

IHF FOCUS: Freedom of expression and media; ill-treatment and misconduct by law enforcement officials; conditions in prisons; religious intolerance; protection of ethnic minorities; protection of asylum seekers and immigrants.

At the heart of the important human rights questions in Hungary were the freedom of the state television and radio, poor prison conditions and the labour rights of prisoners, police misconduct and the slow pace of judicial proceedings dealing with such cases. The planned amendments to the Law on Freedom of Conscience and Religion appeared to be tailored for the traditional churches and pave the way for discrimination against new religious groups. There were no notable positive steps in the treatment of minorities: no general anti-discrimination law was adopted, and the status of the Roma remained the same. Following criticism by the UNHCR on the Hungarian Asylum Law and practice, the new central authority on asylum and immigration issues, the Office for Immigration and Naturalisation (OIN), was established and started planning amendments to laws criticized by the UNHCR.

Freedom of Expression and Media

The legal anomalies outlined in the previous IHF report still prevailed in 2000. An unresolved dispute between the Government and the opposition surrounding the election of an 8-member council for the board of trustees of Hungarian Television, gave grounds for concern that the Government was aiming at gaining control over the national media. The board of trustees significantly has the right to elect the President of Hungarian Television.²

As of the end of 2000, there were still no members delegated by the parliamentary opposition in the councils of the boards of trustees supervising the Hungarian television and radio.

Ill-Treatment and Misconduct by Law-Enforcement Officials

Police misconduct remained a serious problem.

◆ On 27 January three plain-clothed officers conducting an investigation visited the Budapest 16th district elementary school where a police suspect's daughter studied. Suspicious of the three men, the mathematics teacher of the girl refused to provide them with information concerning her pupil. As the officers decided to wait in front of the building, they saw a girl coming out of the school and thought she might be the one they were looking for. They stepped towards her and asked for her ID card. The mathematics teacher ran to the scene and, trying to protect the girl, she pushed one of the officers (the policeman claimed that she slapped him), who in turn gas-sprayed and handcuffed her and started pulling her towards the car parked on the other side of the road. The teacher tripped and fell, however, the policeman did not wait for her to stand up: he grabbed the handcuffs and started dragging the woman lying on the ground in the direction of the car.

The Hungarian Helsinki Committee's lawyer filed a report with the Metropolitan Prosecutor's Special Investigation Department for police ill-treatment and the abuse of official powers by the police, and submitted a request for disciplinary action to the Chief Commander of the Metropolitan Police. The commander suspended the case until the Prosecutor's Office completes the investigation. At the same time the police initiated criminal proceedings on the count of "violence against an official" against the teacher. Characteristically, they initiated the procedure against an "unknown suspect," because this way the teacher could not take her counsel to the first interrogation. If she had been named as the suspect, no interrogation could have been held without the presence of the lawyer. The case caused a public outcry. Even the Ombudsman for Citizen's Rights launched an *ex-off*

ficio investigation, which concluded that the police action violated the teacher's right to human dignity and was not proportionate. Despite the complaints put forward by the Hungarian Helsinki Committee, the investigation against the policemen's commander on count of the abuse of official powers was terminated, while charges will be pressed against the policemen and the teacher.

◆ It took the Hungarian criminal justice system almost three years to bring three policemen who had resorted to ill-treatment before the court. The case dates back to 28 October 1997, when three members of the Hungarian Helsinki Committee's Police Cell Monitoring Programme visited the jail of the Budapest 6-7th District Police Headquarters, where they witnessed the ill-treatment of two Ukrainian men arrested for aggressive behaviour. The Committee reported to the Investigative Department of the Prosecutor's Office both identified and unidentified policemen taking part in the incident on the count of ill-treatment. As the monitors revisited the police station to offer representation to the victims, they were told that, although the police had initiated a criminal procedure against them on the count of disorderly conduct, they had been released. The officer refused to disclose the names of the Ukrainians and their addresses but promised to inform the Helsinki Committee when they would be summoned. The Committee also informed the Commander of the Budapest Police Headquarters about the incident and asked him to look into it. In his 25 November 1997 reply he claimed that the police officers' measures had been professional and lawful. He also informed the Helsinki Committee that although a criminal procedure was initiated against the two Ukrainians they had so far failed to turn up when summoned. According to the experience of the Hungarian Helsinki Committee, it is not characteristic of the police to promptly release suspects of violent crimes, especially if they are foreigners and

especially not after having attacked policemen accompanying them (which was the version of the police with regard to what happened at the station). As the Hungarian Helsinki Committee pointed out: "There is usually no witness to police ill-treatment, but on the rare occasion there are witnesses, officials make sure that there are no victims to be found."

