

Hungary¹

IHF FOCUS: elections; peaceful assembly, judicial system and independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; national and ethnic minorities; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers and immigrants; homosexuals' rights.

Two UN bodies considered reports submitted by the Hungarian government under conventions ratified by Hungary. In March, the UN Human Rights Committee commented on the fourth periodic report of Hungary under the International Covenant on Civil and Political Rights (ICCPR),² and in August, the UN Committee on the Elimination of Racial Discrimination (CERD) reviewed Hungary's progress in combating discrimination.³

The UN Human Rights Committee commended Hungary for the substantial progress it had made in strengthening democratic institutions within its jurisdiction and for steps taken towards establishing and consolidating a human rights regime. It noted in particular, the establishment of a framework for minority protection and minority electoral representation.

On the other hand, the CERD expressed its deep concern about the situation of the Roma who still remained disadvantaged in almost all aspects of life and recommended that a vigorous campaign be carried out to alter public attitudes vis-à-vis the Roma. It also regretted that under the new Criminal Procedure Act, short-term arrest of up to 12 hours remained possible and expressed concern both at the length of the initial pre-trial detention phase (up to 72 hours) and the difficulties experienced by detainees in contacting their families and obtaining access to a lawyer. Other concerns included: the low participation of women in political life and their segregation in the labor market; the high number of reports of ill-treatment by law enforcement agencies and the limited number of investigations carried out in such cases along with the low conviction rate of perpetrators; the continuing overcrowding in prisons; and the discriminatory practices with respect to the registration of certain religious groups in Hungary.

Elections

In general, Hungary's April/May parliamentary elections were conducted in a fair and free manner, with lively public exchange of opinion and a high voter turnout. The elections resulted in the change of government with a new coalition between the Hungarian Socialist Party and the Alliance of Free Democrats coming into power. However, after the elections, supporters of the previous government claimed that irregularities had happened during the counting of ballots. Political as well as non-political organizations tried to convince the National Election Committee to order a recount of ballots but it refused to do so.

The Organization for Security and Cooperation in Europe (OSCE) observed the elections. It concluded that the elections had basically complied with international standards and that no irregularities had taken place.⁴ However, the OSCE report referred to some other problems, stating that

¹ Based on the *Annual Report 2002* of the Hungarian Helsinki Committee.

² UN Human Rights Committee, *Concluding observations: Hungary, 19/04/2002*. CCPR/CO/74/HUN, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/0aa530144627309fc1256b9600386877?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/0aa530144627309fc1256b9600386877?Opendocument)

³ UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding observations of the Committee on the Elimination of Racial Discrimination: Hungary, 01/11/2002, A/57/18*, paras.367-390, at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/37b6a9d17ac31a98c1256c7000380d9f?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/37b6a9d17ac31a98c1256c7000380d9f?Opendocument)

⁴ *Final Report of the OSCE/ODIHR Election Observation Mission*, 6 June 2002, at www.osce.org/odihr/documents/reports/election_reports/hu/hu_pe_april2002_efr.php3

the members of the National Election Committee had been chosen by the ruling majority in the previous parliament, while opposition parties had not been consulted.

The national television channel was far from impartial in its reporting on all political parties and favored the incumbent government. Moreover, contrary to the recommendation of the Constitutional Court, minority groups' right to parliamentary representation was still not guaranteed.

Local government elections were held in October, with a higher than usual voter turnout bringing about the victory of the former opposition parties.⁵

Peaceful Assembly

Freedom of assembly is protected by the Constitution and by Act III of 1989. According to the act, assemblies have to be announced to the local police station three days prior to the event. One incident in 2002, however, exposed inconsistencies in the regulations. The government is planning to address these.

- On July 4, a large demonstration that effectively blocked traffic, took place on the Elisabeth Bridge in Budapest without prior notification. The demonstrators demanded that the National Election Committee conduct a recount of the ballots of the parliamentary elections because of alleged irregularities. Due to lack of prior notification, the police tried to disperse the assembly. One police officer tried to force one of the organizers to kneel down at gunpoint. In the evening the police dissolved the crowd using tear gas and truncheons. A journalist of the daily paper *Népszabadság* was wounded in the course of the action.

Due to the ambiguities in the regulation governing the freedom of assembly, the police were uncertain how to use their power and were criticized for the role they had played. An investigation was started in July by the general deputy commissioner of civil rights who called for an amendment of the act on the freedom of assembly. The deputy commissioner recommended that parliament authorize the minister of interior to regulate the police's conduct by decree in the case of assemblies, in order to provide guidance for their lawful actions.

