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## **FOLLOW-UP REPORT ON HUNGARY (2002-2005)**

# **Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights**

**For the attention of the Committee of Ministers and the Parliamentary Assembly**

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#### **Introduction**

1. The Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited Hungary from 11 to 14 June 2002 at the invitation of the Hungarian Government. He would again thank the Hungarian authorities for their co-operation during that visit and for the facilities made available to the members of his Office<sup>1</sup> who made a follow up visit from 26 to 29 September 2005. His first report<sup>2</sup> raised a number of issues concerning legislation and actual observance of human rights in Hungary.

2. The purpose of the present report is to assess changes further to the Commissioner's 2002 findings and recommendations. It follows the order of the recommendations which the Commissioner made in his first report.

3. The present report is based on information provided by the Hungarian authorities as regards developments in observance of human rights since 2002, documents of national and international NGOs and of international organisations, reports in the media, and the findings and conclusions of the follow up visit by members of the Commissioner's Office<sup>3</sup>.

## **1. Protection of minorities**

### **1.1 Representation of minorities in Parliament**

4. In his report the Commissioner recommended adopting legislation that would allow representation of minorities in Parliament, as provided for in the Constitution.

#### ***Developments and measures adopted***

5. Article 68 (3) of the Hungarian Constitution provides: "The laws of the Republic of Hungary shall ensure representation of the national and ethnic minorities living within the country". It follows that the legislature has a duty to enact legislation that sets aside a specific number of seats for representatives of minorities as components of the state. That obligation goes far beyond the principles usually found regarding protection and representation of minorities.

6. Legislation of that kind has yet to be adopted despite the recommendations of various international bodies (chief among them the Advisory Committee of the Framework Convention for the Protection of National Minorities<sup>4</sup>), NGOs and the national minorities themselves. That legislative vacuum does not, however, prevent members of national minorities from having seats in Parliament. At the last general election members were elected who belonged to the Roma, German and Slovak communities. In addition, Hungary can take satisfaction from being the first country to have two Roma members of the European Parliament.

7. As stated by the Advisory Committee of the Framework Convention, in its second opinion on Hungary, in addition to political difficulties there are technical problems about representation of the minorities, because of their nationwide dispersal, their smallness in most cases, and the voting system for parliamentary election<sup>5</sup>.

8. During the follow-up visit it was mentioned that there was no law preventing minorities from forming political groups or putting forward candidates exclusively from among their own numbers. In the case of some minorities that might be a highly effective approach, in particular with the help of the device of compensatory national lists. During the visit, representatives of various minorities said that, without appropriate legislation, they could not properly protect their own particular interests. Their argument was that members of minorities who had seats in Parliament were primarily elected to represent a political party and its ideals, and not a minority. In addition, the members in question were not always minorities' best spokespersons. Lastly, they maintained, the possibility of setting up "ethnic" parties offered prospects of success only to the largest minorities, principally the Roma and German communities.

#### ***Conclusions***

9. The Commissioner calls on the Hungarian legislature to bring the law into line with the provisions of the Constitution and introduce a mechanism ensuring that national and ethnic minorities are represented in Parliament.

### **1.2 Legislation on the organisation of national minorities and on discrimination**

10. In his report the Commissioner recommended examining the effects of the 1993 law on the organisation of minorities with a view to amending it if necessary, in particular with regard to election of minorities' representatives. The report also mentioned draft legislation which was under way to combat discrimination.

#### ***Development of the situation and measures taken***

11. Law LXXVII of 1993 on the rights of national and ethnic minorities allows minorities to organise themselves both nationally and locally by means of autonomous institutions of their own which can be given responsibility for specific aspects of the particular minority's cultural or educational life. The law has, however, been severely criticised, in particular as regards the arrangements for election of representatives of minorities. The method of election allowed anyone, without any restriction as to membership of a minority, to vote or stand in elections to minorities' autonomous institutions. The aim of the arrangement was to allow everyone to freely represent their minority. There did not have to be a special electors' roll and nor were there any particular requirements for standing as a candidate.

12. The informality of the system has led to obvious cases of fraud since 1993: candidates claiming membership of different minorities in different elections, candidates changing their names so as to head the lists on the ballot papers, candidates being used by political parties, and so on. The proportion of blank votes cast also made it clear that there was public confusion about the election system, with people often voting simultaneously for more than one minority. These abuses have been extensively pilloried by minorities themselves, civil society and international bodies<sup>6</sup>.

13. To remedy these problems, which harm the credibility of minorities' autonomous institutions and their membership, Hungary has set about reforming the election method and the procedure for lodging candidatures. A proposal on the subject was submitted to Parliament by the parliamentary commissioners (ombudsmen) for national minorities and data protection. The proposal was that lists be administered by minorities' autonomous

authorities, which would also check that candidates belonged to the minority in question. The proposal, which had the support of minorities, civil society and some political parties, was not taken over into the legislation enacted.

14. The law which Parliament ultimately adopted provides for registration of members of minorities by declaration. To be able to vote, members of minorities will have to register with their municipality in person or by letter. The approach is based on making the individual citizen responsible for making a declaration in good faith of membership of a minority. The rule is that the lists are to be used solely for the particular election and destroyed after the election has been held. Despite these restrictions, many NGOs have been wary of the declaration arrangement. Firstly, there is no provision for checks on the individual's membership of a minority, which means that past abuses may recur. Secondly, and above all, there are fears that lists of minorities may be used by local administration for purposes other than proper conduct of elections. That fear might likewise affect numbers declaring membership of a minority.

