in the public health care system remains an obstacle.
131. Concerning school education, while the national curriculum includes elements on discrimination and difference, homosexuality and homophobia-related topics are not explicitly mentioned. According to a report of the Council of Europe's Commissioner for Human Rights,⁵² schools do not provide any information about homosexuality or only biased, incorrect information.
132. In view of the above, ECRI considers that the authorities should draw up and adopt an action plan to promote tolerance towards LGBT persons in different areas, as well as to combat homophobia and transphobia.
133. ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, drawing inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.

⁵¹ According to the above-mentioned 2013 EU LGBT Survey, 19% of respondents in Hungary felt discriminated against in the last 12 months when looking for a job and/or at work because of being LGBT and 33% felt discriminated against in areas other than employment, including when looking for a house or apartment to rent or buy; by healthcare personnel; by social service personnel; by school/university personnel; at a café, restaurant, bar or nightclub).

⁵² Discrimination on grounds of sexual orientation and gender identity in Europe, September 2011.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Hungary are the following:

- ECRI strongly recommends that open reception facilities are used to accommodate asylum seekers, in particular families with children.
- ECRI strongly recommends that the central Government takes action in all cases where local authorities attempt to force Roma out of social housing, evict them from their homes without ensuring suitable alternatives or subject them to directly or indirectly discriminatory rules in respect of housing.

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

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§2) ECRI reiterates its recommendation for Hungary to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§10) ECRI recommends amending the Criminal Code to include: incitement to discrimination and incitement to violence in Article 332; a racism-specific defamation offence in Article 226 including all the grounds mentioned in its General Policy Recommendation No. 7 § 18 b; and the prohibited ground of language in Articles 332 and 216. They should also assess the need for further changes should an analysis of the case law show gaps in connection with citizenship and public insults.
3. (§12) ECRI recommends that the authorities amend the Criminal Code in order to remedy the gaps identified in § 11 of this report.
4. (§14) ECRI reiterates its recommendation to include in the Criminal Code racist motivation as a specific aggravating circumstance for all criminal offences.
5. (§17) ECRI recommends amending the Act on Equal Treatment and Promotion of Equal Opportunities to remedy the gaps identified in § 16 of this report.
6. (§35) ECRI recommends that Hungary ratifies the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
7. (§38) ECRI strongly recommends that a less restrictive approach is taken to the criminal law provisions against incitement to hatred to allow for due prosecution and punishment of hate speech.
8. (§43) ECRI strongly recommends that the authorities amend the appointment procedures for all members of the Media Council to ensure political plurality; it encourages it to be more pro-active in cases of dissemination of hate speech.
9. (§52) ECRI reiterates its recommendation that political leaders on all sides take a firm and public stance against the expression of racist and homophobic hate speech and react to it with a strong counter-hate speech message.
10. (§66) ECRI recommends that the National Crime Prevention Strategy should be revised to include measures aimed at combating crime motivated by racial and homo/transphobic violence.
11. (§81) ECRI strongly recommends that the authorities develop a policy against segregation in education and take steps to eliminate it.
12. (§83) ECRI strongly recommends that the authorities ensure that all Roma children have the possibility to benefit from the new rules concerning compulsory pre-school attendance at the age of three.
13. (§88) ECRI recommends that the authorities amend the National Social Inclusion Strategy and its Action Plan to include specific anti-discrimination measures aimed at reducing prejudice against Roma in the labour market.
14. (§92) ECRI strongly recommends that the central Government takes action in all cases where local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly or indirectly discriminatory rules in respect of housing.

15. (§94) ECRI recommends that the authorities conduct an evaluation of the implementation of the National Social Inclusion Strategy in order to measure its impact and redefine its parameters and goals where necessary, paying attention to the shortcomings noted in this report, including in the fields of education, employment and housing.
16. (§100) ECRI recommends that the authorities revise their integration measures for beneficiaries of international protection, in particular as concerns housing.
17. (§102) ECRI reiterates the recommendation made in its fourth report that the authorities run awareness-raising campaigns to promote a positive image of asylum seekers and refugees ensuring that the need for international protection is understood.
18. (§108) ECRI reiterates its recommendation that a monitoring system is set up to enable the collection of disaggregated equality data for the purpose of combating racial discrimination, ensuring that this is done in all cases with due respect for the principles of confidentiality, informed consent and voluntary self-identification.
19. (§113) ECRI strongly recommends that the practice of placing Roma children without genuine disabilities in schools for the mentally disabled is definitively stopped.
20. (§118) ECRI strongly recommends that open reception facilities are used to accommodate asylum seekers, in particular families with children.
21. (§121) ECRI encourages the authorities to undertake research and collect data on LGBT persons as well as on discrimination and intolerance against them.
22. (§125) ECRI encourages the authorities to align all the relevant legislation in order to send a clear message that intolerance against LGBT persons is not acceptable.
23. (§133) ECRI recommends that the authorities draw up and adopt an action plan to combat homophobia and transphobia in all areas of everyday life, including education, employment and health care, drawing inspiration from Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity.