Judicial System and Independence of the Judiciary⁶

The independence of the judiciary was well established in Hungary. Generally, the structures of judicial self-government and self-administration functioned efficiently. A recent ruling by the Constitutional Court concerning the mandatory establishment of appellate instances helped ensure that basic questions about the organization of the judiciary would be protected from political interference. At the same time the continued involvement of the executive branch in the budgeting process for the judiciary resulted in consistent under-funding and effectively weakened its independence and capacity. Therefore, steps taken by the government in 2002 to strengthen the judiciary's financial independence were an improvement of judicial capacity. Nevertheless, certain areas of operations should be made more transparent and professional management should be introduced into the courts, freeing up judges to focus on their core adjudicative work. This would help lessen the current backlog of cases.

According to the Hungarian Helsinki Committee, the very success the judiciary has had in asserting extensive institutional autonomy makes it imperative that it continue to develop specialized expertise in public administration and enhance the transparency of its operations. This will increase

⁵ For details on minority self-government elections, see Ethnic and National minorities, below.

⁶ Partly based on Open Society Institute, *Judicial Capacity in Hungary. Monitoring the EU Accession Process—Judicial Capacity*, 2002, at www.eumap.org

judges' professionalism and avoid creating an insular and unaccountable institution that lacks public trust and support.

The Helsinki Committee also noted that the procedures for selecting and promoting judges would benefit from clearer and more standardized criteria. The lack of transparency and the broad discretion afforded to officials involved in the process encouraged arbitrariness and even abuse. This may discourage the development of a professional corps of judges. Hungary had a good system for evaluating judges' performance; the system, however, afforded legal professionals and other individuals outside the judiciary only limited input. The general public's limited opportunity to monitor the quality of adjudication contributed to public distrust of courts. Although Hungary had a fairly efficient training system, its capacity and level of financial support were not sufficient to develop necessary training programs in management skills. Political support for the creation of a separate institute for judicial training was lacking.

The European Commission's 2002 *Regular Report on Hungary*⁷ noted that court infrastructure and technical facilities were still inadequate and judges had to spend a large part of their time on administrative matters. The remuneration of judges has risen over the years, but increases have remained below the annual inflation rate since 1998, resulting in a salary decrease in real terms. In order to remedy this situation, the government proposed to increase the basic salary of judges by 50% as of January 2003.

The establishment of five regional appellate courts in 2003-2004 should reduce the backlog of cases before the Supreme Court and enable the highest court to concentrate on its main functions: to guarantee uniform application of law by courts, to provide guidance to lower courts, and to examine application for the review of final judgments as an extraordinary remedy.

The Hungarian Helsinki Committee carried on the project "Equality before the Law in the Criminal Justice System – for Roma and Non-Roma Suspects" to determine whether anti-Roma biases influenced the outcome of criminal procedures against them. A careful examination of 146 cases of petty theft, theft and robbery involving 69 Roma and 77 non-Roma suspects altogether was conducted. The early results of the project's pilot phase – based on a small sample – seemed to support the opinion that a certain degree of discrimination may be traced in the criminal procedure. Preliminary findings showed that the average length of pre-trial detention was longer for Roma suspects than that for non-Roma (385 as opposed to 232 days) and that the average length of effective (i.e. not suspended) prison sentences imposed by courts also tended to be longer for Roma (504 as opposed to 319 days). Additionally, the preliminary study found that in 62.1% of the cases involving Roma suspects, their criminal files contained hints relating to their ethnic origin, a fact that may have influenced the proceeding authorities' decision.

Fair Trial and Detainees' Rights

The European Committee for the Prevention of Torture (CPT) has recommended to Hungary that, "steps be taken to ensure that persons in police custody benefit from an effective right of access to a lawyer, as from the very outset of their deprivation of liberty."⁸ In contrast to this, under Hungarian law, short-term arrest – not formally a phase of the criminal procedure, but often preceding the criminal process – could be applied on a number of grounds, for example, when caught in the act of committing a crime or for being a "suspect of having committed a crime." A well-founded

⁷ *European Commission 2002 Regular Report on Hungary's Progress Towards Accession* [COM 2002(700) final], at http://europa.eu.int/comm/enlargement/report2002/hu_en.pdf

⁸ Article 31 of the *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 16 December 1999* (CPT report), at www.cpt.coe.int/reports/inf2001-02en.htm

suspicion was not required.⁹ The maximum length of a short-term arrest was eight or (in exceptional cases) twelve hours. The arrested person had to be informed about the reasons for the arrest.