15. The bill amending law LXXVII 1993 was adopted by Parliament on 13 June 2005, then submitted to the Constitutional Court by the President of Hungary. On 27 September 2005 the Constitutional Court delivered its decision on the bill, whose changes regarding elections it ratified. Following that decision, the legislation should come into force after review by Parliament.

16. Forthcoming application of the criteria restricting participation in election of minorities' autonomous institutions both nationally, regionally and locally will set those institutions' representativeness and legitimacy on a firmer footing and largely eliminate the abuses and problems previously encountered.

17. In addition to this amendment of the 1993 law, there has been recent reinforcement of protection of minorities. In 2003 law CXXV on equal treatment and promoting equal opportunity stepped up and assisted action to combat discrimination. In January 2005 a further stage was accomplished with inception of the Equal Treatment Authority. The Authority was established under government decree 362/2004. Its remit is to supervise proper implementation of law CXXV. It is empowered to put a stop to contraventions, to impose fines ranging from 200 to 24,000 euros and to impose penalties available under other legislation. Hopefully we can look to a body of this kind to make sure that the racism, xenophobia, anti-Semitism and anti-Roma attitudes which persist amongst a fringe element in the Hungarian population and are sometimes tolerated by local authorities are effectively combated. The point must, however, be made that the Authority is answerable to the Ministry for Equal Opportunity. In an opinion on the setting up of a similar institution in Poland the Commissioner pointed out that it was of fundamental importance to make such an authority fully independent of the Government<sup>7</sup>.

### **Conclusions**

18. The Commissioner welcomes and acknowledges the considerable progress which Hungary has made as regards both representation of minorities and action to counter discrimination. Even though the legislative changes have yet to demonstrate their full effect, he remains convinced that the efforts at legislative level will be reflected in the community. Greater independence of the Equal Treatment Authority might further reinforce protection of minorities.

## **2. Situation regarding the Roma minority**

### **2.1. Access to the employment market**

19. In his report the Commissioner recommended that Hungary continue its programmes to assist the unemployed and give special backing to assistance plans for the Roma community with a view to combating the discrimination they face in access to employment. By way of examples the report mentioned measures to make it easier for Roma to take out bank loans, and tax incentives to firms employing Roma. It also said that the Roma housing problem was linked to Roma unemployment.

### **Development of the situation and measures taken**

20. Since the 1990s the Roma community in Hungary has been hard hit by unemployment and poverty. Roma unemployment runs at over 60% and the number of Roma depending on a single salary is three times the national average<sup>8</sup>.

21. Hungary has extensively heeded the difficulties which Roma have in gaining employment and is now trying to provide concrete solutions. The authorities acknowledge that the employment difficulties are linked to lack of education and poor living conditions, but also to employers' prejudices against Roma. Research has shown that the employment market rarely offers decent jobs for Roma living in rural areas. The fact is that a large proportion of the Roma minority do not live in Hungary's main towns and cities.<sup>9</sup>

22. In 2003, according to the information supplied by the Hungarian authorities, the Ministry of Labour and Employment allocated 8.56 billion Hungarian forints - over 34 million euros - to measures to improve employment access for Roma. In 2003 a programme with support from the Labour Market Fund was launched to promote employment and training for unemployed Roma in public institutions. By means of a scheme akin to positive discrimination, a significant number of Roma were found both permanent and temporary public-sector jobs.

23. In 2004 the Government instigated a study to better identify the expectations and needs of the Roma community with regard to labour market access. It is hoped that the findings of the study will be available in 2006. The Government likewise adopted a resolution on the governmental programme for improved social integration of Roma<sup>10</sup>.

24. There have been groundbreaking decisions by the courts in the battle against segregation and racism. On 26 August 2005, for instance, a local court awarded compensation to two Roma who had been refused entry to a discotheque. There have been similar decisions concerning Roma admission to bars and restaurants, but also to public buildings such as hospitals and maternity clinics<sup>11</sup>. So far, however, there would not seem to have been any similar court decisions concerning employment discrimination.

25. Further efforts are needed. The Ministry of Employment's national employment action plan for 2004 repeatedly refers to the special attention which must be paid to Roma and their needs. However, the action plan also points to Roma unemployment as excusing Hungary's (for Europe) above-average unemployment rate in the 25 to 54 age group<sup>12</sup>. That line of reasoning implies that the Roma minority do not fully belong to the national community. In addition, recent programmes on the whole have so far assisted only a very small proportion of Roma experiencing unemployment and exclusion.

26. As regards availability of housing, a question which is often linked to labour-market access, Roma continue to encounter great difficulties in obtaining decent housing, for economic reasons and also on account of a degree of segregation. At local level Roma have several times been prevented from moving into neighbourhoods by resistance from local people and/or action by local authorities<sup>13</sup>. In addition, evictions of Roma families, which the Commissioner noted in 2002, are continuing<sup>14</sup>. To tackle the problem of housing segregation, the Ministry for the Family and Social Affairs has launched a programme to provide housing and promote social integration for people living in Roma neighbourhoods. The Government is convinced that defusing and ending prejudice against the Roma is an urgent priority and to that end it is running a project to promote solidarity in society<sup>15</sup>.

## **Conclusions**

27. The Commissioner notes that the government authorities are addressing the difficulties which members of the Roma community experience in obtaining work. These efforts nevertheless need continuing and intensifying if genuine employment opportunities are to be opened up for Roma, in particular by means of special measures encouraging private employers to follow the example set in the public sector. As regards housing, it is necessary to further develop provision for helping Roma obtain decent housing, while firmly punishing discriminatory or anti-Roma behaviour and pressing ahead with the action to combat social prejudice towards them.

