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Wickenburgg. 14/7, A-1080 Vienna, Austria; Tel +43-1-408 88 22; Fax 408 88 22-50
e-mail: office@ihf-hr.org – internet: <http://www.ihf-hr.org>
Bank account: Bank Austria Creditanstalt, 0221-00283/00, BLZ 12 000

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Hungary 1

IHF Focus:

Elections; freedom of expression and the media; conditions in prisons and detention facilities; freedom of movement; protection of ethnic minorities; protection of asylum seekers and immigrants.

Following the parliamentary elections in May, the new government promised that it will achieve more than a change in government but less than a change in the political regime. As the Hungarian political system has been a constitutional democracy since 1990, this statement gave a cause for worry to many. Such concerns were supported by the fact that the parliamentary majority one-sidedly decreased the number of plenary sessions in parliament. Consequently, the opposition has less opportunity to put questions to the government, and therefore has reduced parliamentary control on its activities. The Constitutional Court stated that the parliament's House Rules, the amendment of which requires a two-thirds majority of MP's present, should provide rules for the regularity of plenary sessions. The Constitutional Court gave a deadline of 15 December 1999 for the amendment of the House Rules.

In addition, the government proposed a so-called Anti-Mafia Bill aiming at the repression of organized crime. This act, if it would come into force, would restrict the exercise of some basic human rights. In case the Bill is passed, the majority of asylum seekers would be accommodated by a military agency, the border guards, instead of the civilian Office for Refugee and Migration Affairs. Other concerns included the protection of the Roma minority, and asylum seekers and immigrants.

Elections

Parliamentary Elections

The parliamentary elections were held on 10 and 24 May, resulting in the victory of the conservative Fidesz-MPP (Fidesz-Hungarian Civic Party), and the formation of a coalition government. In the local elections held on 10 October, the MSZP (Hungarian Socialist Party - the stronger party of the former government coalition) was the most successful, while the candidate of the SZDSZ (Alliance of Free

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COOPERATING ORGANIZATIONS:

The European Roma Rights Center – Human Rights Without Frontiers – Mental Disability Advocacy Center

Democrats - the smaller party of the former government) was elected mayor of Budapest, the capital, with the support of the MSZP.

Both elections were fair and free.

Freedom of Expression and the Media

On 15 July Béla Pokol, deputy of the FKgP (Party of Independent Smallholders - the second strongest party in the government) and president of the parliamentary Committee for Constitutional Affairs, submitted a proposal to parliament aiming at the modification of article 79 of the civil code. In terms of the proposal, media would not only be obliged to publish corrections of untrue statements of fact but also counter-opinions refuting value judgments. He proposed that the article should include the following sentence: "If an opinion or evaluation which is regarded as socially disadvantageous is published or broadcast in a medium, the individual personally concerned by the opinion or evaluation is entitled to demand that a statement refuting the opinion or evaluation be published or broadcast by the same medium."

The Hungarian Helsinki Committee stated that such a proposal violated article 61(1) of the constitution that guarantees the freedom of expression. In violation of that freedom, the proposal could obligate a media outlet to publish a counter-representation based on somebody's personal opinion. Moreover, it provided only for the vague formulation "opinion or evaluation which is regarded as socially disadvantageous," a definition potentially subject to a wide variety of interpretation by editors, publishers and the courts. According to the Hungarian Helsinki Committee, such a provision may be considered a first step to censorship.

Under article 61(3) of the constitution a qualified majority vote in parliament is required for the passing of acts concerning the freedom of expression and the media, while the civil code may be modified by a simple majority vote. According to the Hungarian Helsinki Committee, the aim of Béla Pokol was apparently to elude this strict voting requirement. Despite public uproar, the proposal was put on the agenda of the parliament. Finally, Fidesz-MPP's media expert announced that although they agreed with the basic idea, they did not support the proposal in the form it had been submitted.

Media Boards

During the past years, the privatization of electronic media took place, with the exception of three public service television and three radio stations. The National Radio and Television Council's (ORTT) task is to supervise the economic operation and the functioning of the different entities of the public service media. The Act I of 1996 on Radio and Television broadcasting (the so-called media law) prescribed that the members of the boards' presidium be elected by the parliament. The presidium must consist of at least eight members, with at least one representative from each political party in parliament, plus an equal number of representatives of the ruling parties and the opposition.