Under the Police Act, detainees (including people under short-term arrest) were provided with the possibility to notify a relative or any other person, unless such a notification posed a threat to the purpose of the measure. As a criminal procedure had not yet formally started at this stage, the arrested person was not entitled to contact a lawyer. During the short-term arrest, the person arrested was not allowed to receive visitors,¹⁰ so even if the person under short-term arrest could notify a lawyer, the lawyer would not be allowed visit him/her.

Additionally, although neither the Police Act nor the Criminal Procedure Code allowed for it, the police often informally questioned the short-term detainee without pressing formal charges. As this type of informal questioning took place before the criminal procedure began, police officers were not obliged to inform the arrested person about his/her rights as the accused.

The longest deprivation of liberty possible without a judicial decision was the 72-hour detention. Under the Criminal Procedure Code, it was possible to take the accused into a 72-hour detention if caught in the act and his/her identity could not be established, or if the conditions of pre-trial detention existed. If the court did not order pre-trial detention within 72 hours, the person taken into a 72-hour detention was to be released.¹¹

The legal framework provided for mandatory *ex officio* defense, but its implementation was problematic, including inadequate fees of the appointed counsel. If the defendant was convicted, the fees were only advanced and not borne by the state, which was clearly contrary to the relevant provisions of the ICPR and the European Convention on Human Rights ECHR.¹² Moreover, the quality of defense provided by *ex officio* defense counsels was often sub-standard and ineffective. Many of the 1996 findings of the parliamentary commissioner for civil rights (ombudsperson) were still true in 2002.¹³ For example, there was a lack of appropriate sanctions for failure to perform appropriately or at all.

It was not compulsory for appointed counsels to appear at any pre-trial stage of the procedure, save for in the case of minors. Since appointed defense counsel fees were very low,¹⁴ there was little incentive to appear unless required. Furthermore, appointed counsels were not eligible for remuneration for time spent meeting with clients, and in the case of foreign defendants, interpretation was only available in the case of official proceedings and not in case of meetings held with counsel.

The upcoming comprehensive amendment of the rules of criminal procedure and the regulations increasing the fees of *ex officio* appointed defense counsels¹⁵ would solve some of these systemic problems. The new Criminal Procedure Code prescribes that if – based on his/her income and property conditions – the accused/defendant is not able to pay the criminal expenses, the court or the

⁹ Article 33 (1) (a) and (2) (b) of Act XXXIV of 1994 on the Police (1994. évi XXXIV. törvény a rendőrségről).

¹⁰ Article 45 (5) of Decree 3/1995 (III.1.) of the Minister of Interior on the Service Regulations of the Police (3/1995. (III. 1.) BM rendelet a Rendőrség Szolgálati Szabályzatáról).

¹¹ Criminal Procedure Code, article 91(2).

¹² See www.pili.org/library/access/country_reports.html for the Hungarian Helsinki Committee's country report on access to justice in Hungary.

¹³ Office of the Ombudspersons, *A kirendelt védovel rendelkező fogvatartott személyek védelemhez való jogának érvényesülése a büntetőeljárás nyomozási szakaszában* (The realization of the right to defense of detained persons with appointed defense counsels in the investigative phase of the criminal procedure), 1996.

¹⁴ Decree 1/1974 of the Ministry of Justice prescribed fees of HUF 1,000 (€) for the first hour of the given procedural act and HUF 500 (€) for every subsequent hour. This compared with "market fees" of HUF 10,000–15,000 (€39–58). A related problem was that appointed defense counsels had to pay a very high sum for copies of files (one page costs HUF 100 [€0.4], i.e. 10% of the fee they were paid for the first hour).

¹⁵ Act XIX of 1998 on the Code of Criminal Procedure will come into force in July 2003. The new Ministerial Decree on the fees of *ex officio* appointed defense counsels will come into force on in January 2003.

prosecutor may grant a personal exemption of costs. In such a case, the court, the prosecutor, or the investigative authority would appoint a defense counsel upon the request of the accused/defendant and the fee and the expenses of the *ex officio* counsel would be borne by the state. Under the provisions of the new ministerial decree, the fees of *ex officio* appointed defense counsels will be increased.

However, no solution seems to be emerging for the lack of quality control with regard to the performance of *ex officio* appointed defense counsels or for the lack of comprehensive management of the system of access to justice in the field of criminal as well as civil law.