### **2.2 Roma children and the education system**

28. In his report the Commissioner recommended increasing the number and improving the quality of vocational training programmes accessible to the Roma community, and that their children be provided with high-quality and non-discriminatory education. While pointing out the large increase in the number of grants awarded to Roma students, the report was critical of segregation in some schools which placed Roma children in classes for deprived or handicapped children.

#### ***Development of the situation and measures taken***

##### **2.2.1 Separate classes**

29. The Ministry of Education estimates that 95% of children of school age are registered school attenders. Alongside the normal schooling programme, there is special educational provision for children regarded as requiring special attention on account of handicap. While the maximum size of ordinary classes is 25 children, the special classes have a maximum of 13 so as to ensure quality instruction. The per-pupil grant which central government makes to local authorities is doubled for children in the special classes.

30. Around 20% of Roma children continue to be assigned to special classes<sup>16</sup> as against only 2% of Hungarian children. It should be noted that dyslexia is regarded as a serious difficulty requiring placement in a special class and that social marginality has sometimes also been treated as a handicap. As a result, whereas the proportion of handicapped children in Europe is 2.5%, it is 5.5% in Hungary on account of inappropriate or abusive placements of this kind.

31. A protection mechanism has recently been introduced which requires parental consent for a child to be placed in a special class. In addition, the child must be tested without delay to assess its abilities. During the visit it was explained to the delegation that the files of 2,000 children regarded as handicapped had been thoroughly checked to make sure that placement in a special class was strictly necessary and to put right any abusive placements which authorities had made for financial or segregation reasons. Of the 2,000 children concerned, 10% had been returned to ordinary schooling after the check – evidence that close supervision of placements must continue.

32. Significant progress has also been made in the courts. The Budapest appeal court found against local authorities and a school in Tiszatárján for keeping some children – mostly Roma – in separate, lower-ability classes from 1994 to 1999 without any legal basis or medical certificates<sup>17</sup>. The appeal court held, in particular, that the practice would have lengthy effects on the victims and that the school had not properly recognised or resolved the victims' learning difficulties by deciding to put them in lower-ability classes.

33. The Government has decided to bring in numerous reforms for the benefit of Roma, in particular regarding educational matters. According to the authorities the delegation met, Roma children's access to education is limited because of a degree of discrimination against them but also because of many families' poverty. To offset that, meals and school books are now being provided free to the most deprived children. This is a measure aimed primarily at Roma children and it considerably alleviates parents' financial hardship. A programme of school-building aid to municipalities has been introduced. In the remotest communities, however, mayors' offices lack the knowledge and staff to deal with the aid application formalities.

34. The Ministry of Education has likewise adopted measures to end segregation by making integration grants to schools. In the case of neighbourhoods where children are socially disadvantaged on account of poverty, ethnic origin or other factors, special finance encourages social integration by attracting children from better-off backgrounds<sup>18</sup>.

35. To keep track of mainstreaming of Roma questions, a post of Minister's Commissioner for Integration of Roma and Disadvantaged Children was introduced in 2002 at the education ministry. The Commissioner can intervene in all decisions concerning education matters, and the post carries its own budget. Lastly, the Education Act was amended in 2003 and now prohibits all segregation in schools and all direct or indirect discrimination<sup>19</sup>. The upper limit of compulsory schooling has also been raised from 16 to 18 years of age. This extension of compulsory schooling may have a considerable financial impact on lower-income households but will also ensure that all children leaving the Hungarian school system have a minimum level of instruction and are better equipped to enter the labour market.

### **2.2.2 Choice of school**

36. As already stated, efforts have been made to try to ensure a reasonable social and ethnic mix in schools. Nonetheless there are still schools which are exclusively Roma, a situation which is assisted, not to say worsened, by the possibility which is legally open to parents of selecting their children's schools.

37. The absence of fixed school catchment areas and parents' free choice of schools have the theoretical aim of stimulating competition between schools and thus raising standards at all of them. In practice the system places children from the poorest families at a disadvantage as their parents cannot afford transport to a school other than the local one. Above all it makes it more difficult to achieve a social mix since parents often opt to send their children to schools attended by pupils from the same group or social class. This is conducive to ghettoisation of Roma children since it allows parents who do not want their children educated alongside Roma children to register them at other schools. Lastly, this freedom of choice sometimes forces children to go to a school outside their neighbourhood for lack of school places locally.

38. There are two factors, among others, that may account for educational failure of Roma children: age of admission to primary school and access to secondary schools. Whereas 70% of non-Roma children start school at age 6 or age 7, the figure is under 50% in the case of Roma children. 10% of them start school at age 8 or over<sup>20</sup>. As Roma children often do not have access to nursery schools their primary-school admission is frequently postponed on the ground of insufficient maturity. Outside the cities it is not uncommon for there to be only one nursery school for a whole region. Later, when they leave primary school, entry to secondary school is more difficult for them because they have been receiving less advanced instruction in special or separate classes. The result is that more of them are channelled into vocational streams and there is a greater tendency for them to drop out.

### **2.2.3 Private education**

39. A degree of segregation likewise persists as a result of placement of children in "private education". This arrangement, originally introduced for sporting, artistic or intellectual high-fliers, allows children to receive their schooling at home, subject to attending school for a few hours a week. Such a system of course requires support from the parents and the child's immediate circle<sup>21</sup>.

40. According to statistics, there are eight times more Roma children than non-Roma children receiving this type of instruction. "Private" education is thus being used by some schools as a way of not admitting Roma children, so that they are educated at home and deprived of proper educational supervision. The Ombudsman for the Rights of National and Ethnic Minorities has in fact received many complaints from parents of "problem" children about being pressured by schools into adopting this home system<sup>22</sup>. It must also be borne in mind that because the child still has a few hours of school instruction the school continues drawing the per-pupil grant paid by central government.