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APPENDIX: GOVERNMENT'S VIEWPOINT

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

ECRI, in accordance with its country-by-country procedure, engaged in confidential dialogue with the authorities of Hungary on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 12 December 2014, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

- In the fourth and eleventh paragraphs of page 7, as well as at points 32, 56, 60, 64, we consider the use of „self-organizing extremist” as appropriate wording instead of „paramilitary”, given the fact that they are not armed groups.

- In the twelfth paragraph of page 7, as well as at points 26, 30, and 58, we consider the use of „radical extreme right-wing” as appropriate wording instead of „neo-Nazi”.

- The Government does not agree with the statement in the second sentence of the first paragraph on page 8, as the revised version of the National Social Inclusion Strategy does refer to segregation in education (see points 7.3.1 and 7.3.2. of the National Social Inclusion Strategy). Data-based evidence to confirm the statement made in the third („Disproportionate numbers of Roma children continue to be placed in schools for pupils with learning disabilities.”) and last sentence of the paragraph are missing. Several measures have been implemented by the Government in order to suppress unjustified classification as mentally disabled: restructuring of institutions, establishment of uniform rules of procedure, standardization of new diagnostic tests, training of experts in diagnostic committees, etc. Due to these developments, the ratio of children and students with mild mental disability decreased (2.1% of children and students in school year 2003/2004 and 1.5% in 2012/2013).

- On page 8, ECRI states that „Refugees face many problems in practice, notably homelessness; sleeping in certain public places can now lead to criminal sanctions.” Regarding the second part of the sentence, the Government notes that - despite its previous observations - it still fails to reflect the full reality. It is not mere sleeping at public places, but the use of these public places as a regular living environment which draws the legal consequences of misdemeanors, and not criminal sanctions.

In the third paragraph of page 8, the observations concerning the living conditions in the asylum detention facilities do not reflect reality. The requirements of asylum detention facilities and the rules on the reception conditions are defined in Ministerial Decree No. 29 of 2013 (VI. 28.) on the Implementation of Asylum Detention and on Asylum Bail. Sections 11-13 of the Decree provide specific guarantees regarding maintenance of contact with legal assistance and with representatives of non-governmental organisations.

The Hungarian Government disagrees with the statements of the report that find asylum detention as incidental and arbitrary. The personal circumstances of the asylum-seeker are in every case taken into consideration when deciding on asylum detention, and the asylum authorities continuously assess the need for maintaining detention. If the authority finds that the availability of the asylum-seeker may be ensured by other means, the asylum detention will be terminated. The decision on detention always contains the assessment of the asylum-seeker’s individual circumstances. Factors such as full capacity of reception centers or the nationality of the asylum-seeker are not influencing factors in the decision-making process.

In light of the data of 2014, only a small percentage of asylum seekers were kept in detention, and asylum bail was applied in a great number of cases. The asylum detention facilities have been subject to constant supervision by the public prosecutor and the judiciary. The inspections of the public prosecutor have not revealed any inadequacies or violations of the law. This fact alone contradicts the statements regarding limited communication with legal assistance and other non-governmental organizations.

- In regards to the fifth paragraph of page 8 and in point 66, Government resolution no. 1744 of 2013 (X.17.) on the National Crime Prevention Strategy (2013-2023) emphasizes that it concentrates first and foremost on the prevention of traditional, frequently committed crimes and does not deal with criminal activities (e.g. hate crimes, corruption) whose prevention and treatment require the special knowledge and expertise of national bodies. At the same time, a number of measures have already been taken by law enforcement bodies to handle the problem (e.g. setting up of a specialized unit within the police on hate crimes; activities of the Counter-terrorism Centre in relation to paramilitary groups - these are summarized in point 64).