Torture, Ill-Treatment and Police Misconduct

Three types of criminal offences – ill-treatment, forced interrogation, and unlawful detention – were typically committed by the official staff of the law enforcement agencies in 2002. Although 1,100-1,400 cases of police misconduct have been reported annually in recent years, the Hungarian Helsinki Committee, based on its own experiences, believed the real number to be much higher. Detainees subjected to ill-treatment usually did not file a complaint, because they were afraid of retribution or they were highly dubious that abusive police officers would be held accountable for their actions. Hence, the vast majority of the reports concerning ill-treatment were filed by people who were not suspects of criminal acts but who were ill-treated while undergoing a routine police check on the street or in the course of another kind of routine check.

The investigative department of the Prosecutor's Office responsible for investigating these cases failed to investigate approximately 40% of the cases reported to it, terminated the investigation before completion in a further 40-50% of cases, and pressed charges against the accused police officers in just 10% of cases.

In cases where charges were brought against the accused, the officer was almost always found guilty in the procedure that followed. However, the sentences tended to be lenient – usually either suspended imprisonment, a fine, or probation. The judicial practice of imposing suspended imprisonment enabled the convicted police officer to continue working in the police force.

- In January 2000, a Budapest secondary school teacher was ill-treated by plain clothes police officers in front of the school because she had tried to prevent the police from checking two students. The Hungarian Helsinki Committee's attorney represented the victim. The investigation by the parliamentary commissioner for civil rights into the case established that the teacher's right to dignity was violated during the procedure. Despite this conclusion, the prosecutor's investigation office terminated the criminal procedure against the police officers arguing that they had not committed a crime. At the same time, the procedure against the victim on account of violence against an official person, was closed by reprimanding the school teacher. The victim and her legal representative filed an appeal against this decision, which is pending at the time of writing.¹⁶
- In 2002, the most publicized case of police ill-treatment took place in Gyöngyös on 1 November, when hospital security guards called in police because about 50 members of a Roma family mourned a deceased relative in an allegedly too loud manner, thereby disturbing the other patients. During the police action, a commotion erupted and several police officers as well as Roma sustained injuries. The police subsequently detained several Roma. The ill-treated Roma filed a complaint against the police officers. The complaint was initially rejected by the local police headquarters. This decision, however, was overturned by the Heves County Police Headquarters, which ordered the town police headquarters to repeat its investigation. The new investigation concluded that none of the police officers' actions were severe enough

¹⁶ See IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2001 (Events of 2000)*, at www.ihf-hr.org

to warrant dismissal from the police force, but seven police officers received various lighter punishments. Several police officers also faced disciplinary procedures following an investigation of the incident ordered by the director general for public security of the National Police Headquarters.

Conditions in Prisons and Detention Facilities

Prisons

Lack of access to physicians and health care constituted the majority of the problems in prisons in 2002. The decree of the Minister of Justice on Health Care Provisions for Inmates provided that “inmates indicating medical complaints shall be taken [to the physician] at the time of the next medical consulting hours.” However, the Hungarian Helsinki Committee’s Prison Monitoring Program revealed that inmates were often unable to gain access to the physician with their health or medical problems, and instead, educators, guards, or nurses determined whether the complaint was well founded.

Physicians participating in the Prison Monitoring Program were not always satisfied with the food inmates received, calling attention mainly to the lack of fresh vegetables and fruit. The physician participating in the monitoring visit to the Sátoraljaújhely prison in November pointed out that it would be difficult to provide diabetics with an appropriate diet in that penitentiary institution.

According to the regulation on Implementation of the Rules of Imprisonment and Pre-trial Detention (Penitentiary Rules) “inmates shall be provided with warm bathing opportunities (showers) at least once a week; for those working in a dirty workplace, daily after-work baths shall be made possible.” Although this provision complies with relevant international instruments,¹⁷ the Hungarian Helsinki Committee was of the opinion that showering once a week no longer complies with contemporary hygienic standards.

The Penitentiary Rules provided inmates with the right to “self-education, ordering press products, and making use of education and sports facilities of the penitentiary institution.” It was possible to suspend this right only for a maximum of five days in times when order in the penitentiary was directly and severely threatened.

Although the Penitentiary Rules prescribed that space suitable for outdoor exercise and sports shall be provided in penitentiary institutions, in practice, physical exercise opportunities were remarkably scarce in most penitentiaries in 2002. In practice, ensuring access to the gym was granted as a “reward.” In some penitentiaries, inmates placed in the strictest security regimes were not allowed to use the gym at all, again in contravention of the Penitentiary Rules. In at least one prison, the Balassagyarmat prison, some gyms had been transformed back into cells in order to tackle overcrowding.