Finally in May 2000, two of the three police officers were found guilty of ill-treatment and were obliged to pay a fine of 30.000 Forints (approximately U.S.\$ 100), while the principal defendant, Viktor Egri – seen by the monitors to step on the head of one of the victims, who had previously been brought down to the floor by four other policemen – was put on a one year probation. Thus, although a high ranking police officer (Commander of the Budapest Police) considered the action of the policemen as lawful and professional, the court did not seem to share his opinion - which says a lot about the way senior police officers perceive ill-treatment and other abuses of official power.

Conditions in Prison

Physical Conditions

The EU Commission's 2000 *Regular Report on Hungary's Progress towards Accession* also called attention to one of the biggest problems of the Hungarian prison system: the severe overcrowding of penitentiary institutions. The size of the prison population decreased following the political transition, but started to rise again owing to the stricter criminal policy, i.e. ever stricter amendments of the Criminal Code, tougher punishments and the rarity of imposing so-called alternative sanctions. As of early 2000, 15,742 inmates were kept in Hungarian jails, prisons and penitentiaries, although officially there were only 10,249 places, which meant that several new places should be built. However, it is absolutely impossible for the Hungarian Prison Administration (which is struggling

with severe financial problems - although it is the law enforcement agency with the lowest average salaries in Hungary) to find the necessary resources for such an expansion. As of March 2001, one prison was being built.

Most of the operating prisons were built at the turn of the century. Under Article 137 of Decree 6/1996 of the Minister of Justice on the Rules of Implementing Imprisonment and Pre-trial Detention ("Ministerial Decree") the number of people to be placed in a prison cell shall be defined in a way that each inmate have three square meters of moving space (women and minors shall have three and a half square meters). In 2000, this regulation was abided by practically none of the Hungarian correctional institutions. In the Budapest Penitentiary and Prison, for example, the gross ground space of cells holding 10-13 inmates was 27,5 square meters, which meant that even if there had not been beds, lockers and wash basins, the moving space per person in a cell still would not have reached the size required by the law.

Another problematic point was the use of sports facilities in prisons. Under Article 36, § 1, point m) of Law Decree 11 of 1979 on the Implementation of Sanctions and Measures ("Law Decree on Implementation") the inmates shall be entitled to use the cultural and sports facilities of the penitentiary. According to Article 37/A of the same statute this right - along with others - may only be suspended for a definite period of time (5+5 days) under special circumstances that severely and directly threaten the security of detention. However, according to the experiences of the Hungarian Helsinki Committee's Prison Monitoring Programme, most correctional institutions used the gym for instance as a special type of award for good behaviour, since the lack of capacity (small size of the gym, lack of personnel) prevented them from providing all the inmates with this legally prescribed opportunity. In one of the

prisons visited by the Committee the use of the open-air sports field was suspended for "security reasons," in another the gym was used as a premises for work.

Labour in Detention

In theory, the inmates were obliged to work while serving their sentence (Article 33, § 1, point d) of the Law Decree on Implementation). However, the correctional system was not able to provide jobs to more than two thirds of the inmates.

There were two major problems in connection with this area. The first one was related to the wages inmates received for their work. According to Article 36, § 1, point (d) of the Law Decree on Implementation, the inmates shall be entitled to a wage corresponding to the amount and quality of the work. Article 45, § 4 of the same statute claimed that the wage of the inmate shall be determined in accordance with the general principles of remuneration. As opposed to this, under Article 124 of the Ministerial Decree inmates working full time (i.e., eight hours per day) shall receive at least one third of the minimum wage established for the previous year. The correctional institutions usually interpreted this in a way that those inmates who fulfilled the norm received one third of the minimum wage, while the others were given even less. It was easy to see that this provision and practice were not in harmony with the general principles of remuneration and clearly went against the principle of "equal payment for equal work" set forth by Article 70/B of the Constitution.

The other problem was that the work inmates performed in prison did not count as "service time" from the point of view of the pension system. Service time in the Hungarian social security system was the time spent in an employment context so as to be eligible for an old age pension. If therefore someone served a 25-year sentence, it would be very hard for him/her to gather the required amount of service time (especially because it is not so easy to find

a job after being released) and even if he/she managed to do so, the service time would be very short which would influence the amount of the pension in a detrimental manner. This will further hinder the reintegration of the given person into society, and it is again in contradiction with the general anti-discrimination clause of the Constitution.