- Concerning the recommendation on the integration of beneficiaries of international protection (page 8, second last paragraph), we would like to highlight that the integration contract does not exclude the possibility of Hungarian language training to be provided to beneficiaries of international protection. The introduction of the integration contract as of 1st January 2014 meant the termination of the compulsory Hungarian language training provided by the Office of Immigration and Nationality, the content of the support services to be provided upon the integration contract are free to be defined based on the needs of the beneficiary of international protection, it may include Hungarian language training as well. Moreover, we would like to highlight that as a general rule, applicants for asylum are accommodated at the open reception centres, so asylum detention may only be ordered as an exception, after the assessment of the use of alternatives to detention. The statistical data confirm this practice, as approximately 80% of all asylum applicants are accommodated at open reception centres.

- Points 7 and 10:

In our opinion this is a misinterpretation of the criminal offence of incitement against a community, regulated in section 332 of Act No. C of 2012 on the Criminal Code (hereinafter: CC.). Contrary to the wording of the Report, the commission of the crime against “certain groups of the population” may be based on other characteristics than disability, sexual identity or sexual orientation. The CC merely listed these specific groups by way of example due to the growing number of crimes against members of such groups and due to their increased chances of victimization. However, the act in question may be committed against any other definable community that is not named separately, which share similarities based on other aspects (political, ideological, geographical, etc.).

The meaning of „national group” as written in the CC is wider than in section 1 (1) of Act No. CLXXIX of 2011 on the Rights of Nationalities (henceforward: Act CLXXIX of 2011), which determines “nationality” as follows: “every ethnic group - that is native in Hungary for at least a century -, which is in numerical minority among the population of the state, which differs from the rest of the population due to its own language, culture and traditions, but at the same time represents a sense of collective belonging that is aimed at the preservation thereof and at the expression and protection of the interests of its historically formed communities.”. Nationalities are listed in the first Annex of Act CLXXIX of 2011: “Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian.”. It must be pointed out that the term “national group” of the CC is wider than the content of the term “nationality” as written in Act CLXXIX of 2011, therefore it includes ethnic groups that are not native in Hungary for at least a century, such as the Chinese minority. The use of the term “national group” guarantees criminal law protection for non-Hungarian persons who settle in- or reside temporarily in Hungary (immigrants, refugees, foreigners settled in Hungary, stateless people), irrespective of their citizenship.

It must further be pointed out that the term „certain groups of the population” wishes to provide protection to people who may be grouped based on practically any feature, thus the act guarantees protection against atrocities deriving from discrimination based on citizenship, color, origin or language, which are not enlisted in the act. The interpretation of the specific legal subjects of the crime - certain groups of the population, national group, etc. - has not raised any difficulties neither in legal regulation nor in the developed practice.

It must be mentioned that point 18, subpoint a) of GPR No. 7 renders public incitement to violence, hatred or discrimination to be punishable, which is in our opinion an alternative list. On the one hand, section 332 of the Hungarian CC renders incitement to hatred punishable. On the other hand, section 216 (1) of the CC punishes displaying a provocative conduct directed against the community that is capable of causing alarm in members of a given group that are affected in the bias-motivated attack. In respect of the latter crime, it is not even necessary to display the violent behavior against a member of the group in question, it is sufficient to display such act against an object (e.g. a vehicle parking on the street). Such behavior, if committed in public, can result in causing alarm or even hatred in other people (e.g. using degrading and hateful phrases while displaying anti-social conduct), or it can provoke violence (e.g. inciting or attempting to incite others to similar behavior).

- **Points 8-10:** Point 18, subpoint b) of GPR No. 7 requires the criminal punishment of intentional public insult and defamation committed against a person or a group of persons based on their race, color, language, religion, national or ethnic origin. The Government believes that section 226 on the criminal act of defamation complies with these requirements. It is an aggravating circumstance to commit defamation with a malicious motive, and according to Hungarian legal practice, criminal offences motivated by racism, anti-Semitism or by other similar bias always qualify as an offence with malicious motivation or intent.

- **Points 9 and 10:** *„However, the ground of language is not explicitly included.”* In this regard, we refer to the argument written above.

- **Points 11 and 12:** According to the Report: *„There is also no mention of the public dissemination, distribution, production or storage, with a racist aim, of written, pictorial or other material containing racist manifestations (§ 18 f)”*

The Government points out that - with the 4th amendment of the Fundamental Law of Hungary (adopted on 25 March 2013 and entered into force on 1 April 2013) - the provisions on freedom of expression were complemented by further rules. The new sections (4) and (5) of Article IX. of the Fundamental Law include the following constitutional provisions:

“(4) Exercising the freedom of expression and opinion cannot be aimed at violating other persons’ human dignity.