The rate of overcrowding further increased in 2002. If the Penitentiary Rules had been complied with, only 11,000 inmates could have been placed in the Hungarian penitentiary system. Their number, however, exceeded 18,000.¹⁸

Temporary leave from penitentiaries remained underutilized. The radical decrease in the number of leaves, which began in late 1999, continued in 2002. For instance, in the Balassagyarmat prison, where 651 inmates were being detained, only two inmates since 1999 had been allowed to leave the prison for a maximum of 24 hours, four times a month, in order to maintain relationships

¹⁷ UN Standard Minimum Rules for the Treatment of Prisoners, point 13, European Prison Rules, point 18.

¹⁸ Information provided by the National Prison Administration.

with the outside world. By September 10, 2002, out of 70 inmates who had requested an interruption of their sentence, only 18 had their request fulfilled.¹⁹

There was a virtual lack of legal framework for the treatment of imprisoned drug addicts or drug users. While scattered provisions relating to imprisoned drug users did exist, a comprehensive and coherent system did not, although the legal tools that could provide solutions to this issue were at hand. The amendment to the Penal Code²⁰ that could create a framework for the treatment of such inmates, adopted 14 years ago, had not yet entered into force.

Alien Policing Jails

The 2001 Aliens Act stipulated that detention shall be ordered in the interest of implementing the expulsion order issued for a foreigner. In the case of asylum seekers, however, it was not allowed to implement the expulsion until the final decision in the asylum procedure had been taken. The law did not call for the compulsory detention of asylum seekers – nevertheless, asylum seekers who were not able to reach the asylum authorities before being caught by the border guards were detained in 2002. According to the Aliens Act, the maximum length of detention of an asylum seeker was one year, a period of time not in keeping with international law.

As of the end of 2002, there were approximately 450 expelled migrants detained in the eight alien policing jails maintained by the border guards in Hungary. The majority of them were asylum seekers who did not understand why they were held in conditions that were often worse than in their countries of origin. They did not receive information about their rights and obligations from authorities. Legal and psychosocial counseling provided by NGOs was insufficient to remedy this problem. Border guard officers working in the jails generally did not speak any foreign languages. Suicide attempts and hunger strikes were frequent in alien policing jails.

- In Győr, several migrants attempted suicide during their detention.
- On November 22, in Szombathely, a young Armenian man hung himself.
- During the first week of December, 56 detained migrants went on a hunger strike in Nyírbátor, protesting against their lengthy detention.

By law, it was possible to detain a foreigner following a medical examination. In light of the medical condition of detainees, the Hungarian Helsinki Committee was concerned about whether a thorough medical examination took place in every instance. It also noted that health care services available to detained migrants were unsatisfactory. In Győr, for example, although there was a 24-hour on-duty health care service, there was no qualified doctor. As a result, medication and treatment prescribed were not always appropriate. In addition, a number of foreigners suffered from psychiatric disorders which remained untreated.

Some detainees belonged to vulnerable groups of asylum seekers (torture victims, pregnant women, persons suffering from psychological or physical problems) who should not have been detained even for a short period of time. Pregnant women and children often received neither milk nor other essential nutrients. In Szombathely, only after a visit by the UNHCR was it discovered that a woman who was four months pregnant had refused to eat for several days. Married couples as well as parents and children were separated, and the same regime applied to children as to adults.

The foreigners' isolation was aggravated by difficulties concerning communication. The public payphone, which was the only method of contact with the outside world, was placed outside of the barred area in several jails. There were no foreign language publications or magazines and there was a lack of cultural and sport activities. Long-term detention often led to tension and aggression

¹⁹ Information provided by the management of the Balassagyarmat Prison.

²⁰ Article 11 of Act III of 1987.

that was frequently directed against other detainees. Hygienic conditions were substandard; detainees received little soap or detergent. Detainees were escorted to the dining hall by armed guards (often accompanied by dogs).

The Hungarian Helsinki Committee was aware of several cases of ill-treatment of foreigners in alien policing jails.

National and Ethnic Minorities

Hungary ratified the European Framework Convention for the Protection of National Minorities in 1999 (Act XXXIV of 1999) and the International Convention on the Elimination of All Forms of Racial Discrimination in 1969 (Law-decree 8 of 1969.) Moreover, Hungary has signed but not yet ratified Protocol No. 12 of the European Convention of Human Rights.

Following lengthy debate and years of reluctance on the side of the government, a comprehensive draft law on anti-discrimination was finally before the Ministry of Justice as of the end of 2002. After significant amendments, the 1992 Labor Code was more or less in line with the EU Race and Framework Directives. For instance, it contained provisions on prohibition of discrimination and on the reversed burden of proof. However, its practical application by courts remained problematic in 2002.