As of this writing, the media board supervising public service television functions unlawfully as there are only representatives of the government parties in it. This situation is worrying as it influences the independent functioning of public service media. The SZDSZ and the MSZP turned to the Constitutional Court for a decision.

According to the Hungarian Helsinki Committee, it appeared that the new government had decided to strive at taking a decisive control over the press and the electronic media. It had expressly declared its intention to recreate the "necessary" balance (which it interpreted to mean support for conservative organs) in the media by administrative means. This direction was demonstrated already in the consolidation of the Postabank. The government ceased to support a liberal paper belonging to the portfolio of the bank, saying that it was unprofitable, while it kept financing another – an equally unprofitable but conservative paper.

Data Protection

On 1 October the Hungarian government adopted a draft aiming at the repression of organized crime. The draft, also known as the anti-mafia package, contained many controversial proposals, some of which - if adopted - would have seriously restricted fundamental civil rights. As a result of the strong protests by the opposition and the public, some of the most controversial measures were left out of the act that parliament finally passed. Another consequence of the heated discussion was that the minister of the interior decided to send the act to the Constitutional Court for a preliminary constitutional assessment. Therefore, the act had not come into force by the end of 1998.

The draft proposed modifications of several laws, including Act LXIII of 1992 on Data Protection. In terms of that act, everyone was entitled to obtain information about the procession and the handling of his/her personal data, about who was allowed to gain

access to his/her data, and for what purpose and to whom the information could be forwarded. Only parliament could restrict these rights, and only for certain purposes such as the internal and external safety of the state (national defense, crime prevention, criminal investigations, etc.), financial interests of the state, or the defense of others' rights. Data could only be forwarded with the permission of the person concerned, or if the agency handling the data was authorized by law to forward it. Also, the data released had to be essential to fulfil a certain purpose, it had to be suitable for that purpose, and it should not be handled to a greater extent or for a longer time than was necessary for the given purpose.

Some of the regulations of the anti-mafia package did not meet these requirements. It provided investigative authorities with new possibilities for data collection in connection with "organized crime." However, as this term had no generally accepted definition in the Hungarian legal system and was subject to different interpretations, it would be impossible to follow the rules of data protection in a consequent manner.

According to the anti-mafia package, in cases concerning drug abuse, organized crime, money laundering and terrorism, the investigative authorities would be entitled to collect data from all databases falling under the secret data collection without the approval of a prosecutor. In such cases, databases of, for example, tax authorities, clearing houses, insurance companies and banks were obliged to immediately forward the data required by the investigative authorities. Should the Constitutional Court not rule against this act, no information would be available for concerned individuals about the collection of their personal data unless legal proceedings were initiated on the bases of the collected information. The legal control provided by the prosecutor would also be missing, so nothing could guarantee the lawfulness of data collection.

Torture, Ill-treatment and Misconduct by Law-Enforcement Officials

On 17 and 19 November the UN Committee Against Torture (CAT) considered the third periodic Hungarian report under the UN Convention Against Torture.² The Hungarian Helsinki Committee submitted its comments on the government's report, calling attention to inadequate investigation into police brutality cases, conditions of detention in police cells and community shelters for foreigners.

The CAT noted with satisfaction, inter alia, the functioning of the ombudsman mechanism and Hungary's compliance with its previous recommendations. However,

it was concerned with the provisions of the criminal code that made criminal acts committed by police officers or soldiers punishable only if the perpetrators were aware that by doing so they were committing a criminal offense. The CAT also expressed its concern about the finding of the Hungarian Helsinki Committee's report that an inordinately high proportion of detainees were handled roughly or treated cruelly before, during and after interrogation by the police and that a disproportionate number of detainees and/or prisoners serving their sentence were Roma. The CAT was also disturbed by information to the effect that a number of complaints of torture or treatment contrary to article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment did not result in the initiation of investigations by prosecutors.

Conditions in Prisons and Detention Facilities

Conditions in the border guards' community shelters for foreigners (see below) were generally far less than satisfactory. However, the conditions in two community shelters, in Miskolc and in Győr, as well as - in the second half of the year - in Kiskunhalas were evidently tantamount to inhuman and degrading treatment. Therefore, the Hungarian Helsinki Committee approached the Committee for the Prevention of Torture (CPT) of the Council of Europe, requesting an ad hoc visit to the community shelter in Győr.³

Following a Hungarian Helsinki Committee visit⁴ to the Miskolc community shelter, the Hungarian Helsinki Committee filed a complaint with the parliamentary commissioner for human rights, arguing that the shelter was unsuitable to provide even short-term accommodation for human beings. In her report⁵, the ombudsman recommended that the shelter be closed, and the minister of the interior ordered its closure as of 31 May.