(5) Exercising the freedom of expression and opinion cannot be aimed at violating the dignity of the Hungarian nation or the dignity of any national, ethnic, racial or religious group. Members of such groups are entitled to bring action before the court - as defined by law - against any statement considered injurious to the group alleging violation of their human dignity. ”

This demonstrates that the constitutional regulation regarding freedom of expression has changed in the meantime

If a public official discriminates based on race in the course of his/her official activity, it raises criminal law issues if, taking into consideration all the circumstances of the case, he/she also commits the crime of violence against a member of a community according to section 216 of the CC, or incitement against a member of a community according to 332 of the CC. Naturally, in such cases the commission of abuse of authority (section 305 of the CC) cannot be ruled out either.

- **Points 13 and 14** The Report recommends to „(...) *include in the Criminal Code racist motivation as a specific aggravating circumstance for all criminal offences.*”

Hungary does not agree that racist motivation should be included *expressis verbis* as aggravating circumstance regarding every criminal offence, as it is recommended in section 21 of GPR No. 7. It would be quite unrealistic to establish a racist motivation in the context of theft, economic fraud, money laundering, organization of illegal gambling, or traffic violations, just to name a few examples. It is for this reason that the legislator opted for a general requirement to impose a punishment - within the limits established by law - that is adapted to the danger the crime and the offender poses to society, the degree of culpability, and other aggravating and mitigating circumstances, keeping in mind the aim of punishments (section 80 of the CC). Thus, if the perpetrator committed a crime where the malicious motivation or aim is not *de jure* an aggravating circumstance, the court may consider the racist motive as an aggravating circumstance when imposing a punishment, provided that such a motive is sufficiently proven. This is also defined in section III, point 2 of opinion No. 56 of the Criminal Board of the Supreme Court on factors to be considered during the imposition of a punishment: “The method of commission, considered by law as an aggravating circumstance regarding certain crimes is generally also an aggravating circumstance of other crimes [applied at the stage of the imposition of the sentence].” As a consequence, according to rules acknowledged and applied by legal practice, racist motivation can be taken into account as an aggravating circumstance even if the law does not include it as an aggravated case for a criminal offence.

- **Point 16:**

Pursuant to points a) and b) of section 21 of *Act No. CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter: the Ebktv, following the Hungarian abbreviation)* it is considered a violation of the principle of equal treatment especially if an employer uses direct or indirect discrimination against an employee, in particular regarding access to work, in publicly advertised vacancies, hiring, conditions of employment, or actions carried out before the establishment of the employment relationship or other relationships related to work, or related to the procedure facilitating the establishment of such a relationship. **However, the Hungarian Equal Treatment Authority may launch an investigation into the manifestation of express intent to discriminate or its public advertisement in every field (thus beyond the field of employment, in areas such as social security and health care, housing, education, goods and services) of discrimination.** Moreover, as an example, by virtue of section 30, point c) of the Ebktv. it is considered a particular violation of the principle of equal treatment if, at premises open to customers, particularly in catering, commercial, cultural and entertainment establishments, a notice or sign is displayed implying that a certain individual or certain individuals are excluded from the provision of services or sale of goods at the premises based on attributes defined in section 8 (the list of the so-called protected characteristics).

Furthermore, statements that contain express intention to discriminate, or statements that publicly advertise discrimination may be investigated in the aspect of harassment.

In relation to the act of inciting others to discriminate, it is important to underline that pursuant to section 7 (1) of the Ebktv., any order to commit direct or indirect discrimination, harassment, segregation or retaliation likewise constitutes violation of the requirement of equal treatment.

- Point 35:

The Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (hereinafter: Additional Protocol) was signed by 13 European Union Member States so far. The Government points out that Hungary has not yet signed the Additional Protocol, as the criminalization of such acts would - having regard to the constitutional requirements established by the Constitutional Court - violate the right to freedom of expression guaranteed in Article IX (1) of the Fundamental Law. Since the Additional Protocol does not make it possible to reserve the right not to apply Article 4 on racist and xenophobic motivated threat, the Protocol cannot be signed by Hungary at this point without the risk of invoking unconstitutionality.

Nonetheless, we would like to draw the attention to the fact that the new Criminal Code introduced a new provision, namely “rendering electronic data permanently inaccessible” (section 77). The reason for this new provision was to have more effective tools in the fight against crimes which may also be committed by publishing data in electronic communication networks. Incitement against a community is one of such examples, as according section 459 (22) of the Criminal Code the term “committed in public” must be interpreted as including commission by way of publication on electronic communication network. In order to enable the authorities to take more effective action, the new Criminal Code therefore makes it possible to render the data published on electronic communication networks inaccessible if it constitutes a crime, were used as a tool to commit a crime or were created through a criminal act.