The two problems together contributed to the fact that the inmates were released with an amount of money that could not cover their living costs for more than two or three days. Although the law prescribed that the correctional institutions shall support the freshly released inmates in finding a job and shelter, the institutions lacked the means to abide by this provision. The situation was made even more severe by the fact that owing to the stricter criminal policy, significantly less inmates were placed on so called "outside" jobs before being released, which minimized the chances of being re-integrated into society and to acquire enough money to start a new life.

Religious Intolerance³

In early 1999, the report prepared by the OSCE/ODIHR criticised the restrictions planned in Hungary concerning the Law on Freedom of Conscience and Religion. The OSCE/ODIHR condemned all kind of state control concerning the content of the documents submitted as part of an application and stated that the decision on the status of a religious community should be impartial, thus without the participation of dominant religions or churches in the decision-making procedure. It denounced "proposals that would have the effect of de-registering churches by applying eligibility criteria retroactively" saying that "as a general principle, religious discrimination in limiting or rejecting religious status should be avoided."

Also the EU has drawn attention to the deterioration of State neutrality emphasizing that the role of the State is to "promote tolerance." It said that the restrictions

planned in Hungary are not motivated "by the desire to fight more effectively against" abuses against the religious status but rather by "discrimination and unnecessarily restrictive tendencies against religious beliefs." The statement urged a "flexible and tolerant approach through dialogue and education."

Human Rights Without Frontiers (HRWF, IHF cooperating organization) noted that even though the most obviously discriminating requirements of the amendments to the law on religious organizations – which was in Parliament at this writing – have been dropped (the 10,000-founder requirement and retroactive duration requirement of 100 years), there is a clear pattern of efforts to marginalize minority churches in favour of the six historical churches.

For example, the amendment to the law on VAT would deprive 98 percent of the registered churches of their former rights to claim VAT refunds under certain circumstances. Neither the parties, nor the denominations were informed properly by the Government. While six historical denominations (Roman Catholic, Reformed, Lutheran, Baptist, Serbian Orthodox and Jewish) and the secular non-profit organizations would be exempt from any restriction, the minority churches would be excluded allegedly on the basis of their social role. The HRWF found the argument unacceptable, because, firstly, no scientific research has been carried out regarding the dimension of activity, and secondly, no such research would have this result.

According to the HRWF, the definition of "religion" in the new draft amendment of the Law on Freedom of Conscience and Religion "was formulated in such a way that the submissions of the historical churches would automatically conform to the definition." Such a definition could be used "as a yardstick to measure the 'correctness' of the submissions from the minority churches." The list of activities that "expressly" cannot be classified as religious activities

gives room for subjective interpretations in terms of deciding whether an activity is part of the primary activities or not.

The requirement to present a "summary of main teachings" is also not likely to sift out obviously negative activities.

According to the HRWF, the draft law is aimed at protecting the "symbolic and social status" of some churches by distinguishing between churches on the basis of their social role, a fact which is incompatible with state neutrality and European norms.

In addition, the contradicting statements of the Government regarding the necessity of amendments have not proven to be true, since the law in force is able to protect against abuse and there is no registered church in Hungary that could be accused of being engaged "in activities of an illicit or criminal nature and in violation of human rights." The reference to the European Parliament Resolution on Cults in Europe (1996) was therefore unacceptable.

Protection of Ethnic Minorities

Lack of an Anti-Discrimination Act

Still in 2000, there was no general anti-discrimination legislation in Hungary, although several experts and NGO's emphasized the necessity of adopting an anti-discrimination act, i.e. developing an adequate system of sanctions which would be suitable for the prevention of discriminatory acts and the effective punishment of offenders, and setting up an effective institutional system to guarantee the implementation of the anti-discrimination act and the above sanctions.

There has been a debate going on for some time about the creation of independent anti-discrimination legislation. During the preparation of the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority⁴ the experts participating in the drafting of the document argued in favour of such legislation. They noted, for example, that the present system is rather haphazard (some legal fields have anti-discrimination provi-

sions, some do not, some have a relatively elaborate system of sanctions, some contain no sanctions at all, etc.) and it does not cover all the relevant areas. They also pointed out that the number of actual cases initiated by individuals discriminated against has been low. In their opinion, an anti-discrimination law could promote the establishment of a relatively independent legal field, form a circle of legal experts specializing in this area and create a more coherent judicial practice and sanctions.