### **Conclusions**

41. The Commissioner notes the measures which the Hungarian authorities have taken to promote schooling for all children and provide financial and material aid for the most disadvantaged, in particular Roma children. Closer supervision of placement in special classes and the new post of Ministerial Commissioner on Roma Matters and Disadvantage are two moves in that direction. These measures must be continued and developed so as to guarantee free and equal access to the education system. The most pressing requirement is to put a stop as quickly as possible to misuse of placement of Roma children in special classes or home education.

## **3. Domestic violence**

42. In his report the Commissioner recommended analysing the phenomenon of intra-family violence and drawing up a programme of specific measures to tackle it, beginning with more targeted training for police officers in the area of protection for women and children. The report also pointed out the lack of public funding for shelters for battered women.

### **Development of the situation and measures taken**

43. Domestic violence remains a great problem in Hungary. According to the latest study, at least a million women have been victims of marital violence and annually between 50 and 150 women are killed by a member of their families<sup>23</sup>, which represents more than one woman homicide victim per week. The official data are incomplete, however, since the criminal code does not define domestic violence as a major or serious offence. Consequently, police and prosecution-service major crime figures cannot take domestic violence into account.

44. In response to this situation, the police are starting to receive training from NGOs and international organisations in dealing with domestic violence and are beginning to treat it as an offence rather than a matter for the individual couple. However, the absence of specific penalties for acts of domestic violence does not make it any easier for the police and courts to deal with it. There are further problems regarding victims' complaints and confidentiality of the procedure. Perpetrators mostly receive mere fines or suspended sentences. According to the authorities, when life is threatened, the Court's ruling must include a sentence of imprisonment. Furthermore, a 2005 amendment to the Criminal Code allows a judge or the prosecutor to order a person on probation to keep away from a victim, his/her home or workplace<sup>24</sup>.

45. Since 1994 the NGO NANE has had an emergency helpline for women. In April 2005 the National Crisis Intervention and Information Helpline started its operation under the direction of the Ministry of Youth, Family, Social Affairs and Equal Opportunities. At present it works round the clock with the support of social workers, lawyers and psychologists.

46. The Government Office for Equal Opportunities opened a pilot crisis management centre in Budapest in December 2003. It provides assistance and supports abused women as well as collects data for methodology purposes. The centre also actively participated in the training on the issue of domestic violence. In spring 2004, the Ministries involved in the subject and National Police Headquarters conducted a joint campaign against domestic violence in the mass media. A similar information campaign was launched in autumn 2005.

47. Hungary does not yet have a network of shelters for battered women that is adequate to the problem. At present the Budapest shelter run by the Salvation Army and which can accommodate 20 people or three families is the only facility solely for victims of domestic violence and their children. For lack of any other specialist facilities, victims are forced to take refuge in the 90 hostels for women and families in distress. These are a last resort and do not fully meet victims' needs. Firstly, their addresses are not kept secret. Secondly they are not always equipped to accommodate children (the very young, and the older teenager), women with handicaps or children with handicaps<sup>25</sup>. Lastly the staff are not always trained to protect and support victims of violence or appropriate or adequately qualified for that task.

48. To remedy this unacceptable gap in provision, the Ministry of Youth, Family, Social Affairs and Equal Opportunities launched a programme in the second half of 2005 with the aim of opening four facilities in each county and four in Budapest for women victims of domestic violence and their children. Several associations and NGOs have responded to the government call for tenders. This programme, which is extremely welcome and deserves support, has experienced, and continues to experience, certain financial difficulties. According to information provided by Hungarian authorities, 8 temporary family homes have been chosen to provide accommodation and complex help to the victims fleeing from domestic abuse with or without children. The opening of a secret shelter is foreseen and will exclusively accommodate women victims of domestic violence with or without children.

49. Lastly, the Hungarian authorities have for several years been discussing the possibility of enacting domestic-violence legislation. In 2003 Parliament adopted a resolution on development of a national strategy to prevent and fight domestic violence<sup>26</sup>. This resolution stated that domestic violence cannot and should not be considered as a private matter. As a result the Ministry of the Interior issued regulatory measures to step up police action on the question and to adopt a victim-oriented approach<sup>27</sup>. In a 2005 Resolution, the Government instructed its different bodies to develop the training of experts in the field of domestic violence<sup>28</sup>.

50. During the follow-up visit, an important debate was taking place regarding the enactment of a law providing for restraining orders which could apply to domestic violence situations. The Hungarian authorities informed the Commissioner that on 13 February 2006 amendments to the Criminal code of procedure were adopted and include the restraining order as a new coercive measure. According to the new law, restraining could be ordered in cases where there are suspicions of a crime to be punished with imprisonment and when it may be assumed that the perpetrator risks to influence, threaten or repeat a criminal act against the victim. Restraining orders can be ordered by a court for a non renewable period of 10 to 30 days.

### ***Conclusions***

51. The Commissioner welcomes the progress in the protection of victims of domestic violence and invites the Hungarian authorities to step up their action, in particular by further carrying on with specific trainings and raising public awareness on this issue. Shelters specifically for victims of domestic violence need to be opened speedily so as to provide protection and support for victims in difficulty and their children.

52. The Commissioner calls on the Government and Parliament to enact as soon as possible legislation creating a specific offence of domestic violence. The adoption of the restraining order law which will enter into force on 1<sup>st</sup> July 2006 is very much to be welcomed. It remains to be implemented swiftly and fully in order to ensure better protection of victims.

## **4. Committals to psychiatric establishments**

53. On the subject of such committals the Commissioner recommended ensuring that both legislation and practice guaranteed effective and ongoing supervision of any decision regarding committal to psychiatric establishments. The report also referred to the use of net beds in some psychiatric hospitals.