The Criminal Code further provides that the rendering of electronic data permanently inaccessible shall be ordered even if the perpetrator cannot be prosecuted due to age or mental incapacity, or if the offender has been reprimanded. In these cases, rendering electronic data permanently inaccessible shall be ordered as an independent measure.

In parallel to the introduction of rendering electronic data permanently inaccessible as a new measure under the Criminal Code, it was further necessary to amend the Code of Criminal Procedure with a new coercive measure that - similarly to the above mentioned measure - aims at preventing the continuance of commission of crimes which may be committed through computer systems, and at the temporary disabling of access to prohibited data. The coercive measure of “rendering electronic data temporarily inaccessible” was added to Act No. XIX of 1998 on the Criminal Procedure Code (hereinafter: CPC) by Act No. CCXXIII of 2012 on the amendment of certain laws and temporary provisions related to the entry into force of Act No. C of 2012 on the Criminal Code (in force since 1 July 2013).

- Point 42:

The Media Council can apply a more extended scope of sanctions than the sanctions listed in the second sentence of the 42nd point of the report, it includes the exclusion from the tenders of the Foundation, moreover it includes the possibility of service deregistration and termination of the regulatory contract with immediate effect.

In connection with the 42nd paragraph the Government indicates that the Media Council obliged the media content provider (the publisher) to pay the fine and not the writer of the article.

- Point 53:

It cannot be identified which authorities provided information. In order to present objective information, we think it would have been necessary to indicate them precisely.

- Point 57:

ECRI notes that “Jews have been attacked in the street (...)”. We consider that such atrocities are not generally typical to Hungary.

- Point 59:

Violence against the target group mentioned in the first sentence is exceptional in Hungary. In the concrete case, there is no enforceable, final judgment.

Contrary to what is stated in the report, those affected do not have to wait several months to receive the integration support. Based on integration contract, most of the refugees and persons under subsidiary protection who submit an application for integration support immediately receive accommodation and support at the reception centres, within the framework of the service guaranteed by the Act on Refugees and its enforcement decree. Following the decision granting integration support, the Office of Immigration and Nationality promptly takes action for the payment of the first installment of integration support for refugees and persons under subsidiary protection.

The vast majority of clients take the opportunity to reschedule payments, which enables the first year's integration support to be received as a lump sum. Based on last year's experience, clients requested rescheduling in order to establish housing conditions; to pay rental fee and deposit. Unfortunately, it is also last year's experience that on a considerable number of occasions clients did not use the significant amount of rescheduled support for the cause indicated by them previously, rather, they left to unknown locations after receipt of the support.

- The Hungarian Government still does not agree with the findings of the report stating that homelessness typically occurs amongst refugees and persons under subsidiary protection, as experience from last year does not support this statement. Housing of refugees and persons under subsidiary protection who receive integration support is typically resolved.

With this in mind, there is likewise no basis to claim that the refugees and beneficiaries of subsidiary protection leave the country and move typically to another Western European country due to fear of homelessness or its legal consequences. According to our experience, the primary reason for leaving Hungary is rather economic in nature; they consider that they have better chances of finding a job in Western-European countries, secondly they have relatives, friends in these

countries whose support they can count on. The phenomenon is related to the transit role of our country.

- The Hungarian Government would also like to indicate that refugees and beneficiaries of subsidiary protection may access the social benefit system with the same conditions as Hungarian citizens, and the amount paid for them as integration support - in comparison with the amount paid to Hungarian citizens living in similar situations - is higher. The aim of the integration support is to enhance social inclusion, to which our country intends to contribute with financial support provided to the refugees and persons under subsidiary protection in the first two years following recognition.

It is important to point out that expenses related to integration contracts and integration support are financed through state budget funds, contrary to the statements of the Report. Complementary activities (social integration programs run by NGOs such as organization of language courses, housing projects) are partially funded by European Union sources, but also with contribution from the Hungarian state budget.

- Point 79:

The draft report states that the Equal Treatment Act was amended on 12 July 2013 in order to contain the principle that pursuing equal rights and social equalization are first and foremost a state obligation. Roma organizations expressed concerns that this may in practice be used to legitimize measures which *de facto* constitute the segregation of Roma. As a counter-argument, the Report indicates that the authorities deny having such intention. We would like to emphasize that these provisions and the fourth amendment of the Fundamental Law of Hungary - which added the same principle in the Fundamental Law - do not in any way result in the legitimization of segregation based on any ground. Quite the contrary, it amounts to a clear and strong message that the state has committed itself to continued efforts in the field of social equalization.