However, the Government has been reluctant to assume the obligation to adopt such legislation, so the decree only contains that "the possibility of such a measure shall be examined" and it called the Government to collect all the possible arguments necessary for deciding on the question. When the question was raised again during the drafting of the second medium-term action plan, the Ministry of Justice explicitly stated that since the present system of anti-discrimination legislation (anti-discrimination provisions scattered in different acts and decrees) was sufficient, it would not devise a draft.

In September 2000 the office of the Minority Ombudsman declared that it would undertake the task to develop a draft for the general anti-discrimination act. The statement was not without an effect. According to information available to the Hungarian Helsinki Committee the Ministry was in early 2001 planning to draft some modifications of the valid legal instruments to improve the system of anti-discrimination so that its stance on the lack of necessity of a unified anti-discrimination act would be easier to support.

The Hungarian Helsinki Committee stated that the passing of such an act would be important because although there are anti-discrimination provisions in the statutes regulating different fields (education, labour, etc.), most of these are only confined to declaring the prohibition of discrimination: no adequate system of sanctions accompanies them. The most impor-

tant such fields would be labour, the media, education and housing.

Segregation in Education

The Roma minority continued to suffer widespread discrimination in Hungary, concerning access to housing, education and employment.

Discrimination against Roma pupils in education (especially in elementary schools) remained a serious problem. It was widespread, with proportionally far more Roma than non-Roma students placed in special schools or classes for children with slight mental disorders. Another form of segregation was the creation of purely Roma classes, a practice condemned as exacerbating the problem of low academic achievement for Roma pupils. The proportion of Roma pupils in schools with a majority of non-Roma pupils, and the proportion of Roma students attending high schools, colleges and universities remained very low.

Protection of Asylum Seekers and Immigrants

In December 1999, UNHCR stated that there are shortcomings in the Law on Asylum as well as in practice.⁵ UNHCR concluded that readmission to Hungary of an asylum seeker based on his transit in Hungary should not be carried out unconditionally. UNHCR cautioned third countries against indiscriminate return of asylum seekers pending a satisfactory resolution of several problems in the Hungarian asylum system, particularly concerning confinement of asylum seekers and conditions of accommodation. Despite this caution from UNHCR, Austrian authorities continued to return asylum seekers to Hungary without an asylum process in Austria, contrary to Article 4 of the Austrian Act on Asylum.

On 1 January, a new central authority, the Office for Immigration and Naturalisation (OIN) of the Ministry of Interior was set up. The OIN, which deals with all asylum

related, aliens policing and naturalisation issues, incorporated the former Office for Refugee and Migration Affairs (ORMA) in the form of the Refugee Affairs Directorate.

In 2000, OIN's Refugee Affairs Directorate registered 7,801 new asylum applications, resulting in a total of 8,822 asylum applications to be dealt with. In 2000, 197 asylum seekers were recognised as refugees while a further 680 persons were granted "authorised to stay" status under the Law on Asylum.

A reason for the decrease in the number of new asylum applications was the end of the war in Yugoslavia. As a consequence, widely criticised overcrowding in border guard community shelters and refugee reception centres also lessened during the year.

A great part of asylum seekers moved on from Hungary, either legally or illegally, partly due to low recognition rates and insufficient opportunities for integration. Approximately half of all asylum seekers disappeared during the asylum procedure and received decisions terminating the asylum procedure *in absentia*.

Roma asylum seekers from Kosovo, who fled to Hungary after the NATO air strikes ended and claimed to be persecuted in Kosovo by returning Albanians, were usually rejected any type of protection in Hungary. Furthermore, the Hungarian refugee authority, invoking the improvement of the situation in Kosovo, terminated the "authorised to stay" status of an Albanian-Serb couple who for reasons of safety cannot return to Kosovo or Serbia.

According to the original concept of the Law on Asylum (Act CXXXIX of 1997), the one-year long "authorised to stay" status did not aim at integrating such foreigners into society (e.g. lack of financial assistance, no access to education, requirement of a work permit). In practice, this legal situation left substantial numbers of such foreigners in difficult situations.⁶ In early 2000, the procedure for obtaining a work permit for authorised to stay persons was eased as a

result of modifying Decree No. 8/1999 of the Minister for Social and Family Affairs on work permits for foreigners.

In early summer, the OIN began drafting substantial amendments to both the Law on Asylum and the Law on Aliens. UNHCR, the Capital Court (which acted as the court of first instance in asylum review procedures) and field offices of the Refugee Affairs Directorate were all asked to submit their opinions on the draft. NGOs, however, were not invited to do so. Parliamentary discussion of the proposed amendments is expected to take place during spring 2001, while amendments will enter into force in 2002. In December 2000, the Hungarian Helsinki Committee issued a position paper detailing its concerns about the proposed bills, focusing on the ineffectiveness of legal remedies in the asylum procedure as well as detention of illegal migrants.

