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COMMISSAIRE AUX DROITS DE L'HOMME



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# **REPORT**

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COMMISSIONER FOR HUMAN RIGHTS OF THE  
COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO HUNGARY  
FROM 1 TO 4 JULY 2014**

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## SUMMARY

Commissioner Nils Muižnieks and his delegation visited Hungary from 1 to 4 July 2014. In the course of the visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report focuses on the following human rights issues:

### **Media freedom**

Four years after the adoption of the “media package”, which introduced a complete overhaul of Hungary’s media legislation, the Commissioner follows up on his predecessor’s findings on the package and subsequent changes in legislation and practice, focusing in particular on: the regulation of media content; the sanctions which can be imposed by the Media Council for breaches of media legislation; the protection of journalists’ sources; and the obligation for media to register. The Commissioner welcomes that a series of amendments were adopted to bring Hungary’s media legislation in line with European standards. However, he remains concerned that, in practice, the mere existence of some provisions has a chilling effect on journalistic freedom. This is particularly true for the severe sanctions, including high fines which, although rarely imposed, appear to have forced a number of media outlets to engage in self-censorship. The extensive administrative regulatory power of the Media Council in terms of media content also remains problematic. The Commissioner recommends that the Hungarian authorities adopt additional amendments, including: the repeal or reformulation of the provisions of the Media Act on opinion and political views; the extension of the protection of journalists’ sources to freelance journalists; and the exclusion of print and online media from the registration requirements.

Regarding the independence of the Media Council, the Commissioner notes that the political constellation in Hungary, characterised by a dominant majority, coupled with the wide-ranging powers of this body, leads to the fact that the Media Council is not seen as independent from political influence and control. The Commissioner calls on the authorities to review the appointment procedure for media regulatory bodies.

The Commissioner is also concerned about increasing threats to media pluralism. He sees measures such as the designing of the tax on advertising revenues and restrictions on political advertising as further attempts to curb media freedom in the country. He exhorts the Hungarian authorities to refrain from adopting measures which further restrict the space in which the media can operate freely and fully perform their watchdog functions.

Finally, the Commissioner regrets that the Hungarian authorities did not take the opportunity of the reform of the Criminal Code to decriminalise defamation. On the contrary, the criminal regulation of defamation was recently tightened and the sanctions attached to it, increased. The Commissioner calls on the authorities to revise the current legal framework criminalising defamation in Hungary and repeal criminal defamation provisions in favour of civil sanctions, which should be strictly proportionate to the actual harm caused.

### **The fight against intolerance and discrimination**

The Commissioner is concerned at the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh manifestations, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. Despite positions taken by the Hungarian authorities to condemn antisemitic speech, antisemitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, there is a recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons.

One of the most worrying trends in the field of racism and intolerance in Hungary is the growing visible presence of extremist organisations in the last years. A distinctive feature of this phenomenon is the

combination of the strong presence in the Hungarian national parliament of a party which uses extremist rhetoric and the close links between the latter and paramilitary groups carrying out acts of intimidation against Roma. Also of concern is the increasing influence of extremist rhetoric on the discourse of mainstream politicians and on society at large.

While welcoming steps taken to reinforce Hungary's legislative framework against hate crimes and hate speech and to improve its implementation, the Commissioner urges the Hungarian authorities to address persisting failures, including by better investigating the possible racial motivation of offences. Noting with appreciation the ban imposed on the Hungarian Guard, the Commissioner calls on the Hungarian authorities to take appropriate sanctions against individuals and groups advocating for and involved directly or indirectly in acts of racist violence, inciting racial hatred and opposing the basic principles of democracy and the rule of law.

The Commissioner stresses the need to fight against all forms of discrimination affecting several social groups in Hungary. He urges the Hungarian authorities to step up efforts to improve Roma access to education by addressing all forms of school segregation of Roma children. The dire housing situation of many Roma living in substandard and segregated settlements and the discriminatory impact on Roma of some measures taken at local level should also be addressed as a matter of priority. The Commissioner urges the authorities to combat widespread direct and indirect discrimination of Roma in access to employment, notably by ensuring full respect of the social rights of the employees working in public work programmes and their rapid integration into the primary labour market.

Concerning discrimination against persons with disabilities, the Commissioner strongly urges the Hungarian authorities to make progress in ensuring compliance with the right of these persons to live independently in the community, enshrined in the UN Convention on the Rights of Persons with Disabilities. The authorities are encouraged to create new living settings which comply with this right, stop new placements in institutions, avoid opening new - even if smaller - institutions, and move resources from institutions to the development of individualised support services. Furthermore, noting the high number of persons with disability who are placed under guardianship in Hungary, the Commissioner calls for a genuine shift from the substitute decision-making paradigm to one that is based on supported decision-making. The Commissioner also urges the Hungarian authorities to review their legislation to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote and that they can participate in political and public life on an equal basis.

While welcoming progress made in the fight against intolerance and discrimination against LGBTI persons, the Commissioner is concerned at attempts to introduce legislation criminalising the "promotion" of homosexuality and to ban the annual Pride March in 2011 and 2012. He calls on the authorities to take all necessary measures to address discrimination against LGBTI persons, fight physical violence against them and promote public awareness of diversity and respect for all persons' sexual orientation and gender identity.

In relation to discrimination on the grounds of socio-economic status, the Commissioner is worried at measures taken in the last three years to prohibit rough sleeping and construction of huts and shacks in Budapest and other cities, which have widely been described as criminalising homelessness in practice. Given the obsolete and overcrowded system of emergency shelters in Budapest and elsewhere, the Commissioner urges the Hungarian authorities to review the restrictive regulations in light of internationally agreed standards binding Hungary and guaranteeing human dignity. They should also investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions, in violation of international human rights standards. There will be no solution to the problem of homelessness without Hungary adopting a national social housing strategy adapted to the needs of homeless persons.

## **Human rights of immigrants, asylum seekers and refugees**

At the juncture of various migration routes in Central Europe, Hungary has experienced a considerable increase in asylum applications in recent years, which has put a strain on its asylum system. The extensive use of detention of asylum seekers has been a long-standing problem in Hungarian asylum law and practice. In spite of improvements in the legal framework introduced in 2013, the Commissioner remains concerned about the infrequent use made of alternatives to detention in practice, the arbitrariness which characterises the asylum detention regime and the lack of effective judicial review. He calls upon the Hungarian authorities to ensure that the detention of asylum seekers is only used as a last resort, for the shortest possible period of time and on the basis of individual assessments.

Another issue of serious concern to the Commissioner is the detention of unaccompanied asylum seeking minors, despite the fact that it is prohibited by the law. Moreover, the Commissioner notes that the detention of asylum seeking families is still provided for by the law, although there have been no cases of such detention recently. In the Commissioner's view, children should not be subjected to immigration detention, whether with or without their families. He thus exhorts the authorities to remove the possibility of detaining families with children from the law and establish an adequate system of age assessment in order to avoid placing unaccompanied minors in detention.