- Point 80:

The Government does not agree mentioning the case in the Report. The Curia (the Supreme Court of Hungary) established in its final judgment, delivered after the preparation of the Report, that the Greek Catholic Church (Diocese of Hajdúdorog) did not pursue segregated education in the referred school of Nyíregyháza.

- Point 90:

Pursuant to Section 12 (5) point a) of Act No. LIII of 2006 on the Acceleration and Simplification of the Implementation of Investment Projects of Major Importance for the National Economy, the Government received authorization to issue a decree defining the matters of key importance for national economy. Based on this authorization, the Government issued Decree No. 461 of 2013 (XII.4.) on the Declaration of Administrative and Regulatory Matters Relating to the Implementation of the Reconstruction of Diósgyőr Stadium within the Framework of the National Stadium Development Programme and on the Designation of the Proceeding Authorities. The decree also defines the area involved in the investment, thus the plots of land demarcated by Andrásy Street -Kilencedik Street -Tizenegyedik Street -Pereces Patak is specifically mentioned in the decree. The rental agreements in place in these areas are terminated *ipso iure*, pursuant to section 23/A of Act No. LXXVIII of 1993 on Certain Rules of the Renting of Homes and Other Premises and the Alienation Thereof (hereinafter Housing Act). The legal consequences of the termination of the rental contracts in such a way are regulated in section 23/A (2)-(5) of the Housing Act.

However, the stadium reconstruction not only affects rented homes, but also privately owned properties. The properties required for the stadium reconstruction are not sold to gain profit: the state acquires the privately owned properties either based on an agreement or through expropriation, while properties owned by the municipality are given to the project company that owns the sports facility as contribution in kind, pursuant to Government Resolution No. 1895 of 2013 (XII. 4) on the Measures Related to the Diósgyőr Stadium Reconstruction Project. Therefore the municipality has a law enforcement-and not legislative role in the construction of Diósgyőr Stadium, and the involvement in the construction works is determined by the location of the leased or owned properties and not by the nationality or income or financial position of the tenants or owners. That is why the project affects all residents living on the site defined in Government Decree No. 461 of 2013 (XII. 4), irrespective of whether or not they have any protected characteristics.

Naturally, a rental contract is a prerequisite for the eligibility for alternative accommodation or compensation. Without that, i.e. when a home is used without a legal title, the unlawful tenant must vacate the home pursuant to the provisions of the Housing Act. However, this does not mean that the tenant whose stay has become unlawful cannot apply for the lease of another flat owned by the municipality.

The statements relating to the eviction of “hundreds of Roma families” are incorrect.

This point of the Report mixes up the procedure conducted due to the investment, which is in full and absolute compliance with the provisions of the Act on Expropriation, with the elimination of slums.

The Report unjustifiably and wrongly treats public security, public health, tenancy and expropriation issues as minority issues.

The Report talks about coercion, whereas they are only contractual processes that are based on law and have been accepted by both parties in contracts, or procedures falling within the scope of judicial enforcement, regulated by law and supervised by the courts.

- Point 91:

Contrary to what is stated in point 91 of the Report, the criticized section 23 (3) of local government decree No. 25 of 2006. (VII.12.) of the General Assembly of the municipality of the County City of Miskolc on Lease of Housing (hereinafter decree), based on the authorization granted by section 23 (3) of the Housing Act, allows for the termination of a contract by mutual agreement in respect of agreements concluded for an indefinite period which have not yet expired, and not at the expiry of the rental contract.

Distinction must be made between rental contracts for indefinite and definite terms.

In the first case, the tenant and the landlord municipality transform their indefinite rental relationship (without expiration date), which is a pecuniary right, into a compensation fee, through a unanimous declaration of intent. This terminates the rental contract as, pursuant to the decree, the tenant acquires private property. Section 23 (3) of the Housing Act expressly permits such legal transactions. A rental contract concluded for an indefinite term is unlimited in time, and may be terminated only in cases specified by law with mutual consent or with a unilateral declaration if either party is in breach of the contract (e.g. lack of rent payment).

In the second case, the rental right of the tenant to a particular home is limited in time due to the joint intention of the contracting parties. It lasts for a specifically defined period, after the expiry of which the contract is automatically terminated

ipso iure when such objective event occurs. A terminated right cannot be compensated and its value cannot be paid off, as no such legal transaction is known under the Housing Act at the moment of the termination of an engagement. If no remuneration is given in respect of a given service, than it is considered a donation.

In view of the above, the statement of the report that compensation is paid upon the expiry of the rental agreement is incorrect.