The Hungarian Aliens Act lacked provisions that would take into consideration an expelled foreigner's family ties in Hungary. Therefore, even those foreigners could be expelled (mainly Romanian and Yugoslavian citizens) who were married to Hungarian citizens or whose children were Hungarian citizen.

Halted Extradition

◆ On 20 December 1999 Yang Chun Jian, a national of China and Sierra Leone, having served his prison sentence for a crime committed in Hungary, was remanded in extradition detention on charges of assault pending against him in China. His lawyer brought the case to the attention of the Hungarian Helsinki Committee in February 2000, because of well-founded fears that once extradited to China, his client would be executed or subjected to torture: the client's accomplices had been executed shortly after their trial and it was expected that he would most probably face the same treatment.

In a 8 March 2000 letter sent to the Ministry of Justice, the Helsinki Committee

expressed concerns over the client's pending deportation to China and argued that based on data available from Amnesty International and various UN bodies, there were reasons to fear that once extradited, the client would face treatment contrary to Articles 3, 6 of the Geneva Convention and 1 of Protocol No. 6.

Due to the urgency of the issue, on 7 June the counsel applied to the European Court of Human Rights with a request for interim measures. The measures were not granted because the Government promised that prior to deportation, they would obtain further assurances relating to complaints advanced by the applicant, which they received. However, the Helsinki Committee noted that China had previously broken such assurances and was frequently unwilling to comply with relevant international treaties.

In the meantime, the client applied for asylum but was rejected. Furthermore – contrary to general practice – the refugee authority found that he could be *refouled* to Sierra Leone.

The European Court of Human Rights declared the case admissible on 11 January 2001. On 24 January the Hungarian authorities extradited the client to Sierra Leone, but by a gentlemen's agreement "lost him" in Lagos, Nigeria.

The relevance of the above case is two-fold: Firstly, this was the first of many applications represented by prominent Hungarian human rights NGOs that was declared admissible by the European Court of Human Rights. Secondly, it underlined the effectiveness of the Strasbourg mechanism in cases involving an immediate threat to human life and dignity.

Death During Deportation

◆ On 18 December, Christian Ecole Ebune (born 1970), a rejected asylum seeker from Cameroon, died during the deportation measure at the Budapest Ferihegy international airport.

According to police reports, Ebune strongly and continuously resisted the deportation and for this reason, he was held handcuffed and later cuffed on his feet for hours. Other forms of physical force were also used in several instances to curb his resistance. Due to Ebune's resistance, the pilot refused to take him on board of the plane. A few minutes after being escorted back to the airport transit halls, he was pushed against the wall by the police officers. A few minutes later, one of the police officers noticed that Ebune fell unconscious. A physician pronounced him dead 15 minutes later.

The autopsy ordered by the Minister of Interior found that Ebune had died of natural causes as a result of a chronic heart condition.

On 22 December the Hungarian Helsinki Committee requested an independent forensic medical opinion, which stated in the preliminary report that, *inter alia*, "al-

though not every detail pertaining to the application of physical force is known, it can be probable that in case of a healthy person, the collapse of the cardiovascular-respiratory system would not have occurred".

The Hungarian Helsinki Committee filed a criminal report at the Investigation Office of the Budapest Public Prosecutor's Office, against unknown police officers on account of well-founded suspicion of ill-treatment in official procedure or alternatively, abuse of official power, or bodily injury causing death. On 19 January 2001, the Investigation Office of the Budapest Prosecutor's Office refused to carry out an investigation on grounds that no causal relation could be established between the legitimate and necessary physical force applied and Ebune's death. The Helsinki Committee filed a complaint to the Budapest Prosecutor's Office against this decision, to which no response had arrived by this writing.

Endnotes

- ¹ Based on the Hungarian Helsinki Committee, *Human Rights in Hungary 2000*, March 2001.
- ² For background information on this and other issues concerning the operation of boards of trustees of influential media in Hungary, see IHF, *Annual Report 1999*; and IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2000* (Events of 1999).
- ³ Based information from Human Rights Without Frontiers.
- ⁴ Government Resolution 1093/1997 which contains measures concerning education, employment, social and health care, housing programs, regional programs, etc
- ⁵ Background information on the situation in the Republic of Hungary in the context of the Return of Asylum Seekers, §§ 28-30, UNHCR, December 1999
- ⁶ 1,776 were granted such status in 1999 alone, many of them families with children from FRY and Afghanistan.