*Roma Minority*²¹

As also noted by the European Commission,²² members of the Roma population – the largest minority group in Hungary with an estimated population of 450,000-600,000 persons – have been the primary victims of discrimination in many fields, including health care, employment, housing, criminal justice, and especially in the field of education, due to widespread segregation of Roma students in schools.

The European Commission's report stated that "around 70% of working-age Roma are unemployed. Only 33% of Roma children start secondary education (compared to 90% of non-Roma children) and the percentage of Roma with higher education is small (scarcely 1% of the total Roma population). Housing conditions are very poor for a large proportion of Roma and often do not meet the most basic health and safety requirements. Recent health surveys confirmed a life expectancy for Roma of 15 years below the Hungarian average." It was estimated that in 2002 there were still around 150 schools in Hungary where special Roma classes were maintained.

- In the village of Jászladány a private school was planned to be opened, making the enrollment of Roma students practically impossible because of the tuition fees. The Ministry of Education rejected the registration of the school because of its indirectly discriminatory effects.

According to the European Commission's report, Roma policy was not well integrated into general social development strategies and existed as a separate and parallel project.

Inappropriate regulations of the Act on Minorities (Act LXXVII of 1993) allowed for electing minority self-government representatives who actually did not belong to the given community. During the local government elections in October, several candidates benefited from this regulation. In Jászladány (see above), four of the five members of the Roma self-government were non-Roma.

The parliamentary elections brought four Roma representatives into the parliament. The new government established a political state secretary on Roma affairs in the Prime Minister's Office. A ministerial commissioner "for equal opportunities for children of Roma origin and in disadvantageous

²¹ See also Intolerance, Xenophobia, Racial Discrimination and Hate Speech.

²² See, http://europa.eu.int/comm/enlargement/report2002/hu_en.pdf

position” was appointed in August in the Ministry of Education. In line with the government program, the Roma Coordination Board was set up at the end of July to serve as a consultative advising body to the government. The president of the board was the prime minister and the vice-president was the political state secretary for Roma affairs.

In June, the Government announced the creation of a new anti-discrimination bureau to combat discrimination against women, disabled people, Roma, and other minority groups in the field of employment. A special anti-discrimination network of attorneys was set up by the Ministry of Justice of the previous government in co-operation with the National Roma Self-Government and the Office for National and Ethnic Minorities in late 2001.

The 2001 status-law on Hungarians living abroad, in force since January 2002, caused a regional scandal. The act, adopted without consultation with the countries concerned, aimed at according preferential treatment to ethnic Hungarians who were citizens of neighboring countries (except Austria) in the fields of health care, education, travel benefits, and work permits. Various international organizations, such as the Council of Europe's Venice Commission, the OSCE High Commissioner for National Minorities, the European Commissioner for Enlargement, as well as neighboring governments have criticized the act for its extraterritorial effect and because it discriminated against citizens of neighboring countries based on their national identity.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

The constitutional provision prescribing a fundamental ban on discrimination was amplified by a patchwork of anti-discrimination provisions scattered in statutes governing different fields of social life. However, most of these provisions were not backed by a system of sanctions and were little more than declarations. This was partly due to the fact that there was no widespread awareness of available remedies within the groups most vulnerable to discrimination, and partly due to the unwillingness of competent authorities to act with the necessary firmness against discriminatory acts.

Several experts (including the minorities ombudsman) and NGOs have repeatedly emphasized the following points: the need for adopting a comprehensive general anti-discrimination act; the need for developing an adequate system of sanctions that is suitable for the prevention of discriminatory acts and the effective punishment of offenders; and the need for setting up an effective institutional system to guarantee the implementation of the anti-discrimination act and its sanctions. Following years of resistance, the government finally decided in March, to look into the issue. The new government's program foresees adopting a comprehensive anti-discrimination law.²³ At the time of writing, the drafting of the anti-discrimination legislation is in progress in the Ministry of Justice.

Hungary is party to the International Convention on the Elimination of all Forms of Racial Discrimination. The UN Committee on the Elimination of Racial Discrimination (CERD) considered the most recent periodic report of Hungary in August 2002. While noting a number of positive developments, the CERD expressed concern about the following: persisting intolerance and discrimination especially in relation to the Roma minority, xenophobic tendencies against immigrants, refugees and asylum seekers, the number of allegations of ill-treatment and discrimination against the Roma and non-citizens by law enforcement officials, especially by the police.