### ***Development of the situation and measures taken***

54. Hungary has only one psychiatric facility for convicted persons, the Judicial Institute for Observation and Mental Treatment (Hungarian acronym: IMEI). Under the criminal code, committal to the IMEI cannot be ordered unless the individual has committed a violent offence against the person or an act endangering the public punishable by a prison sentence of one year or more, he or she is exempt from conviction on mental-health

grounds, and there is a danger of a repeat offence. To order a committal, a court must likewise take advice from two experts<sup>29</sup>.

55. Although committal orders do not themselves seem to raise particular difficulties, the procedure for review of committal continues to meet with criticisms. Under the code of criminal procedure the person committed can challenge the committal during the year following the committal<sup>30</sup>. If the committal order is upheld by the court, review of the committal to a forensic psychiatric institution then takes place annually. An application for review can be made at the request of the prosecutor, the person committed, that person's counsel or the head of the establishment among others. However, the court may refuse to consider the application if a review has taken place in the previous six months. In taking its decision, the court has reports from the patient's IMEI psychiatrist and one expert. If the decision is negative, the patient may appeal.

56. The procedure for annual review by the court of the order committing the patient to the IMEI has recently been criticised by civil society<sup>31</sup>. The procedure makes few concessions to adversariality – the patient is seldom present and hearings often last less than ten minutes. That information was confirmed during the follow-up visit, with judges stating that more time was unnecessary as the decisions were mainly based on the experts' reports. Lawyers and patients present thus have little opportunity to put forward their views.

57. Lastly, difficulties seem also to arise when the patient due for release cannot be taken in by the family: to avoid any repeat offences or relapses it is important to have guarantees that the patient will be received into an adapted environment. If no family solution is available patients are transferred to psychiatric institutions, but as these are often full there can be a wait of anything up to three years before actual transfer to a non-forensic facility is possible.

58. Procedure for compulsory placement in a psychiatric hospital is still governed by the Health Act of 1997, which lays down two mechanisms. Under the normal procedure a patient may be placed in hospital against his or her will by court order requested by a psychiatrist. The emergency procedure allows immediate placement in hospital at a doctor's request if the patient presents particular danger. This compulsory placement must be reviewed by a court within 72 hours. In both cases the procedure requires a hearing attended by the patient, an independent medical expert and the doctor requesting the placement. The patient is entitled to free legal aid in this type of proceeding. Emergency placement is reviewed by the court every 30 days. While, in practice, there were difficulties regarding the distinction between voluntary and compulsory placement, improvements have apparently been noted in the matter of guarantees of respect for patients' rights and wishes.

59. Lastly, after many complaints from NGOs and international bodies, in particular the CPT, on 6 July 2004 the Minister for Health and Family and Social Affairs adopted a decree<sup>32</sup> making the use of net beds illegal in all Hungarian psychiatric institutions.

## **Conclusions**

60. The Commissioner welcomes the progressive measures which have been introduced, in particular the removal of net-beds and the improved observance of patients' rights in placements and committals to psychiatric hospital. He invites the Hungarian authorities to make similar efforts regarding the procedure for review of committals to the IMEI so as to guarantee genuine adversariality and that patients' wishes are taken into consideration.

## **5. Protection of vulnerable persons**

61. In his report the Commissioner recommended establishing care programmes for elderly people and persons suffering from mental illness, including the opening and/or rehabilitation of suitable establishments to which sufficient funds were allocated.

### ***Development of the situation and measures taken***

62. Hungary has introduced various programmes, in particular with financial assistance from the European Union, to reduce the overcrowding that has been found and to set up smaller, less impersonal facilities. According to the NGOs met, although progress has been made, with closure of some large, run-down psychiatric institutions and transfer of patients to modern facilities, lack of resources and use of funding for other purposes have brought this progress to a halt. A similar observation may be made in the case of facilities for the elderly, particularly in the public sector.

63. In the case of psychiatric facilities for children, the places available are inadequate to meet the need. In an attempt to do so, the legislation allows placement of children in psychiatric institutions for adults if no children's psychiatric facility is available. Where children's facilities exist, they are frequently understaffed and in particular are short of psychiatrists.

64. As regards conditions in the IMEI, which the delegation visited, attention must first be drawn to the age and disrepair of the infrastructure. Although the IMEI is an independent and autonomous institution, it is located inside Budapest Prison, in a building dating from 1896. At the time of the visit, it had 200 inmates being treated compulsorily and 50 prisoners being treated by court order after sentencing. The maximum capacity is 311. Although the maximum has not been reached, the institution gave an impression of overcrowding, in particular because of the large number of beds in each room and the general dilapidation of the facilities. Because of an obvious lack of resources, which the authorities admitted, inmates cannot be given all the treatment necessary or a balanced diet. Despite the staff's laudable efforts, the facilities are inappropriate and belong to another age, particularly the beds, most of which consist in a thin (2 cm) mattress on wooden planking, in a bed frame which, in many cases, was rusty. The isolation cells are likewise unfit to decently accommodate patients with the severest conditions. The Authorities informed the Commissioner that a programme was launched in 2002<sup>33</sup> to modernise penal institutions including the IMEI. The deadline for implementing this programme is 2007-2008. Furthermore,

several investments were recently made in the IMEI including the reconstruction of the electric and water networks.

65. In discussions during the follow-up visit the authorities acknowledged the (to put it mildly) inadequacies of the facility, and said there were plans to build outside the prison a new, 400-place facility which would be able to accommodate present IMEI patients and others with conditions rendering them dependent.