The Commissioner is concerned that refugees and other beneficiaries of international protection in Hungary face serious integration challenges which threaten their enjoyment of social and economic rights. While the Hungarian authorities have started to address this issue, they should ensure that their integration efforts are supported by adequate financial and human resources. Noting with concern the serious obstacles to family reunifications resulting from the application of strict rules on travel documents, the Commissioner calls on the Hungarian authorities to rapidly develop alternatives to facilitate the travel of family members who do not have valid travel documents.

While commending Hungary's efforts to combat statelessness, notably by establishing a procedure to assess and confer formal status on stateless persons, the Commissioner notes that the Hungarian legislation still prevents persons who are not lawfully residing in Hungary from applying for stateless status. In the Commissioner's view, this limitation is in breach of Hungary's international obligations under the 1954 UN Convention and should be removed. The Commissioner also calls on the authorities to take all necessary measures to close the gaps which may impede children's right to acquire a nationality and thus lead to statelessness.

The report contains the Commissioner's conclusions and recommendations addressed to the Hungarian authorities and is published on the Commissioner's website along with the authorities' comments.

## INTRODUCTION

1. The present report follows a visit to Hungary by the Council of Europe Commissioner for Human Rights (“the Commissioner”) from 1 to 4 July 2014.<sup>1</sup> The visit focused on media freedom, the fight against intolerance and discrimination, and the human rights of migrants, including asylum seekers.
2. During his visit the Commissioner held discussions with the Hungarian authorities, including the Minister of Justice, Mr László Trócsányi, the (then) Deputy Minister for Foreign Affairs and Trade, Mr Péter Szijjártó, the State Secretary for Social Affairs and Inclusion and the Deputy State Secretary for Social Inclusion at the Ministry of Human Resources, Mr Károly Cibere and Ms Katalin Langerné Victor, the Deputy State Secretary at the Ministry of Interior, Ms Krisztina Simonné Berta, the Chairperson of the Hungarian delegation to the Parliamentary Assembly of the Council of Europe, Mr Zsolt Németh, and the Deputy Chief Prosecutor, Mr Ervin Belovics. The Commissioner also met with the Commissioner for Fundamental Rights (Ombudsman), Mr László Székely, the President of the National Authority for Data Protection and Freedom of Information, Mr Attila Péterfalvi, the President of the Equal Treatment Authority, Ms Ágnes Honecz and a member of the Media Council, Mr András Koltay.
3. In addition, the Commissioner met with representatives of a number of international and non-governmental organisations. He also visited the Isola shelter in the fourth district of Budapest, where he met with a number of homeless persons, and the integrated social care home in Polgárdi. The Commissioner also attended and spoke at the launch of an exhibition on the history of LGBT rights organised in the context of the 2014 Budapest Pride Festival.
4. The Commissioner wishes to thank sincerely the Hungarian authorities in Strasbourg and in Budapest for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. The Commissioner notes that Hungary’s legal framework has radically changed since 2010, with the adoption of a new Constitution, amended five times, and over 600 new laws. A number of these texts have been scrutinized by international organisations. The European Commission for Democracy through Law (the Venice Commission) in particular issued no less than eleven opinions concerning Hungary in the last three years. These far-reaching legal changes were pushed through by the governing majority in a manner that evoked concern - they were often adopted in great haste, in a manner lacking transparency, and with little or no consultation with domestic or international stakeholders.
6. Another trend that has evoked concern about respect for the rule of law in Hungary has involved changes affecting the independence of a number of institutions that play an important role in the domestic system of checks and balances. The premature termination of the Hungarian Data Protection Commissioner’s term in office was found by the Court of Justice of the European Union to be a violation of EU law.<sup>2</sup> By the same token, the shortening of the mandate of the President of the Supreme Court of Hungary (*Kúria*) was found to be a violation of the European Convention on Human Rights.<sup>3</sup> Changes casting doubt on the independence of the media regulatory authority were also enacted (see below).
7. Concern about the erosion of checks and balances by a dominant majority has only been reinforced by government measures narrowing the space for critical voices in civil society and the media. The Commissioner sought to raise awareness about the essential role in a democracy of non-governmental organisations (NGOs) in a letter he sent to the Minister of the Prime Minister’s Office, Mr János Lázár, shortly after the visit.<sup>4</sup> In his letter, the Commissioner expressed concerns over a number of audits carried out by the Hungarian Government Control Office and concerning NGOs, all of which were beneficiaries of the Norwegian Civil Fund. The Commissioner is worried by recent developments indicating that these

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<sup>1</sup> During his visit the Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and by Ms Claudia Lam and Ms Anne Weber, Advisers.

<sup>2</sup> [Commission v. Hungary](#), judgment in Case C-288/12, 8 April 2014.

<sup>3</sup> [Baka v. Hungary](#), application no. 20261/12, judgment of 27 May 2014, not final.

<sup>4</sup> The [letter](#), together with the reply of Mr Lázár, was made public on the Commissioner’s website on 24 July 2014.

investigations continued over the summer and led to the publication of an audit report. He understands that the Government Control Office has initiated criminal procedures on the basis of that report, despite the fact that the legality of the audit is still contested. The Commissioner regrets that the stigmatizing rhetoric used against NGOs has also continued.

8. In 2011 the Commissioner's predecessor voiced concerns about the recently adopted "media package" (see below). Legislative and policy changes affecting media freedom and pluralism have continued apace since that time. Though some of the issues raised by international organisations have been addressed by the Hungarian authorities, other concerns persist. In a context of a broader weakening of checks and balances and challenges to the rule of law, the government has a positive obligation to actively promote freedom of expression in general and media pluralism in particular. This would do much to allay concerns about the deleterious impact a "supermajority" in parliament has had on political pluralism and the fabric of democracy in the country.
9. These developments have provided the background to the three issues covered in this report: media freedom (section I); the fight against intolerance and discrimination (section II); and the human rights of immigrants, asylum seekers and refugees (section III). Each section of the report ends with the Commissioner's conclusions and recommendations addressed to the Hungarian authorities. The Commissioner wishes to continue his constructive dialogue with the authorities on these issues. He trusts that this dialogue will be facilitated by the present report.



## 1 MEDIA FREEDOM

10. Hungary's media legislation was completely overhauled in 2010, at the initiative of the government emerging from the April 2010 parliamentary elections. Two main texts, which entered into force on 1 January 2011, were adopted: the Media Act (Act CLXXXV of 2010 on Media Services and Mass Media), restructuring the media regulatory system, and the Press Freedom Act (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content), concerning media content and press regulation. This "media package" was completed by a number of amendments to other legislation as well as changes at constitutional level.
11. The adoption of the "media package" prompted severe national and international criticism. The Commissioner's predecessor notably published an Opinion on Hungary's media legislation in February 2011 (hereinafter: the 2011 Opinion),<sup>5</sup> expressing the view that the "media package" as a whole resulted in "an unfortunate narrowing of the space in which the media can operate freely in Hungary."<sup>6</sup>
12. In 2011, the Secretary General of the Council of Europe also initiated a dialogue with the Hungarian authorities with a view to reforming the most problematic aspects of the new provisions. In this context, an expert opinion of the media legislation commissioned by the Council of Europe (hereinafter: the 2012 Council of Europe expert opinion) was published in 2012.<sup>7</sup>
13. At the national level, the Constitutional Court of Hungary issued on 19 December 2011 a decision, which declared some newly adopted provisions unconstitutional.
14. As a result of the various criticisms, a number of legislative changes have been adopted since 2010. Four years after the adoption of the "media package", the Commissioner takes stock in this Section of the situation of media freedom in the country by following up on his predecessor's findings on media freedom and subsequent changes in legislation and practice.