With respect to education practices, the CERD expressed concerns about the discriminatory practices resulting from the system of separate school classes for Roma students, private schooling arrangements, and the practice of allocating Roma children to schools and classes for the mentally disabled. More generally, the CERD also noted the following: proportionately higher unemployment rate among the Roma population, discrimination in respect of housing including forced evictions, and

²³ See, www.kormany.hu/program/III/C/

the discriminatory practices against Roma in access to public places, such as restaurants, bars, and cafés.

Due to the relatively restrictive interpretation of the offense of incitement to hatred – incitement shall only be committed if the perpetrator calls for effective action directed against the given group – the number of recorded criminal offenses relating to hate speech (article 269 of the Criminal Code) was minuscule. In a number of highly publicized cases the authorities refused to launch a criminal procedure, although they themselves acknowledged that the expressions used in public were degrading and humiliating with respect to a certain group of society.

The Civil Code also failed to provide groups with effective protection against hate speech.

- On November 22, a civil court rejected a claim by private persons who sought redress for defamatory statements made about the Jewish community by members of the extreme right-wing party MIÉP and a journalist affiliated with it. The court's stance was that individuals cannot file claims on behalf of a group under the relevant provisions of the Civil Code. The court acknowledged that this situation constituted a legal gap.²⁴

The new government's program promises to take effective measures against hate speech.²⁵ On October 28, the minister of justice stated that the Penal Code would be amended as soon as the EU Council of Ministers adopt its framework regulation, in order to make sure it is in line with the EU acquis.²⁶

A survey by TÁRKI Social Research Center found that xenophobia was on the rise in Hungary. Forty percent of the adult population would close the door to all seeking asylum in Hungary. Only 6% could be perceived as friendly towards foreigners, while 54% percent would distinguish between different groups of migrants. Most members of this latter group would refuse entry to Roma and Arabs.²⁷

- In Paks, in September, a building in which approximately 40 Roma lived was torn down by the local council citing its desolate condition. The local council tried to place the Roma in neighboring villages but the plan was aborted due to resistance among the inhabitants of the villages. For example, they demolished a house that the Paks council had bought for one of the Roma families, and staged demonstrations against the Roma. The minority rights ombudsman established that authorities in Paks and in neighboring Németskér had resorted to discrimination. A criminal procedure was launched against the citizens of Németskér who participated in the demolition of the house.²⁸

Should footnote 23 read: See "We are..." at www.kormany...
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Asylum Seekers and Immigrants

As of January 1, the new Act on the Entry and Stay of Foreigners came into force. It was an amendment to the Act on Asylum including its executing government decrees.

The new legislation brought about a number of positive changes: it introduced a legal remedy against the rejection of visa applications, it reduced the maximum length of detention from 18 to 12 months, it defined the term "unaccompanied minors," and it abolished the restrictive rules on granting of "persons authorized to stay" (PAS) status. Notwithstanding, numerous anomalies occurred in the practical implementation of the law.

²⁴ See www.nepszabadsag.hu/Default.asp?DocCollID=82792&DocID=78123#78123

²⁵ See www.kormany.hu/program/III/C/

²⁶ See www.nepszabadsag.hu/Default.asp?DocCollID=78454&DocID=74345#74345

²⁷ See www.romapage.hu/hirek/index.php?kozep=mh1211.htm

²⁸ See www.romapage.hu/hirek/index.php?kozep=paks.htm

The Aliens Act brought about structural changes in the Office of Immigration and Nationality (OIN). In addition to the central body, seven regional directorates were set up to decide on asylum applications in the first instance, and deal with other alien policing tasks. The central unit of OIN adjudicated appeals against first instance decisions. The asylum procedure became lengthier as the formerly single-stage public administrative procedure became a two-stage one. The possibility to request judicial review first from the Metropolitan Court and then appeal to the Supreme Court still remained. Although both the second instance OIN department and the Metropolitan Court were entitled to hear the asylum applicant, these bodies merely based their investigation on the documents in the appeal or the court review procedure. The court did not consider new facts and evidence.

According to the amended Asylum Act, the OIN was entitled to order expulsion under the Refugee Status Determination Procedure (RSDP) and had the right to order the immediate execution of the expulsion order while an asylum application was still pending. Although the suspension of immediate execution could be requested from the court, the legal regulation failed to provide adequate safeguards ensuring the suspension. In 2002, the legal remedy department of the OIN frequently applied expulsion in cases where the applicant was determined to have come from a “safe country of origin” or a “safe third country.”