### ***Conclusions***

66. The Commissioner encourages the authorities to maintain the efforts on behalf of children, elderly people and mental patients so that all enjoy decent conditions in adapted facilities without any overcrowding. He invites the Hungarian authorities to begin as soon as possible building the psychiatric centre which is to replace the IMEI and urges them, pending the opening of the new facility to improve conditions at the IMEI, which are currently sub-standard.

### **6. Police violence**

67. In his report the Commissioner recommended further training programmes for police officers in order to eliminate all police violence, and called for prosecutions if offences were committed. The report expressed concern about complaints of police brutality and poor relations between the Roma and the police.

### ***Development of the situation and measures taken***

68. In July 2004 the European Court of Human Rights delivered judgment in a case concerning violence inflicted on the applicant during police custody in 1996. The Court found a violation of Article 3 ECHR<sup>34</sup>. In 2004 two cases of suspicious death involving the police were recorded. The first was the death of a Bulgarian who had tried to escape from a police vehicle. The autopsy showed that he had died of strangulation. The two police officers involved were suspended until the end of the case. In July a Rom died after being chased by an off-duty police officer. The preliminary medical examination showed that he had died of a heart malformation. The forensic report nonetheless stated that there were suspect traces of sand and water in the respiratory tract<sup>35</sup>. Cases of police violence continue to be recorded, in particular against Roma and in country areas<sup>36</sup>.

69. Despite these documented cases there has been a significant change in official attitudes in Hungary towards such occurrences. Disciplinary and criminal proceedings are now brought against police officers responsible, and convictions and dismissals are frequent.

70. In addition, the police, like other law-enforcement agencies, are given periodic training in human rights and receive instruction on questions like human trafficking as part of initial training at police college. Posts in the police have been opened up to Roma under a positive-discrimination scheme. For several reasons (such as lack of qualifications and reluctance to come forward) few of these posts have been filled so far, but their existence is to be welcomed. Police officers have also been given training in Roma culture and language to assist communication and aid mutual understanding.

### ***Conclusions***

71. The Commissioner notes the reduction in cases of police brutality and the policy of prosecuting the officers responsible when cases occur. The efforts being made as part of initial training, opening up the police force to Roma and police exposure to Roma culture will further reduce any persisting use of violence.

### **7. Police custody and provisional detention**

72. The Commissioner recommended in his report putting into effect the revised provisions of the code of criminal procedure concerning pre-trial detention, and simultaneously taking urgent measures to ensure that pre-trial detention takes place in prison establishments intended for that purpose. According to the report a third of the people in pre-trial detention were being held in police stations, sometimes for lengthy periods.

### ***Development of the situation and measures taken***

73. The provisions of the code of criminal procedure, in particular Article 135, requiring that pre-trial detention take place at remand prisons, were to have come into force in January 2003. Implementation was postponed for lack of places in 2003. The new code of criminal procedure finally came into force on 1 January 2005.

74. The rules provide for pre-trial detention for a maximum of 72 hours. Persons held are allowed to meet their lawyer before any interrogation and throughout the period of police custody. After 72 hours persons must be charged if they are to be further detained. The applicable law (Article 135(2)) now allows a person who has been charged with an offence to be held at a police station for a maximum of 60 days. The police frequently use that period to obtain the person's co-operation, or evidence or information necessary to the investigation.

75. The maximum period of pre-trial detention at a remand prison is 3 years. According to the chief prosecutor's office, the average length of pre-trial detention was 118.5 days in 2004, 12% of remand prisoners being held for longer than eight months.

76. After this "transfer" of prisoners on charges from police stations to remand prisons, the Ministry of the Interior decided to carry out an inspection of all cells at police stations in order to assess what renovation work was needed



and the requirements of each district. In addition to this exceptional measure, it should be noted that every prosecutor performs inspections of police-station cells in his or her jurisdiction. At the district III station which the delegation visited, the prosecutor had, for example, laid down a maximum of two prisoners per cell.

77. Despite the two-year postponement of entry into force of the new code so that the "transfer" could be properly effected, there has been a limited increase in the prison population which, however, aggravated the pre-existing overcrowding situation. The occupancy rate for Hungarian prisons was 144% in March 2005, with a rate of 220% at one prison. Such overcrowding inevitably results in violence between prisoners and creates difficulties for the prison personnel. The new code of criminal procedure has, however, introduced new possibilities and alternatives to custody. In addition, since 2002, three new prisons have come into service, keeping the custodial spiral within limits. The Hungarian authorities informed the Commissioner that two prisons, with a capacity of 700 and 800 persons, will normally open in 2007 and a regional juvenile prison will start functioning in March 2006. These investments are expected to have an automatic consequence on the decreasing of the overcrowding rate.

### **Conclusions**

78. The Commissioner welcomes the entry into force of the new code of criminal procedure and the substantial reduction in the length of detentions at police stations. He would nonetheless repeat that the rule should be that prisoners on charges are held at remand prisons, not police stations, so as to prevent any misuse of authority by the law enforcement agencies. The increase in the prison population also remains a concern, to which a speedy, structural response is needed.

### **8. Asylum seekers**

79. In his report the Commissioner recommended considering co-operation with specialised NGOs in the foreigner and asylum-seeker reception process. The report also drew attention to the fact that decisions rejecting asylum applications contained no statement of reasons.