### 1.1 HUNGARY'S MEDIA LEGISLATION AND THE RIGHT TO FREEDOM OF EXPRESSION

#### 1.1.1 MEDIA CONTENT REGULATION

15. A number of provisions adopted in 2010 regulate the content of media services. The rule on "balanced coverage" contained in Article 13 of the Press Freedom Act<sup>8</sup> particularly attracted criticism upon its adoption in 2010.
16. In his 2011 Opinion, the Commissioner's predecessor stressed that "the adoption of legislation regulating *a priori* the content of media output is irreconcilable with the right to freedom of expression enshrined in Article 10" of the European Convention on Human Rights (hereinafter: the Convention or ECHR) and that "[t]he media has a crucial role as a watchdog in a democratic society, not least in helping to create an informed, critical public."<sup>9</sup> He therefore criticised Article 13 for imposing an unnecessary restriction on the free dissemination of information and opinions through the media by seeking to prescribe subjective criteria for the information and coverage provided by all forms of media. These criteria were also described as insufficiently precise to allow media providers to foresee the manner in which they might be applied. In conclusion, the Commissioner recommended that Article 13 be deleted.
17. Following a dialogue with the European Commission, Article 13 of the Press Freedom Act was amended in March 2011 so that the balanced coverage requirement applies only to linear (broadcast) media

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<sup>5</sup> [Opinion](#) of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, CommDH(2011)10, 25 February 2011.

<sup>6</sup> 2011 Opinion, paragraph 6.

<sup>7</sup> [Expert opinion by Council of Europe Experts on Hungarian Media Legislation](#): Act CIV 2010 on the Freedom of the Press and the Fundamental Rules on Media Content and Act CLXXXV of 2010 on Media Services and Mass Media, 11 May 2012.

<sup>8</sup> Article 13 stated notably that "linear and on-demand media content providers engaged in news coverage operations shall provide diverse, comprehensive, factual, up-to-date, objective and balanced coverage" on public issues.

<sup>9</sup> 2011 Opinion, paragraph 11.

services and no longer to on-demand media services. This provision was amended a second time in 2013, to remove the requirement for “diverse, comprehensive, factual, up-to-date, objective” coverage from this article.

18. During his meeting at the Media Council,<sup>10</sup> the Commissioner was informed about the administrative proceedings which can be initiated against media services by the Media Council for infringement of the requirement of balanced coverage. Such proceedings are only instigated upon request by “the holder of the viewpoint that was not expressed.”<sup>11</sup> In the event that the Media Council finds a violation of the requirement, no fine can be imposed: the media service provider shall broadcast or publish the decision of the Media Council or provide the applicant with an opportunity to present his or her viewpoint. In 2013, the Media Council examined 29 complaints of unbalanced coverage and adopted 26 (first instance) decisions, of which eight were fully or partly admitted.<sup>12</sup> The vast majority of the complaints were filed by the *Jobbik* party<sup>13</sup> and concerned complaints against broadcasters for not including the party’s perspectives or comments in their coverage of certain events.
19. Another problematic provision is Article 12 of the Media Act, which prohibits the addition of any opinion to political news (paragraph 3) and requires all media services to clearly make a distinction between information and opinion (paragraph 4). Thus, for instance, in a decision of 3 June 2014, the Hungarian Supreme Court (*Kúria*) found that the TV station ATV had violated paragraph 3 of Article 12 by describing the *Jobbik* party as “far-right” in a 2012 news broadcast. The Supreme Court’s rationale was that the expression “far-right” is an opinion-forming expression, and not a communication concerning a fact, since *Jobbik* doesn’t call itself a “far-right party”. By using this expression, the news presenter added an opinion, thereby violating the above provision. The Commissioner concurs with the opinion expressed by many of his interlocutors that the requirements imposed by Article 12 are difficult to apply and likely to lead some media to refrain from covering political news in practice.
20. Finally, the Commissioner’s attention was drawn to a recent decision of the Constitutional Court of Hungary regarding comments on the Internet: on 28 May 2014, the Constitutional Court dismissed a complaint filed by the Association of Hungarian Content Providers concerning derogatory comments made on a website managed by the Association. The Court found that content providers are responsible for the comments posted on their websites that may violate the media law, regardless of whether they moderate comments or not, and whether they actively remove the harmful content or not. Reacting to this decision, the Hungarian Civil Liberties Union warned that the Court decision has serious implications for free speech, public debate and Internet freedom in Hungary, as blogs and online news portals may decide to restrict public comment for fear of being sanctioned. The Commissioner shares this concern: in a recent publication on the rule of law on the Internet, he emphasised the danger of private companies being led to choose over-compliance and prevent all users from accessing perfectly lawful materials.<sup>14</sup> The Commissioner notes that the issue of responsibility of Internet content providers for comments by third parties is pending before the European Court of Human Rights.<sup>15</sup>

### 1.1.2 IMPOSITION OF SANCTIONS ON THE MEDIA

21. A controversial element of Hungary’s media legislation relates to the sanctions, and in particular the high fines, which can be imposed by the Media Council.

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<sup>10</sup> On Hungarian media regulatory bodies, see Section 1.1.5 below.

<sup>11</sup> Article 181 of the Media Act.

<sup>12</sup> Media Council, Annual Report to the Parliament 2013 (*Országgyűlési beszámoló a Nemzeti Média- és Hírközlési Hatóság Médiatanácsának tevékenységéről 2013*), p. 63. The Media Council is acting in first instance for cases concerning media service providers with significant market power and public media service providers and in second instance for cases concerning other media services which are decided by the Office of the Media Authority.

<sup>13</sup> See below, Section II, The fight against intolerance and discrimination.

<sup>14</sup> Issue paper published by the Council of Europe Commissioner for Human Rights, [The rule of law on the Internet and in the wider digital world, Executive summary and Commissioner’s recommendations](#).

<sup>15</sup> *Delfi AS v. Estonia*, application no. 64569/09. The Court’s Grand Chamber held a hearing in this case on 9 July 2014.