The amended legislation provided further grounds on which it was possible to conduct an accelerated asylum procedure, and, consequently, more reasons for the immediate rejection of an application. However, as there were no special regulations about legal remedies in the accelerated procedure, all three further stages of legal remedy were open, even for those rejected.

The PAS category now applied to any person who fell under the *non-refoulement* principle. The former restriction that the PAS status could only be granted to those whose personal identity was verified with documents was abolished but the legal status of PAS remained unresolved and this hindered persons with PAS status from benefiting from the support and entitlements provided by law (e.g. regular work).

Under the new Aliens Act, family reunification became a new ground for legalizing one’s stay in Hungary. However, in practice, persons applying for a residence permit for the purpose of family reunification faced considerable difficulties due to a cumbersome procedure and strict financial requirements applied by authorities. Consequently, most cases were rejected and the applicants (mainly from Asia and Africa) were expelled from Hungary although their wife or child of Hungarian nationality resided in the country.

Since January, alien police did not have to request the expert opinion of the refugee authorities on the question of *refoulement* when deciding on refusal or expulsion of asylum-seekers. This raised serious concerns, as alien police officers lacked expertise on country of origin information. In 2002, in many places no information database (including Internet access) was available on the spot to make an assessment on the issue of *refoulement*. Moreover, decisions were not based on individualized investigation. As a result, for example, in early 2002 the expulsion of a few Iraqi citizens was ordered with immediate effect and they were taken into detention; the actual deportation was not carried out.

Within the OIN, the alien policing departments were more powerful than the refugee agency. As a result, alien policing procedure was implemented as a priority procedure and it was applied to aliens who applied for asylum status. Moreover, Hungarian law did not recognize the principle set forth by the 1951 Geneva Convention, which states that penalties cannot be imposed on asylum seekers on account of illegal entry or presence if coming directly from the country of persecution. The OIN did not apply this provision to asylum seekers who arrived in Hungary after having transited a third country but detained them and issued an expulsion order.

The new Aliens Act provided for three types of detention for asylum seekers, all of which can be ordered by the alien policing authority prior to planned expulsion and can only be extended by the

What are the three types?

court. The maximum length of detention was 12 months, however, many foreigners who entered or resided in Hungary unlawfully in 2001 sometimes spent a cumulative period of up to 30 months in detention as a result of legal changes.

In practice, 90 percent of detainees in alien policing jails were asylum seekers whose detention had been automatically extended to up to 12 months. Their access to legal counsel improved after the Hungarian Helsinki Committee concluded a cooperation agreement with the National Headquarters of the Border Guards in September.

Reportedly, in numerous cases undue and unreasonable delays took place in forwarding asylum applications from the border guards to the asylum authority.

Homosexuals' Rights²⁹

Fragmented anti-discrimination legislation and the lack of an express prohibition of discrimination on grounds of sexual orientation made the battle against discrimination extremely difficult. Article 70/A of the Constitution prohibits differential treatment based on, *inter alia*, "other status," on the basis of which the Constitutional Court has applied the ban on discrimination to homosexuals as well.

In 2002, in the so-called Pepsi Island case,³⁰ a court stated in a final judgment that, in accordance with the correct interpretation of article 70/A, homosexuals, as a homogenous group defined by "other status," were entitled to protection by the state against discrimination.³¹

The only Hungarian law that expressly prohibited discrimination on grounds of sexual orientation was the Health Care Act (article 7 (1) of Act CLIV of 1997 on health care), which banned discrimination with respect to health care services.

The Penal Code (Act IV of 1978) had not prohibited homosexual relations between consenting adults since 1962. However, until September 4, the age of consent was regulated differently with respect to heterosexual and homosexual relationships. The Constitutional Court invalidated this discriminative legislation as of September 4, and ordered the review of all pending criminal procedure as well as closed cases that were based on article 199.³² Consequently, the age of consent became equal (14 years) in case of both heterosexual as well as homosexual relationships.

In 2002, the general attitude in society continued to reject homosexuals. Investigative authorities frequently humiliated crime victims who reported criminal acts that took place against them because of their sexual orientation. However, public discourse increased since the Pepsi Island case, and following the change in government in May and the nearing of EU accession, the government has cautiously opened up toward this minority.

²⁹ Based on information provided by the Hatter Support Society for Gays and Lesbians.

³⁰ See IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2002 (Events of 2001)*, p. 168, at www.ihf-hr.org

³¹ Judgment No. 17.P.III.22429/2001/9 of the Budapest 2nd and 3rd District Court.

³² Decision No. 37/2002 (IX. 4.) of the Constitutional Court.