According to the Report, each tenant living in a home with low comfort level receives compensation if they leave the property at the expiry of the rental contract. However, **in reality, only those receive compensation who have rental contracts for indefinite terms for a home with low comfort levels and undertake to purchase a property outside the administrative area of the city, which may not be sold or debited for 5 years starting from the sales transaction.**

Another statement of the Report, according to which earlier only tenants of homes with high comfort degrees were eligible for compensation, is also incorrect. Prior to the amendment of the decree that entered into force on 13 May 2014, the rental agreement could be terminated with mutual consent and with the payment of compensation in respect of any type of accommodation which was rented for an indefinite period. However, the municipality recognized that the scope of beneficiaries should be limited in order to manage public funds responsibly and in the spirit of positive discrimination.

In respect of tenants of houses that are rented under market terms and conditions, there is no need to apply any measures - based on assets or income - that helps finding accommodation when a rental agreement is terminated. As these tenants have higher income, they are able to rent a home even from private individuals under market terms and conditions.

However, the socially disadvantaged tenants are not in the same situation, and therefore are unable to fund themselves normal and dignified housing conditions under market terms and conditions, or even based on the principle of costs.

Hence, positive discrimination is justified towards the socially disadvantaged people, i.e. based on the authorization granted by the Housing Act, the decree **provides opportunity** for the payment of compensation when the contract is terminated by mutual consent in order to enable the tenant of the home to arrange for housing due to the termination of the rental contract. This compensates for the income advantages of those who rent homes according to market terms and conditions.

These provisions, aimed at positive discrimination, are in line with section 17 and Article 5 of Council Directive No. 2000/43/EC.

The government wishes to emphasize that section 23 (3) of the decree, which regulates the termination of a rental contract by mutual consent and with the payment of compensation, is only an option. This provision is actually applied if the tenant accepts the offered option, i.e. clearly expresses in writing his/her wish to terminate the rental agreement by mutual consent, together with the payment of compensation. In such case the rental contract is terminated by the mutual consent of the tenant and the landlord (municipality), subject to the consensus between the two parties. **The contract is not terminated as a result of a unilateral statement.** In a decision, adopted independently by the tenant as a natural person with full legal capacity and ability to act, the tenant undertakes, in consideration for the compensation received in exchange for the valuable right, to use the received compensation to buy a property and not to sell or debit the acquired property within 5 years.

According to the experiences of the (less than one year) period after the amendment of this provision of the decree, termination of the contract with the payment of compensation was offered in writing to each eligible tenant upon their request. The tenants concerned could also provide a written declaration as to whether they wished to take the option or would rather request another accommodation. In the majority of cases, the tenants opted for alternative accommodation, compensation was paid in one case only. **Pressure therefore was not applied under any circumstances. If the tenants rejected the option offered to them, the legal transaction did not take place.**

Another statement of the report, according to which tenants opting for compensation could not return to Miskolc for 5 years is also incorrect. **The restraint on alienation and debiting for a 5-year period in exchange for compensation, pursuant to the decree, does not mean that the individuals concerned cannot cross the administrative border of the city or that they cannot rent accommodation in the city, or that they do not receive social security benefits and services provided by the city. The purpose of this legal concept is to prevent the transfer of a property purchased from the compensation from being transferred (e.g. through sales or as a gift) to a third party other than the former tenant, and to prevent its debiting (e.g. mortgage).**

The restraint on alienation does not and cannot impede registration of the individual at an address in Miskolc. Section 15 (1) of Act No. LXVI of 1992 on the Registration of Personal Data and Address of Residents (Registration Act) contains a specific and exhaustive list of data which needs to be provided in relation to one's home address. Pursuant to the provisions of the Registration Act, citizens must only inform the authority responsible for the registration of addresses of their personal data and their old and new addresses, based on which the authority must register the citizen at the new address in line with the information provided. The citizen does not need to certify to the authority the type of the property of the new residential address (e.g. detached house, condominium, holiday home, etc.) or the reasons and antecedents of registration at a new address. The registration of an address is a declarative action and does not generate any rights. The purpose of the Act is to register personal data (i.e. residential address), which are required in order to satisfy the law-based data supply requirements of public administration and judicial authorities, local governments and other natural or legal persons. Thus, individuals may also register themselves at addresses in Miskolc who previously received compensation in exchange for their rental rights and used the amount to purchase a real estate outside the administrative territory of Miskolc County city, on which restraint on alienation and ban of debiting was registered.