22. The Media Act gave the Media Authority and the Media Council the power to monitor, upon request or *ex officio*, compliance with provisions contained in the “media package”. The Media Council and the Office of the Media Authority can therefore apply sanctions for any violation of media regulations, including content obligations, breaches of public contracts or other requirements, such as those concerning the protection of minors.
23. The Media Act foresees a gradation of sanctions, from warnings and fines to the suspension of a media service provider, the deletion of the media service from the media register or the termination of the public contract. It specifies the maximum amount of each fine,<sup>16</sup> differentiating according to the type of media service and its influence on the media market; for instance, the maximum amount of the fine for a media service provider with significant market power is 200 million HUF (approximately 650 000 EUR) while the maximum amount of the fine for an online press product is 25 million HUF (approximately 80 000 EUR).
24. Concerns have been expressed as to the severity of these sanctions, including the heavy fines and the possibility of removing the media service from the media register. The 2012 Council of Europe expert opinion concluded that the sanction regime foreseen in the Media Act was problematic not only in terms of proportionality of sanctions but also because the legal provisions were not sufficiently clear and foreseeable.<sup>17</sup>
25. During the visit, the Media Council informed the Commissioner that sanctions were not extensively used and that the principle of proportionality was guiding the decisions of the Media Council. In 2013, the latter sent a warning in 65 cases and imposed a fine in a total of 141 cases.<sup>18</sup> The fines imposed varied from 10 000 to 12 500 000 HUF (approximately 33 to 41 000 EUR), for a total amount of 63 769 000 HUF (208 665 EUR), and concerned primarily violations of provisions relating to the protection of children and minors (Article 9 and 10 of the Media Act), advertisements (Article 32 and 33 of the Media Act), public contracts (Article 63 of the Media Act) and commercial communications (Article 20 of the Press Freedom Act).

### 1.1.3 PROTECTION OF JOURNALISTS’ SOURCES

26. The protection of journalists’ sources is another area where changes took place following extensive national and international criticism. The main shortcoming related to Article 6 of the Press Freedom Act, which obliged journalists to reveal their sources in legal proceedings.
27. In his 2011 Opinion, the Commissioner’s predecessor considered that Article 6 did not guarantee sufficient foreseeability as to the situations in which journalists can and cannot invoke their right not to disclose information relating to the identity of their sources.<sup>19</sup> He also deplored the lack of certain procedural safeguards required under the Convention and underlined that it must be made clear that any and every decision to waive protection of a journalist’s source must be subject to an assessment by an independent and impartial body.<sup>20</sup>
28. On 19 December 2011, the Constitutional Court of Hungary partly annulled this provision, stating that additional procedural safeguards should be introduced regarding the disclosure of journalists’ sources. New wording of Article 6 was introduced in 2012 to address these concerns by limiting the obligation for journalists to reveal their sources to specific criminal cases, and only by court order.
29. While he welcomes this amendment, the Commissioner stresses the importance of ensuring that, in implementing this provision, domestic courts have due regard to Council of Europe standards, in particular Article 10 of the Convention, an issue also highlighted in the 2012 Council of Europe expert

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<sup>16</sup> Article 187 of the Media Act.

<sup>17</sup> 2012 Council of Europe expert opinion, p. 42.

<sup>18</sup> Media Council, Annual Report to the Parliament 2013, p. 136.

<sup>19</sup> 2011 Opinion, paragraph 31.

<sup>20</sup> 2011 Opinion, paragraph 32.

opinion.<sup>21</sup> In this respect, the European Court of Human Rights (hereinafter: the Court), underlining the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, considered that a disclosure order imposed on a journalist requiring him to reveal the identity of his source cannot be compatible with Article 10 of the Convention unless there is a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim.<sup>22</sup> The Commissioner also notes that the law only protects the sources of those who are formally employed as journalists, but not the sources of freelance journalists.

#### 1.1.4 REGISTRATION REQUIREMENTS

30. The “media package” obliged print, online and on-demand media services, in addition to linear (broadcast) media services, to register before being authorised to provide services in Hungary. This authorisation scheme has been criticised on the ground that, contrary to the licensing of broadcast media (which is accepted under the Convention), the mandatory registration of print and online media, beyond simple tax or business registration, is contrary to the principles of proportionality established by the case-law of the European Court of Human Rights.<sup>23</sup>
31. The rules on registration of media services were amended in 2012, to comply with the EU Audiovisual Media Services Directive. Under the new provisions, print, online and on-demand media services have to register with the Media Authority within 60 days of launching their services, rather than prior to doing so. While welcoming this step, the Commissioner notes that the obligation to register still applies to all media outlets, including print and online services. He refers in this regard to his predecessor’s Opinion, which recommended that print media and Internet-based media should be excluded from the registration requirements, in accordance with the ECHR and the Parliamentary Assembly’s Resolution 1636 (2008) on indicators for media in a democracy.<sup>24</sup>

#### 1.1.5 PROBLEMS RELATING TO THE INDEPENDENCE OF MEDIA REGULATORY BODIES

32. The National Media and Infocommunications Authority (referred to as the “Media Authority”) was established in 2010 by the Media Act, to oversee both the media and telecommunications sectors. It comprises three main entities: the President of the Media Authority, the Office of the Media Authority, and the Media Council.
33. The Media Council is an autonomous body within the Media Authority, composed of four members and a chairperson. The Chairperson and the four members of the Media Council are elected for a nine-year term by the Parliament, with a two-thirds majority of the votes. The four members are nominated by an *ad hoc* parliamentary committee composed of one member from each parliamentary faction. The voting powers of the members of this committee are weighted according to the numerical size of the faction in the Parliament. In accordance with the Media Act,<sup>25</sup> the President of the Media Authority becomes automatically the candidate for the Chairmanship of the Media Council by virtue and from the moment of appointment.
34. As mentioned above, the Media Council has wide-ranging powers, from monitoring content and programme requirements to sanctioning media for violations of the media legislation.<sup>26</sup> The Media Council is also responsible for granting licenses for analogue radio and TV broadcasters.

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<sup>21</sup> 2012 Council of Europe expert opinion, p. 23.

<sup>22</sup> [Goodwin v. the United Kingdom](#), application no. 17488/90, judgment of 27 March 1996, paragraph 39.

<sup>23</sup> See the Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) of the Council of Europe Parliamentary Assembly, *Request for the opening of a monitoring procedure in respect of Hungary*, [Doc. 13229](#), 10 June 2013, paragraph 140.

<sup>24</sup> 2011 Opinion, paragraph 27.

<sup>25</sup> Article 125 of the Media Act.

<sup>26</sup> See Section 1.1.1 and 1.1.2 above.

35. While the autonomy and independence of both the Media Authority and the Media Council are formally guaranteed in the law, serious concerns have been raised over the independence of these media regulatory bodies in practice.
36. In his 2011 Opinion, the Commissioner's predecessor underlined that "the provisions regarding appointment, composition and tenure of existing media regulatory bodies demand amendment not least because they lack the appearance of independence and impartiality, quite apart from a *de facto* freedom from political pressure or control."<sup>27</sup> The OSCE also questioned the political independence of the Media Authority and Media Council, pointing out that "these bodies are led exclusively by members supported by the governing party".<sup>28</sup>
37. Following the 2012 Council of Europe expert opinion, which established that the processes for appointments to the Hungarian media regulatory bodies "do not ensure political neutrality or independence" and recommended a thorough reformulation of these processes,<sup>29</sup> the Secretary General of the Council of Europe called on the Hungarian authorities to separate the functions of President of the Media Authority and Chairperson of the Media Council, to have the President of the Media Authority elected by the Parliament and not appointed by the Prime Minister and to limit his or her term of office to one mandate.<sup>30</sup>
38. A number of amendments to the Media Act were adopted by the Parliament in March 2013. As a result, the nine-year mandate of the President of the Media Authority is non-renewable and the President is to be appointed by the President of the Republic upon proposal by the Prime Minister. Prior to submitting this proposal, the Prime Minister should consult a variety of stakeholders, including media content providers and journalists.<sup>31</sup> Furthermore, the competency criteria for candidates to the post of President of the Media Authority and members of the Media Council have been enhanced.<sup>32</sup>
39. However, there is still no separation between the function of President of the Media Authority and that of Chairperson of the Media Council and the changes to the appointment process of the President of the Media Authority are seen by many of the Commissioner's interlocutors as merely cosmetic. During their discussions with the Commissioner, the latter expressed serious concern that, despite the recent amendments, the legislative framework of the media regulatory bodies remains unsatisfactory as their independence from political influence is still not guaranteed.
40. The *Klubrádió* case is often presented as an illustration of this problem. The radio station's license expired in 2010 and a new tender procedure was launched by the newly established Media Council in 2011. Another radio station, *Autórádió*, won the tender, having obtained one more point than *Klubrádió* during the evaluation of the tenders. This decision was however seen as reprisal against an independent radio station which had been critical of the government. A first court decision found in 2012 that there was a formal mistake in the procedure. After a legal battle which lasted several months, the community station license was finally awarded to *Klubrádió* in May 2013, but the station reported severe financial losses.