- The Hungarian Helsinki Committee provided legal assistance to S. S., a citizen of Iran who had been accommodated at the Miskolc community shelter and was later recognized as a refugee. He had spent sixty-five days in a cell that lacked heating or artificial lighting, while natural light only filtered in through a very small, barred cellar window. The only piece of furniture in the cell was an iron bed. According to S., he had not been allowed to leave the shelter for several weeks.

Most complaints about severely inhuman living conditions concerned the community shelter of the Győr border guards directorate. It received attention also in the German and Austrian press.⁶ The report of the parliamentary commissioner for human rights,

based on her investigation into the Győr community shelter, found violations of the constitutionally protected right to property, legal security, the rule of law, and the rights of the child.⁷ Furthermore, the ombudsman found that the conditions violated the constitutional prohibition of inhuman treatment,⁸ as well as the right to human dignity,⁹ due to the fact that men and women were not accommodated in separate dormitories.

The CAT also expressed its concern about reports on conditions in detention and holding centers for refugees regarding, inter alia, overcrowding, the lack of exercise, education and hygiene.

- For instance, two Algerian Muslim women had to spend weeks sharing a room with twenty men from Kosovo. In August several new buildings were assigned to serve as community shelters due to overcrowding.

The situation in the community shelters became so intolerable that on 27 November 132 inmates of the Kiskunhalas community shelter issued a petition, giving an account of a Russian inmate's suicide attempt that was motivated by the hopeless situation and the inhumane circumstances. The inmates wrote:

"The toilet cannot be cleaned. There are no facilities for flushing, thus the toilets are regularly flooded. The bathroom, equipped with four showers and intended to serve more than 200 inmates, is only opened for 2 hours per day. [...] Most of the room warmers or heaters are in a very bad shape. Furthermore, the inmates are deprived of good medical attention. Hardly anybody is taken to the clinic. [...] No soap or other toiletries are distributed. [...] We are completely cut off from the outside world. The only telephone booth installed to serve us hardly works. They maintain a shop that sells all items at exorbitant prices. The shop, ironically, only opens for three hours per day. Sir, the police even degenerate into beating inmates to instill fears."

The conditions in police cells were also far from impeccable. The Hungarian Helsinki Committee's Police Cell Monitoring Program revealed several infringements of the legal regulations concerning prison facilities. Some inmates were deprived of the opportunity to communicate with their families,¹⁰ while others were not permitted to contact their lawyers. The extent to which the different commanders of the city and district police headquarters took the Hungarian Helsinki Committee's complaints into consideration varied significantly. Some of them cooperated with the Committee and took measures to improve the situation, while others ignored all recommendations.

Another serious problem was that the medical examination of the inmates did not include tuberculosis screening, although more and more inmates suffered from it. This fact was particularly worrying because the official health service was not entitled to check the institutions maintained by the police, the border guard and the army - whose opinions about the hygienic conditions prevailing in prisons and other institutions of detention were doubtful.

Freedom of Movement

A system of several smaller community shelters around Hungary was established in the summer of 1995. These shelters, maintained by the border guards in military facilities, were semi-closed institutions that served as designated places of residence for both migrants awaiting deportation as well as asylum-seekers.

On 12 August the national commander of the border guards and the national chief of police issued a joint internal order regarding the right of foreigners accommodated at community shelters to leave the shelter. It stipulated that a person who could not credibly prove his/her identity, could leave the center only for the purpose of medical treatment or at the request from a consulate for the purpose of establishing his/her identity.

Such orders seriously restricted foreigners' freedom of movement outside community shelters. Furthermore, in community shelters, foreigners were denied the right to daily open air exercise and children did not enjoy special social care or educational activities. Since August, foreigners held several hunger strikes and two committed suicide as a result of the denial of freedom of movement in community shelters.

Moreover, in the anti-mafia package the government stated that it would modify legislation in order to restrict the right of migrants awaiting deportation to leave community shelters. The anti-mafia package wished to restrict the right of all inmates of community shelters to leave the shelters only under exceptional circumstances. As a result, virtually all migrants awaiting deportation or those who could not prove their identity would have been confined to military facilities, where in most cases not even exercise outdoors was allowed. This rule would also have covered asylum seekers awaiting a decision, which usually lasts 8-15 months. Although this provision has not been adopted, its proposal raised serious concern about the government's plans.