#### ***Development of the situation and measures taken***

80. Hungary has seen a large decrease in asylum applications, from 9,550 in 2001 to 1,600 in 2004, despite its having an external border with the European Union. The fall would seem to be due to stricter border controls, combined with a policy of detaining foreigners. The Act on entry and stay of foreigners<sup>37</sup> allows foreigners without legal status to be held for a maximum of 12 months. A 2004 amendment to the act brought in criteria for foreigner detention which averted certain arbitrary practices that had been discovered on the ground. According to the authorities met during the follow-up visit, around 6,000 foreigners a year are placed in detention. It was stated that such persons were entitled to a lawyer and had to be released when they made an asylum application. The overall detention period, apart from the five initial days, have to be authorised by a court. The Hungarian Helsinki Committee in fact has access to detention centres for foreigners and provides legal assistance free of charge<sup>38</sup>. The Hungarian authorities also gave assurances that no asylum seeker was subject to the detention system.

81. There are six detention centres for foreigners operated by the national border police. At some of these centres, foreigners are confined to their rooms except for one hour's exercise per day. In addition the rules applied are fairly similar to the prison rules. As well as the detention centres there are open reception centres for foreigners who have the temporary protection of "persons authorised to stay" status. Such persons have freedom of movement both inside and outside the centres.

82. According to UNHCR 1,600 asylum applications were recorded in 2004 by the Immigration and Nationalities Office, which represents 0.2 applications per 1,000 inhabitants<sup>39</sup>. In 2004 the Government granted refugee status to 158 people and alternative protection to another 177.

83. Both NGOs and international organisations have confirmed the substantial improvement in the standard of decisions delivered by the body dealing with asylum applications, the Immigration and Nationality Office. The improvement is due to better training, increased staffing of the Office and the fall in the number of asylum requests. When asylum seekers have their applications rejected, they can appeal from the decision to the Budapest Municipal Court, the quality of whose decisions has likewise improved. Nonetheless, while the backlog of asylum applications in the Immigration and Nationality Office is small<sup>40</sup>, the Budapest court now has a sizeable backlog<sup>41</sup> which prevents it from meeting the 30-day maximum laid down in the legislation and has substantially lengthened asylum appeal proceedings<sup>42</sup>.

### **Conclusions**

84. The Commissioner notes the improved quality of decisions in asylum cases, progress in relations between the competent authorities and NGOs, and the increased resources allocated to protection of asylum seekers and refugees.

85. The Commissioner nevertheless remains concerned at detention of irregular aliens for periods of up to 12 months on the sole ground that they have been found on Hungarian territory without any valid residence permit. The Commissioner points out that all pre-deportation detention must be as short as possible and asks the Hungarian authorities to comply with the guidelines adopted by the Committee of Ministers<sup>43</sup>. His concern is all the greater in that a quasi-prison regime is applied to such foreigners even though they have not committed any serious offence. Such detention should not be systematic and should last only the time strictly necessary to determine the foreigner's status and take any deportation decision.

### **9. Freedom of association**

86. In his report the Commissioner recommended ensuring that freedom of association was scrupulously respected and that social dialogue was instituted where absent. During the visit trade unions explained the difficulties in obtaining trade union representation in some large foreign firms.

#### ***Development of the situation and measures taken***

87. Although relations between trade unions and firms are difficult to evaluate, it is for the state to secure full enjoyment of employment rights to all employees on its territory. Hungary's geographical position, Hungarians' skills and qualifications, and Hungarian accession to the European Union have made the country extremely attractive to large international groups. However, such large firms frequently import new managerial approaches and sometimes impose working conditions which are less respectful of the workforce's wishes. In some cases they seek to restrict development of trade unions in the workplace for fear of an increase in worker claims. As a result, even though trade unions are relatively well organised in Hungary outside such firms, inside them they are seldom represented, which deprives the workforce of an essential protection tool.

88. On 7 October 2004 Hungary signed the Additional Protocol to the European Social Charter providing for a system of collective complaints. Ratification and entry into force of the protocol would undoubtedly give trade unions a stronger hand in national dialogue and thus in dealings with multinationals.

#### ***Conclusions***

89. The Commissioner invites the Hungarian authorities to ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints and to allow national trade unions to make use of it. It also urges them to supervise international firms effectively so as to prevent any hindrance to exercise of freedom of association.

<sup>1</sup> The delegation from the Commissioner's Office was composed of Mr Markus Jaeger and Mr Julien Attuil. <sup>2</sup> Report by the Commissioner for Human Rights, Mr Alvaro Gil-Robles, 2 September 2002, CommDH (2006)6, on his visit to Hungary from 11 to 14 June 2002, for the Committee of Ministers and the Parliamentary Assembly. <sup>3</sup> The visit included meetings with two State Secretaries from the Ministry for Youth, the Family, Social Affairs and Parity, representatives of the Ministries of the Interior, Justice, Education and Foreign Affairs, the Parliamentary Commissioners for Ethnic and National Minorities and for Civil Rights, the Chair and members of the parliamentary Committee on Human Rights, Minorities and Religious Affairs, the head of the Office for Ethnic and National Minorities, national presidents of various autonomous minority authorities, the Vice-President and one judge of the Supreme Court, the Chief of Office of the National Justice Council, the Secretary General of the Constitutional Court and judges of the Central Pest district court. The delegation visited a primary school in district XII, the district III police station, the Budapest central prison and forensic psychiatry institute, and a Roma neighbourhood in district IX. It had lengthy talks with representatives of national and international NGOs and the regional representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). <sup>4</sup> Second opinion on Hungary, adopted on 9 December 2004, ACFC/INF/OP/II(2004)3. <sup>5</sup> *Ibid.*, paragraph 111. <sup>6</sup> See the first opinion on Hungary of the Advisory Committee of the Framework Convention for the Protection of National Minorities, 22 September 2000, § 52, ACFC/INF/OP/I(2001)004. <sup>7</sup> Opinion of the Commissioner for Human Rights, Mr Alvaro Gil-Robles, on the creation of a national body for counteracting discrimination in Poland, 11 February 2004, CommDH(2004)7: "The lack of formal independence of a governmental body will, however, inevitably result in questions being raised as to the independence of its reporting on government policy and administrative practices, even where such reviews are commissioned from outside sources. This problem is evidently acute where the individual responsible for running the body is nominated by the Prime Minister and is a member of the Government. The willingness and ability of the organ to address the policies and practices of fellow ministries would likely be compromised. Also, the effect of the head of the institution's tenure being conditional on both the internal politics of Government and on the swings in parliamentary elections risks undermining the continuity necessary for the satisfactory fulfilment of the post's functions."