### 1.1.6 CONCLUSIONS AND RECOMMENDATIONS

41. The Commissioner welcomes the series of amendments introduced in Hungary's media legislation in order to bring it in line with European standards. These amendments have in general led to improvements, such as the strengthening of the protection of journalists' sources. However, the Commissioner remains concerned that, in practice, the mere existence of some provisions in Hungarian legislation has a chilling effect on journalistic freedom. This is particularly true for the newly introduced

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<sup>27</sup> 2011 Opinion, paragraph 39.

<sup>28</sup> [Analysis](#) of the Hungarian Media Legislation, Commissioned by the Office of the OSCE Representative on Freedom of the Media, prepared by Dr. Katrin Nyman-Metcalf, 28 February 2011, p. 12.

<sup>29</sup> 2012 Council of Europe expert opinion, p. 5.

<sup>30</sup> See the Report of Monitoring Committee, above, paragraph 146.

<sup>31</sup> Article 111/A of the Media Act.

<sup>32</sup> Article 124 of the Media Act.

sanctions: while these sanctions are rarely imposed, the high level of fines foreseen in the legislation had reportedly forced a number of media outlets to engage in self-censorship. In addition, the extensive administrative regulatory power of the Media Council in terms of media content remains problematic.

42. In the Commissioner's view, in order to demonstrate a real commitment to media freedom, the Hungarian authorities should adopt additional amendments. These should include: the repeal or reformulation of Article 12 of the Media Act on opinions and political news; the extension of the protection of journalists' sources to freelance journalists, combined with strict adherence to the European Court of Human Rights case-law in terms of disclosure orders imposed on journalists; and the exclusion of print and online media from the registration requirements. The Commissioner further urges the Hungarian authorities to ensure that their legislation and practice on liability of Internet content providers is fully in line with the right to receive and impart information protected by Article 10 of the Convention.
43. Regarding the independence of the Media Council, the Commissioner notes that some safeguards, such as qualification requirements, exist. While the parliamentary nature of the appointment process of the Media Council members is not unusual and can be found in other member states, the political constellation in Hungary, with the ruling coalition holding a two-thirds constitutional majority in the Parliament, coupled with the wide-ranging powers of this body, leads to the fact that the Media Council is not seen as independent from political influence and control.
44. The Commissioner deplores that, as a result of the Media Act, all members of the Media Council are in fact designated by the ruling party. This does not allow for political diversity in the Council's composition. The Commissioner therefore would like to reiterate the recommendation of the Parliamentary Assembly rapporteurs that the appointment procedure for these bodies is reviewed so as to ensure the *de facto* political independence of its members.<sup>33</sup>

## 1.2 THREATS TO MEDIA PLURALISM

45. The Commissioner is concerned that the cumulative effect of recent legislative changes, combined with a concentration of media ownership in Hungary, results in a media market dominated by media reportedly linked to the ruling party. In their discussions with the Commissioner, media representatives reported growing pressure on journalists and political interference in editorial content. Shortly before the visit of the Commissioner, the editor-in-chief of *Origo*, a news portal owned by the Hungarian Telekom, was dismissed. *Origo* had previously published articles critical of government activities, most recently on the alleged misuse of public money by a government official.
46. The Commissioner is concerned that the new media environment has led a number of journalists and media outlets to self-censorship in the face of fines or dismissal and generated a lack of critical reporting in the country.

### 1.2.1 ADVERTISING MARKET

47. The Commissioner was informed that the government, which is the largest advertiser in the country, had withdrawn a large part of its advertising from independent media since 2010. It is reported that private companies also withheld advertising from independent media in order not to lose contracts with the government. A recent report noted that "media outlets critical of the government policies or supportive of opposition parties' policies are denied almost all state advertising and other support, threatening their economic viability and seriously distorting the commercial media market."<sup>34</sup> A number of independent media outlets are indeed reported to have experienced a decline in public and private advertising revenue, which has had serious economic consequences for several media outlets.<sup>35</sup>

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<sup>33</sup> See the Report of the Monitoring Committee, above, paragraph 144.

<sup>34</sup> WAN-IFRA, [Capturing Them Softly](#) - *Soft Censorship and State Capture in Hungarian Media*, 2013, p. 5.

<sup>35</sup> Human Rights Watch, [Wrong Direction on Rights](#), *Assessing the Impact of Hungary's New Constitution and Laws*, Report May 2013, p. 27.

### 1.2.2 TAX ON ADVERTISING

48. On 11 June 2014, the Parliament passed a law creating a new tax on media's advertising revenues, with taxation levels increasing according to the volume of incomes and with the highest rate (of 40%) having been set for incomes exceeding 2 billion HUF (65 million EUR). Hungarian media outlets have protested against the law by switching to a black screen or publishing blank newspaper front pages.
49. Shortly after its adoption, the OSCE Representative on Freedom of the Media, Dunja Mijatović, called on the Hungarian authorities to rethink the new tax on media's advertising revenues, as it "could negatively affect media pluralism and it may harm media freedom in Hungary." The former Vice President of the European Commission responsible for the Digital Agenda for Europe, Neelie Kroes, has also described the tax as being "unfair."<sup>36</sup> The tax finally entered into force in August 2014.
50. During the Commissioner's visit, the authorities constantly denied any targeting of specific media outlets, stressing that this tax equally affects all of them. In practice, however, the broadcaster *RTL Klub* alleges that it is disproportionately affected, since it is the only media company in Hungary with advertising revenues exceeding 2 billion HUF annually. It is reported that *RTL Klub* will pay half of the country's taxes on advertising revenues, while its share of the total advertising market is only around 15%.
51. The Commissioner understands that the top rate of the tax will be increased from 40% to 50%. This might further hit *RTL Klub*, which is commonly seen as the last remaining major independent television channel in Hungary.
52. Even if not linked to advertising, the Commissioner is concerned at the proposal made after his visit, to introduce a tax on Internet usage, a proposal which was finally withdrawn.