Protection of Ethnic Minorities

The Roma Minority

According to Human Rights Watch, the Roma were particularly likely to fall victim of police abuse, including ill-treatment upon arrest, illegal arrests, and interrogation under duress.¹¹ Furthermore, Roma victims were often unable to obtain adequate remedies for such abuses because only 3 percent of the cases brought against the police led to convictions. Even in the few cases where police officers were convicted, penalties were usually fines, probation or suspended sentences, and police officers generally remained on the force.

The general anti-Roma attitude of the police force was also demonstrated by frequent harassment of Roma by off-duty police officers.

- On 31 July an off-duty police officer from Budapest verbally and physically abused a group of Roma women attending a conference in a holiday resort in Balatonszemes.¹² The officer was supported by a group of allegedly drunken men. One of the women suffered a concussion, while another one - six months pregnant at the time - suffered other substantial injuries. Local police were reluctant to help the victims. The officers of the Siófok City Police reportedly reacted only after the women brought the incident to the attention of the national media. In September the Legal Defense Bureau for National and Ethnic Minorities (NEKI) filed a complaint on behalf of the victims seeking criminal prosecution. The investigation was still in progress as of the end of 1998.

A comprehensive report by the ombudsman for minority affairs on the education of minorities revealed that Roma students were strongly discriminated against in the Hungarian education system. They suffered both from segregation and from insufficient pedagogical methods used in the education of Roma children and youth. Roma pupils were often placed in special schools or classes established for children with slight mental disorders. While the Roma pupils' average proportion in the whole educational system was about 7-10 percent, more than half of the pupils in "special education" were Roma. In most cases this did not result from a lack of mental capacity but rather from the discriminative traditions and the pedagogical failure of the educational institutions.

Another more straightforward form of segregation was the establishment of purely Roma classes: in 1995 such classes were organized in 132 of the 840 elementary schools providing data for the research. The ombudsman estimated that this number

was over 150 as of the end of 1998. The ombudsman's report concluded that after one or two years spent in such segregated classes the Roma pupils became unable to integrate into the ordinary classes and that this practice widened the gap between the majority and minority children to a tragic extent.

There were some positive signs, however.

On 2 December a court ordered the local council in Tiszavasvári to pay a compensation of 100,000 forints (approximately US\$450) to each of the Roma pupils who had initiated a civil suit against the elementary school that had forced them into segregated classes and forbidden them access to high school.

Protection of Asylum Seekers and Immigrants 13

On 1 March the Law on Asylum entered into force, fundamentally changing the legal regime concerning persons seeking protection in Hungary. The new law created three categories of migrants under protection: refugees recognized under the Geneva Convention, temporarily protected persons, and the so-called "persons authorized to stay." A temporary status could be based only on a special decision of the government and only in a case of mass influx of refugees. The third category provided legal standing for persons who were not recognized as refugees but to whom the principle of non-refoulement was applied, i.e. they could not be expelled from Hungary.

The Hungarian Helsinki Committee monitored closely the implementation of the law. According to it, border guard and migration authorities in several cases returned asylum seekers to countries that could not be considered "safe third countries," or did not grant entry to Hungary to people coming from such countries.

Moreover, asylum seekers arriving at the Budapest airport without valid travel documents were regularly prohibited from entering the country. They were left waiting in the airport transit zone, often for several days without food or facilities for washing.

- In July an Iraqi woman with three minor children had to spend five days in the transit zone without any money.

- In September an Albanian woman from Kosovo with five children, two of whom were minors, had to face the same inhuman conditions.

Sponsored by the UNHCR, the Hungarian Helsinki Committee set up a network of lawyers around the country to provide free legal aid to asylum seekers and refugees, and to visit facilities where foreigners were accommodated.

An analysis prepared by an independent expert on refugee determination decisions taken by ORMA (Office for Refugee and Migration Affairs) since the Act on Asylum entered into force revealed that the professional quality of the decisions was poor. ORMA often did not give any specific reasons for a refusal to grant asylum; the relevant provisions of the Geneva Convention were misinterpreted or not taken into consideration at all; and not even Hungarian legal texts were properly observed and implemented.