<sup>8</sup> Roma Education Fund, *Needs Assessment Study for the Roma Education Fund, Background Paper*, Hungary, 2004.

<sup>9</sup> European Roma Rights Centre, shadow report to the Committee on the Rights of the Child, United Nations, 13 September 2005. <sup>10</sup> Government resolution 1021/2004 (III.18.). <sup>11</sup> State Department, *Country Reports on Human Rights Practices for 2004*.

<sup>12</sup> "5.1.2 Characteristics of employment and activity by age group  
[...] The employment rate of the population aged 25 to 54 is 5 percentage points lower and their economic activity is 6 percentage points lower than the EU-15 average. One reason for this is that 10% of the people of 25 to 54 years of age is a pensioner, or receive disability benefits. The low employment and economic activity of the Roma population is another factor restricting the labour supply in this age group." National Action Plan for Employment, 2004, [http://www.fmm.gov.hu/upload/doc/200412/nap\\_final\\_en\\_041208.pdf](http://www.fmm.gov.hu/upload/doc/200412/nap_final_en_041208.pdf)

<sup>13</sup> Second opinion of the Advisory Committee on implementation of the Framework Convention for the Protection of National Minorities by Hungary, paragraph 49, adopted on 9 December 2004, ACFC/INF/OP/II(2004)3. <sup>14</sup> European Roma Rights Centre, "Forced Eviction of One Romani Community Stopped, While Others Continue in Hungary.", 9 February 2004. <sup>15</sup> Comments of the Hungarian government on the second opinion of the Advisory Committee on implementation of the Framework Convention for the Protection of National Minorities by Hungary, paragraph 6, GVT/COM/OP/II(2004)003. <sup>16</sup> They account for 20% of their age group but 50% of pupils in special classes. <sup>17</sup> Decision of the Budapest Court of Appeal (Fovárosi Ítéletábla) of 7 October 2004. Families of nine children were awarded a total of 650,000 forints (approximately 14,600 euros) in compensation. <sup>18</sup> JIM Hungary, p.31. <sup>19</sup> 2003 amendment to Law LXXIX 1993 (the Education Act). <sup>20</sup> Roma Education Fund, *Needs Assessment Study for the Roma Education Fund, Background Paper*, Hungary, 2004. <sup>21</sup> For more details, see Hungarian Helsinki Committee, *Written comments regarding the second monitoring cycle on Hungary under the Framework Convention for the Protection of National Minorities*, 20 September 2004. <sup>22</sup> Annual report of the Ombudsman for the Rights of National and Ethnic Minorities, 2002. <sup>23</sup> NANE Women's Rights Association, *Domestic violence: don't tolerate violence!*, 2003. <sup>24</sup> Amendment by Act n° XCI, 2005 of paragraphs (1) and (2) of Section 82 of the Criminal Code. <sup>25</sup> In this connection see the opinion of the United Nations Committee on the Elimination of Discrimination towards Women, No. 2/2003, Ms A.T. v. Hungary, 26 January 2005. <sup>26</sup> Parliamentary Resolution n° 45/2003 (IV. 23). <sup>27</sup> SEELINE, *Criminal Code report: Hungary, legal mechanisms regarding violence against women*, 9 July 2003. <sup>28</sup> Government Resolution n° 1036/2005 (IV. 21). <sup>29</sup> Articles 101 (1) and (2) of the code of criminal procedure, which does not in fact specify the type of experts required. <sup>30</sup> According to the

Hungarian authorities, a modification of the Criminal Procedure Law was recently adopted to reduce the compulsory periods by half. Therefore, the first submission for review will be possible after only 6 months. These amendments will enter into force on 1 July 2006.<sup>31</sup> See the MDAC report, *Liberty denied: human rights violations in criminal psychiatric detention reviews in Hungary*, 2004.<sup>32</sup> Act n° 60/2004 (VII. 6.) on Rules of admission of psychiatric patients to the institute and restrictive regulations to be applied during their treatment.<sup>33</sup> Government Decree n° 2147/2002.<sup>34</sup> ECHR, *Balogh v. Hungary* judgment, 20 July 2004, Application No. 47940/99.<sup>35</sup> State Department, *Country reports on human rights practices for 2004*.<sup>36</sup> See in particular the detailed enquiry by the Hungarian Helsinki Committee, *Presumption of Guilt*, February 2005.<sup>37</sup> Act XXXIX of 2001, entered into force on 1 January 2002.<sup>38</sup> Programme of the Hungarian Helsinki Committee, Legal assistance through refugee clinics, [www.larc.info](http://www.larc.info).<sup>39</sup> The EU average is 0.6 per 1,000 inhabitants (UNHCR 2004 Global Refugee Trends).<sup>40</sup> According to UNHCR, the average time for processing asylum requests was 60 days in 2004.<sup>41</sup> According to the authorities, this backlog is the consequence of the overburdened court system in Hungary.<sup>42</sup> According to UNHCR, appeal proceedings took between 5 and 6 months in 2004.<sup>43</sup> In particular Guideline 8, Forced return. The Council of Europe Committee of Ministers adopted 20 guidelines on 4 May 2005