### 1.2.3 POLITICAL PARTY ADVERTISING

53. The Commissioner is concerned by restrictions on political advertising which were introduced in Hungary in 2012 and 2013. The fourth amendment to the Constitution, adopted on 11 March 2013, provides that only public media services can air political advertisements and forbids any, even unpaid, political advertising in commercial media services prior to elections, while the fifth amendment to the Constitution, adopted on 16 September 2013, adds that commercial media services can also air political advertising, but at the condition that this is free of charge. The Commissioner notes, however, that similar provisions introduced by statutory law in November 2012 were declared unconstitutional by the Hungarian Constitutional Court in 2013.<sup>37</sup> The Constitutional Court notably stressed that a prohibition of political advertising on commercial television targets exactly the type of media that reaches the widest range of voters.
54. In its Opinion on the fourth amendment to the Constitution, the Venice Commission criticised these restrictions, underlining that "the prohibition of any political advertising in commercial media services, which are more widely used in Hungary than the public service media, will deprive the opposition parties of an important chance to air their views effectively and thus to counterweigh the dominant position of the Government in the media coverage."<sup>38</sup>
55. Following the adoption of the fifth amendment, NGOs expressed fears that commercial media outlets will not or will rarely endeavor to publish political advertising, as they are simply not interested in giving advertisement space for free. These fears were confirmed during the electoral campaign for the parliamentary elections of April 2014: none of the Hungarian private media outlets chose to provide free

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<sup>36</sup> Neelie Kroes, [Media freedom remains under threat in Hungary](#), 28 July 2014.

<sup>37</sup> Decision no. 1/2013 [I.7.] AB.

<sup>38</sup> [Opinion](#) on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95<sup>th</sup> Plenary Session, 14-15 June 2013, CDL-AD(2013)012-e, paragraph 45.

airtime to electoral contestants at that time.<sup>39</sup> The OSCE/ODIHR Limited Election Observation Mission concluded in its report that “in the current media environment, the absence of other political advertisements on nationwide commercial television, combined with a significant amount of government advertisements, undermined the equal and unimpeded access of contestants to the media.”<sup>40</sup>

#### 1.2.4 CONCLUSIONS AND RECOMMENDATIONS

56. The Commissioner remains concerned at reports of self-censorship and the apparent narrowing of the space in which media can operate freely and fully perform their watchdog function. He recalls that there is no democratic society without the right to impart and receive information and true media pluralism.
57. In such a context, he sees measures such as the designing of the tax on advertising revenues and the proposal to introduce an Internet tax as further attempts to curb media freedom in the country. He exhorts the Hungarian authorities to refrain from adopting additional measures which would even more restrict the space for free expression.
58. As far as advertising is concerned, the Commissioner recalls the OSCE recommendation to give consideration to amending the law to provide for both free and paid political advertising in broadcast media.<sup>41</sup> He also calls on the authorities to be more transparent in allocation of state advertising.

#### 1.3 THE NEED TO DECRIMINALISE DEFAMATION

59. The decriminalisation of defamation in Hungary is an issue which has been overlooked in recent legislative reforms. The new Criminal Code, which was adopted in 2012 and entered into force on 1 July 2013, kept the two provisions on libel (Article 226, prohibiting publication of any fact that is injurious to the reputation of another person) and defamation (Article 227, prohibiting the use of expressions capable of causing harm to a person’s reputation notably in connection with his or her professional activity, public office or public activity), which provide for up to two years and one year of imprisonment respectively.
60. As a result of amendments to the Criminal Code adopted by the Parliament on 5 November 2013, the definition of defamation was extended to the preparation and distribution of potentially defamatory video or sound recordings, with penalties including imprisonment of up to three years, when materials are published to a large audience. This change was seen as a reaction to the ‘Baja video scandal’, a fabricated video which presented members of the ruling party discussing buying votes in the run-up to local elections in the town of Baja. The video was published by the *HVG* news website in October 2013. *HVG* was subsequently sued for libel by the ruling party and the editor-in-chief of the news portal resigned.
61. The OSCE Representative on Freedom of the Media, Dunja Mijatović, underlined that these amendments “can further restrict media freedom. The penalties for publishing defamatory recordings are disproportionate and may lead to the silencing of critical or differing views in society.”<sup>42</sup> It has also been stressed that such amendments were not necessary, as the actions in question were already covered by the general provision on defamation.
62. While prison sentences were not applied in recent years, the situation in Hungary remains characterised by a high number of both civil and criminal defamation cases, resulting in the imposition of fines ranging from 100 000 to 200 000 HUF (325 to 650 EUR) in criminal cases. According to the Commissioner’s

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<sup>39</sup> OSCE/ODIHR Limited Election Observation Mission, [Final Report](#) (Hungary, Parliamentary elections 6 April 2014), 11 July 2014, p. 15.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*, p. 16.

<sup>42</sup> Press release, 6 November 2013, “Higher prison sentences for defamation may restrict media freedom in Hungary, warns OSCE representative.”



interlocutors, there is no investigative journalist in Hungary who has not been the subject of a defamation procedure in the last ten years.

63. The Commissioner notes that criminal-law sanction for defamation has been the topic of a judgment issued by the European Court of Human Rights with respect to Hungary.<sup>43</sup> The Court found a violation of the right to freedom of expression (Article 10 of the Convention) in a case concerning the conviction of a journalist for defamation in 2009 for harshly criticising, in a national daily newspaper, the quality of a well-known variety of Hungarian wine produced by a State-owned company. The Court considered that the domestic courts had failed “to have regard to the fact that the press had a duty to impart information and ideas on matters of public interest and in so doing to have possible recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements.”<sup>44</sup> The Court therefore found that the domestic authorities could not establish that the sanction was proportionate as they did not take the above factors into consideration in assessing the proportionality of criminal-law based interference with Article 10 of the Convention.

### 1.3.1 CONCLUSIONS AND RECOMMENDATIONS

64. The Commissioner regrets that Hungarian authorities did not take the opportunity of the reform of the Criminal Code to decriminalise defamation. On the contrary, the authorities recently tightened the criminal regulation of defamation and increased the sanctions attached to it. This move goes against the general trend towards the decriminalisation of defamation in Europe, sends a negative signal to investigative journalists with regard to their use of audio and visual materials and might prevent the expression of critical or satirical views.
65. In view of the disproportionate nature of the sanctions foreseen by the Criminal Code, the Commissioner calls on the authorities to revise the current legal framework criminalising defamation in Hungary. In particular, the authorities should repeal criminal defamation provisions in favour of civil sanctions, which should be strictly proportionate to the actual harm caused. They should reform obsolete legislation which pre-emptly criticism and curbs media freedom and move toward a modern set of provisions which would strengthen free expression by removing prison sentences.

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<sup>43</sup> [Uj v. Hungary](#), application no. 23954/10, judgment of 19 July 2011.

<sup>44</sup> *Ibid.*, paragraph 24.