The main reason for the poor conduct of the ORMA was the fact that it was seriously underfunded and understaffed. There were only 29 ORMA employees dealing with an enormous number of unprocessed cases, who spend more time traveling around the country than investigating the cases. Another factor was that most employees lacked the necessary legal or public administrative knowledge and skills. Reportedly, 7,097 applications for asylum were submitted between March and the end of 1998. Of them, 2,589 cases had not been settled as of the end of 1998, 1,174 were discontinued (in most cases because the applicant had disappeared). Only 3,334 cases had been decided on the merits, 133 positively (4 percent) while 231 obtained the status of a "person authorized to stay."

Toward the end of 1998 a new problem emerged as ORMA decided that the human rights situation in Kosovo had improved to such an extent that migrants coming from that region would no longer fall under the principle of non-refoulement. This meant that rejected asylum seekers from Kosovo could be forcibly returned if their asylum application was rejected.

In December the parliamentary commissioner for civil rights published a comprehensive report on the situation of refugees and asylum seekers in Hungary. The commissioner recommended, among other things, that the minister of the interior and the chief commander of the national border guards take prompt measures to close down a section of the community shelter operated by the border guards directorate of Balassagyarmat due to "disheartening" and "appalling" conditions, reconsider the conditions of the professional and the foreign language training of the staff, take measures to speed up the alien policing proceedings regarding aliens arriving without IDs, examine whether the regulations regarding the separation of

sexes are observed, display the rights of the aliens in a language understood by the aliens in the facilities where they are accommodated, provide for wardrobes that can be locked for the safe storing of the aliens' personal belongings in such facilities, take measures to decrease overcrowding in community shelters, and provide for the necessary equipment and materials for washing and the cleaning of clothes.

Another unsettling tendency was the fact that border guards often judged the passports of people arriving from Southern Europe or developing countries as forged without forensic expertise. Such - often arbitrary - decisions served as the basis for the refolement of people whose life might be in danger in the countries they were returned to. The fact that the appeal against the denial of entry could not stop extradition aggravated the situation.

- In November two Macedonian citizens spent almost a whole month in a community shelter because their passports were declared to be forged. However, the border guards' decision proved to be unfounded. The Hungarian Helsinki Committee initiated a lawsuit aiming at compensation for the two Macedonians.

Asylum seekers and refugees were also accommodated in reception centers of the Office for Refugees and Migration Affairs of the Ministry of the Interior, which did not place such strict restrictions on movement.

In terms of the Law on Aliens, expelled foreigners accommodated at community shelters could be placed in aliens regulatory custody (ARC) in case they committed a misdemeanor (for example, repeated attempts to cross the border illegally, failure to return to the shelter before curfew). ARC, which can be prolonged by a court order, lasted until the conditions for the execution of deportation were secured. However, in many cases deportation could not be executed at all. The Federal Republic of Yugoslavia, despite numerous requests by Hungarian authorities, did not issue travel documents for Kosovo Albanians and, in most cases, not even to ethnic Hungarians from Vojvodina. Therefore, ARC could turn into an unlimited time of imprisonment for persons who had not committed any criminal act.

FOOTNOTES:

1. Based on the Annual Report on Human Rights in Hungary (January-December 1998), Hungarian Helsinki Committee.
2. Conclusions and Recommendations of the Committee Against Torture: Hungary, 19/11/98 CAT/C/HUN.
3. Letter by the executive director of the Hungarian Helsinki Committee to the

secretary of the Committee for the Prevention of Torture, 8 July 1998.

4. Fact-finding visit to the Miskolc community shelter by the Hungarian Helsinki Committee, 23 April 1998.

5. Report of the parliamentary commissioner for human rights, case no. OBH 3020/1998, May 1998.

6. Articles on the condition in the Győr community shelter appeared in Frankfurter Allgemeine Zeitung, 30 May 1998; Der Standard, 27 May 1998; and profil, 15 June 1998.

7. Report of the parliamentary commissioner for human rights, case no. OBH 3524/1998, based on the ombudsman's visit to the Győr community shelter on 17 June 1998.

8. Article 54 (2) of the constitution.

9. Article 54 (1) of the constitution.

10. On one occasion, a police officer ordered that an inmate be not allowed to see his three-year-old child for the sake of the child's undisturbed psychological development.

11. Human Rights Watch World Report 1999, Europe and Central Asia Division.

12. Report by the European Roma Rights Center to the UN Nations Committee Against Torture, p. 3.

13. See also Freedom of Movement and Conditions in Prisons and Detention Facilities