It is important to stress again that the possibility to terminate a rental contract by mutual consent and with the payment of compensation does not extend to users of homes living in flats belonging to the municipality without any legal title. Such a situation can occur if an agreement between the tenant and the landlord, concluded for a definite period, has expired, and no new rental agreement is concluded between the parties, but, contrary to the obligations, the tenant does not leave the property. The same situation may also occur when a rental agreement concluded for an indefinite term is terminated due to breach of contract by the tenant (e.g. lack of rent payment), but the tenant fails to vacate the property. Pursuant to section 17 (1) of the Housing Act, upon termination of the contract the tenant **shall return** the property and the furnishing contained therein **to the landlord** in a condition suitable for proper use.

- Point 114:

The Hungarian Government welcomes the clarifications made at the second sentence of point 114, however, maintain that according to the Hungarian authorities, the dramatic increase in the number of applications for asylum in 2013 was not due to the changes in the regulation of detention of asylum-seekers.

- Asylum detention, introduced on 1 July 2013, is entirely different from alien policing detention, and mixing up these two legal concepts can lead to wrong conclusions. We consider that it is a wrong approach that the report draws far-reaching conclusions in respect of asylum detention based on outdated statements of other organizations (such as the reference to the statements of the 2012 Report of the UNHCR) which refers to alien policing detention. The report thus operates with invalid and not current data and draws critical conclusions based on them, such as the ill-treatment of asylum seekers in detention, because the cited Report of the UNHCR refers to the immigration detention, not the asylum detention.

It can generally be stated that the Office of Immigration and Nationality shows the utmost attention towards the rights of those in various detentions. Letters addressed to the authority responsible for the supervision of detention concerning objections, requests, complaints, notices of public concern, and letters written to human rights organizations shall be forwarded without delay. As a result, clients will have the opportunity to seek legal remedy in case their rights were violated. Social workers, psychologists and doctors who work in the reception centers are also all there to ensure respect for the right to life and human dignity of the foreigners accommodated therein.

The report makes a general statement of atrocities and ill-treatment suffered by asylum-seekers and people receiving international protection. Whenever a crime takes place, the competent authority initiates the necessary procedures, and all cases are investigated without exception.

- Point 115:

Concerning the second sentence of point 115, the Government is of the view that it is not correct, as asylum-seekers may not be detained in aliens policing detention. It further needs to be underlined in respect of the third sentence of this point that asylum detention of families with minor children may only be ordered exceptionally and as a last resort for a maximum of 30 days, taking into consideration the overarching and best interest of the child.

- Point 116:

Concerning the third sentence of point 116, we would like to underline that the UNHCR report referred to in this point was published in 2012, thus it may obviously not be relevant to the changed circumstances and to the asylum detention introduced on 1 July 2013. The use of the measures criticized by UNHCR (use of handcuffs and leashes) are defined by the legislation on the rules of police measures (Decree of the Minister of Interior 86/2012. (XII. 28.) BM). Nevertheless, it is worth mentioning that the authorities aim at reducing the number of transfers of foreigners in detention (be it detention of asylum-seekers or other foreigners in aliens policing detention) by allowing hearings to be made at the premises of the detention centers. Therefore, use of handcuffs and leash may be reduced to the minimum. This is a priority to be taken into account in the development of existing detention centers and will be taken into account, should new centers be established.

- Points 122-124:

With regard to points 122-124, the Government notes that in addition to the Fundamental Law and Criminal Code referred to by the Report, Act No. CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities also includes anti-discrimination regulations.

In connection with the first sentence of item 130, we note that the preparations of clinical guidelines or medical protocols have already begun in Hungary. Until the finalization, Act No. CLIV of 1997 on Health Care regulates the quality of patient care. Accordingly, even in the absence of professional guidelines and legislation, the doctor is required to decide on the care of the patient on the basis of the available professional knowledge (eg. international guidelines). We consider it important to note that according to section 23. § k) of Act No. LXXXIII of 1997 on the Services of Compulsory Health Insurance, health insurance indeed covers 10 % of the total costs of the gender reassignment treatment, unless the aim of the intervention is to create genetically-defined external sexual characteristics due to malformations (in this latter case, the cover of the treatment is full). Legislative provisions allow the health insurance to provide subsidy, based on individual assessment, for the treatment of transsexualism - even in the case of beyond-label use of a medicine or hormonal product.

- Point 131:

The National Core Curriculum and the framework curricula have been developed in a system-approach. Therefore, the topics taught in schools are not focused on a single phenomenon, or a special social group, but taught in a broader context. The topic of sexuality may arise during the discussions in various classes. The discussion of this issue should not result in discrimination, and that is why it should not be handled from the point of view of a certain group or minority, but from social, or even global level.