## 2 THE FIGHT AGAINST INTOLERANCE AND DISCRIMINATION

### 2.1 THE RISE OF RACISM AND INTOLERANCE IN HUNGARY

66. The Commissioner is concerned at the deterioration of the situation as regards racism and intolerance in Hungary. Despite important measures taken by the authorities, according to civil society organisations monitoring the situation, the number of bias motivated crimes (hate crimes) has been on the rise in the last couple of years.<sup>45</sup> The current rise in manifestations of intolerance and racist violence in Hungary takes place in a context marked by an economic crisis, a significant increase in the number of asylum applications in 2013 and reportedly growing nationalist attitudes.
67. Roma have mainly borne the brunt of intolerance and racist violence so far, but antisemitism is also widespread. Despite the relatively small number of migrants living in Hungary, xenophobia is also on the rise. In addition, intolerance has increasingly affected other social groups, including LGBTI persons, persons with disabilities as well as the poor and homeless persons. In this section, the Commissioner addresses some forms of intolerance more in detail. Intolerance and discrimination towards LGBTI persons, persons with disabilities and on the grounds of socio-economic status are the subject of separate chapters in the next section.

#### 2.1.1 ANTI-GYPSYISM

68. Anti-Gypsyism is the most widespread, and blatant form of intolerance in Hungary today. It is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.<sup>46</sup> According to estimates,<sup>47</sup> Roma represent 7.5 % of the total Hungarian population and the largest ethnic minority living in Hungary.
69. Since 2008, violent attacks against Roma that many believe are motivated by racial prejudice are regularly reported by civil society organisations. A series of nine extremely violent attacks against Roma families in north-eastern Hungary, which were carried out over a 14-month period in 2008 and 2009 and which resulted in six deaths and multiple injuries, attracted considerable national and international attention. In one case, on 23 February 2009 in Tatárszentgyörgy, a 27-year-old Roma man and his four-year-old son were shot dead when they attempted to escape their house, which had been set on fire by Molotov cocktails. In a verdict issued on 6 August 2013 against four defendants, the municipal district court of Budapest found three of the men guilty of multiple premeditated murders carried out with particular cruelty. It acknowledged the anti-Roma bias that motivated these murders and sentenced the perpetrators to life imprisonment. The fourth man was found guilty of being an accessory to the crime and sentenced to 13 years in prison.
70. Since then, Roma have continued to be the main targets of distinctively harsh manifestations of intolerance. Some of them have taken the form of intimidating marches in paramilitary uniforms and patrolling by vigilante groups, in Roma-populated villages. The widely documented march attended by up to 2'000 people in the village of Gyöngyöspata on 6 March 2011 succeeded by several weeks of patrolling by vigilante groups threatening, intimidating and harassing Roma residents, was followed by other such incidents in 2012 and 2013 in several places (Cegléd, Devecser, Hajdúhadház and Miskolc).<sup>48</sup> Hate speech against Roma occurs nearly on a daily basis mainly through the Internet and on social media but also in political discourse, particularly at the local level. Prejudice and stereotypes in the media

<sup>45</sup> See Legal Defence Bureau for National and Ethnic Minorities, Háttér Society and Hungarian Helsinki Committee, *Hate Crimes in Hungary, Problems, Recommendations, Good Practices, Summary Report*, 2014, p. 4.

<sup>46</sup> ECRI, [General Policy Recommendation No. 13](#) on Combating Anti-Gypsyism and Discrimination against Roma, 24 June 2011.

<sup>47</sup> Estimates published on the Council of Europe Roma [portal](#) on Roma populations in European countries, updated in 2012.

<sup>48</sup> European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 40.

against Roma remain widespread and the link that is frequently made between Roma ethnic origin and criminality in the media is of particular concern. In January 2013, an editorial in a Hungarian daily described Roma as “animals” that “should not be allowed to exist”. While Hungarian NGOs and some journalists condemned this article, and several months later, the Office of the Media Authority fined the newspaper for this editorial, it appears that many other cases of abusive speech targeting Roma have remained unaddressed so far.

### 2.1.2 ANTISEMITISM

71. The Commissioner is concerned at information indicating that antisemitism remains a widespread phenomenon in Hungary and has even been exacerbated in the context of the economic crisis. In one of the most flagrant manifestations of antisemitism of recent years, one of *Jobbik*'s MPs proposed in 2012 that a list of government officials with a Jewish background be compiled. Whereas antisemitic attacks against persons appear to be rare, the Commissioner notes that in April 2013, the President of the Raoul Wallenberg association was beaten up and verbally abused by football hooligans.
72. According to the findings of a Fundamental Rights Agency's (FRA) online survey on perceptions and experiences of antisemitism, discrimination and hate crime, of all the Jewish respondents, 90 % perceived that antisemitism is a problem in Hungary in comparison to the average of 66 % for all eight EU Member States covered by the survey.<sup>49</sup> Vandalism of Jewish properties and cemeteries also remains an issue of concern: there have been cases of antisemitic graffiti and other manifestations in Budapest and elsewhere.<sup>50</sup> Members of extremist groups have continued to use blatantly antisemitic discourse.
73. In a welcome move, the Hungarian authorities announced a “zero tolerance” policy toward manifestations of antisemitism in 2013 and designated year 2014 as the Hungarian Holocaust Memorial Year. However, according to several sources, Hungarian authorities sometimes fail to deal with antisemitic incidents in a diligent manner and do not take the antisemitic motives duly into account. Another worrying trend lies in the rehabilitation in school curricula or through building monuments of Hungarians known for their antisemitic positions, support for the Nazi regime and/or for their participation in the deportation of Jews from Hungary during the Second World War. In March 2013, in reaction to strong protests, the Hungarian authorities asked a TV journalist well known for his earlier antisemitic and anti-Roma remarks to return an award right after having given it to him.

### 2.1.3 XENOPHOBIA

74. The Commissioner notes with concern that in recent years, refugees and asylum seekers have also become the target of hate crime and hate speech in Hungary. Although less documented than anti-Gypsyism and antisemitism, manifestations of xenophobia have been noted, particularly at local level, in political discourse, media and the attitude of the general public.<sup>51</sup> Negative attitudes were particularly noted in rural areas and towns accommodating open reception centres for asylum seekers. According to a January 2013 public opinion poll by the *Tarki* Institute,<sup>52</sup> 36% of the adults responded that they were xenophobic, in the sense that asylum seekers should not be allowed in the country and only 11% declared that they were favourable to foreigners, in the sense that in their opinion all asylum seekers should be accepted in the country. Some political parties have also stirred animosity against asylum seekers, refugees and foreigners in their campaigns for parliamentary and local elections. For instance, in May 2013 members of *Jobbik* instigated a march in Debrecen aimed at urging the government to close the existing open reception centre. On 27 October 2013, two Hungarian men attacked an African

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<sup>49</sup>European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013.

<sup>50</sup> For a summary of antisemitic incidents reported by NGOs in 2013 and the years before, see the OSCE ODIHR [Hate crime reporting on Hungary](#).

<sup>51</sup> See in particular: European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 33.

<sup>52</sup> Opinion poll available at: [http://www.tarki.hu/hu/news/2013/kitekint/20130205\\_idegenelleneseg.html](http://www.tarki.hu/hu/news/2013/kitekint/20130205_idegenelleneseg.html).

refugee with a stick in Bicske. While the police initially qualified the incident as “hooliganism”, the police later corrected the qualification into hate crime upon intervention by civil society organisations.

75. In view of the worrying instances of xenophobic manifestations which have been reported in recent years in Hungary and the significant growth in the number of asylum applications in 2013,<sup>53</sup> there is a risk that migrants, including asylum seekers and refugees, increasingly become scapegoats, like the Roma and Jews, of intolerant discourse, in particular from extremist organisations, and of xenophobic hate crimes.

#### 2.1.4 EXTREMIST ORGANISATIONS

76. One of the most worrying trends in the field of racism and intolerance in Hungary is the growing visible presence of extremist organisations in the last years. A distinctive feature of this phenomenon is the combination of two factors: the strong presence in the Hungarian national parliament of a party (Movement for a Better Hungary - *Jobbik Magyarországért Mozgalom*, henceforth referred to as *Jobbik*) which uses extremist rhetoric; and the close links between the latter and paramilitary organisations or groups carrying out acts of intimidation against minority groups, notably Roma. The Commissioner notes that, in consideration of these distinctive features, the Fundamental Rights Agency (FRA) issued a thematic situation report in 2013 assessing the response of Hungary’s public authorities, statutory human rights bodies and civil society organisations to racism, discrimination, intolerance and extremism.<sup>54</sup>
77. The Commissioner notes that aggressive anti-Roma and openly antisemitic attitudes have widely characterised *Jobbik* since it emerged as a political party in 2003. Representatives of this party have repeatedly taken a stance against what they call “Gypsy criminality” and aim at tackling the “Roma issue” notably by advocating the segregation of Roma. For instance, the Vice Chairman of the party has called for fenced in, public safety protection camps, with restricted freedom of movement for their Roma inhabitants, including a 10 pm curfew. The party is also using antisemitic and, to a lesser extent, anti-migrant discourse. Although a toning down of the most extremist rhetoric has been noted in 2014, discourse and activities by *Jobbik*’s candidates at the last municipal elections in October 2014 indicate that this might not be an irreversible trend. As a result, the electoral success of *Jobbik*, which is the third largest political movement represented in the Hungarian Parliament with 20.54% of the vote in the 2014 general elections, can only be of concern to the Commissioner.
78. Also of concern is the increasing influence of *Jobbik*’s extremist rhetoric on the discourse of mainstream politicians in the sense that elements of such extremist discourse have been mainstreamed in the Hungarian political discourse.<sup>55</sup> Following the 2014 general elections, a member of the *Jobbik* party and known former neo-Nazi leader, was elected as one of the vice-chairs of Parliament. The influence of extremist rhetoric on society at large is also said to increase. It is worrying to read that “despite its marginal political position, the Hungarian far-right has begun to change the orientation of the entire society.”<sup>56</sup>
79. As mentioned above, the established links between *Jobbik* and several extremist and paramilitary groups constitute a distinctive feature in Hungary that is a particularly serious cause for concern to the Commissioner.<sup>57</sup> The most obvious link was with the Hungarian Guard - a paramilitary group whose members were parading in villages with large Roma populations in paramilitary uniforms and using flags closely resembling those of a former openly Nazi organisation - as it had been created by the leader of

<sup>53</sup> See Section 3 below, Human Rights of Immigrants, Asylum and Refugees.

<sup>54</sup> European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 40.

<sup>55</sup> *Ibid.*, p. 40. See also András Bíró Nagy, Tamás Boros, Zoltán Vasali, “More Radical than the Radicals: the *Jobbik* party in international comparison”, in *Right-Wing Extremism in Europe*, Friedrich Ebert Stiftung, 2013, p. 245 and p. 248.

<sup>56</sup> András Bíró Nagy, Tamás Boros, Zoltán Vasali, “More Radical than the Radicals: the *Jobbik* party in international comparison”, in *Right-Wing Extremism in Europe*, Friedrich Ebert Stiftung, 2013, p. 232.

<sup>57</sup> See, for instance, Tamás Berecz and Kristóf Domina, [Domestic extremism in Europe, Threat Landscape, A Report](#), Athena Institute, 2012.

the *Jobbik* party who went before the European Court of Human Rights to complain unsuccessfully against the dissolution of Hungarian Guard.

80. Despite the banning of the Hungarian Guard in 2011, there remain a number of extremist groups, with membership ranging from a handful of persons to several hundred, currently active in Hungary.<sup>58</sup> The Commissioner expresses concern at information indicating that a marginal political party calling itself Hungarian Dawn and inspired by the Greek party Golden Dawn was created in 2013. Particular mention should also be made of an extremist group taking the form of a website that reportedly publishes on a regular basis racist and antisemitic material. The Commissioner is seriously concerned at information according to which paramilitary activities such as rallies in uniforms and with torch lights and advocacy for racially-motivated policies or “patrolling” in neighbourhoods with Roma population have continued across Hungary. These demonstrations of force creating a climate of fear among persons living in Roma-populated neighbourhoods are totally unacceptable in a democratic society.

### 2.1.5 THE RESPONSE OF THE HUNGARIAN AUTHORITIES

81. The Commissioner welcomes that in recent years, Hungary reinforced its legislative framework, and in particular its criminal law, to combat hate crimes and hate speech. In 2010, the offence of public denial of Nazi crimes including the Holocaust was added to the Criminal Code.<sup>59</sup> Moreover, the new criminal code which entered into force on 1 July 2013 extends the provision against hate crime<sup>60</sup> to include the grounds of sexual orientation, gender identity and disability to the grounds which were already expressly mentioned (national, ethnic, racial or religious belonging). In addition, legislation introduced in 2011 enables the Hungarian authorities to ban extremist organisations. Importantly, new legal provisions have given powers to the police to prevent paramilitary groups from engaging in racist violence and conducting certain activities such as patrolling areas inhabited by Roma. The police are also now empowered to prevent participation in the activity, or the wearing of the uniform, of a disbanded civil organisation.<sup>61</sup>
82. Whereas it is generally agreed that Hungary benefits from a solid legislative and institutional framework against hate crimes and hate speech, further improvement could be brought.<sup>62</sup> In particular, not all forms of hate crimes are covered as such in the Criminal Code. Several specialists have called for adding the prohibition of harassment/stalking and damage to property with a bias motive. More generally, the current criminal code does not include clear and express provisions under which the bias motive has to be taken into account as part of investigation or prosecution of other crimes, including murder.
83. As concerns hate speech, Article 332 of the criminal code prohibits incitement to hatred against a community and Article 335 the use of symbols of totalitarianism, including the swastika and the insignia of the SS. The 2013 Fourth Amendment to the Hungarian Constitution adds a paragraph 5 to Article IX of the Constitution, stating that “The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community. Members of such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates their community, invoking the violation of their human dignity as determined by law.” According to the authorities, this provision was adopted as a means to fight racist speech (directed against the Roma community in particular) and antisemitic speech in Hungary. However, in its Opinion on the Fourth Amendment, the Venice Commission noted that the introduction of the “dignity of the Hungarian nation” into article IX.5 “might (...) be applied to curtail criticism of the Hungarian institutions and office holders which could be incompatible with the condition that a limitation has to be

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<sup>58</sup> See in particular: Victoria Fomina, [Mapping the Network of Hungarian Extremist Groups](#): an In-Depth Analysis Paper, Athena Institute, December 2013.

<sup>59</sup> Article 333 of the Criminal Code.

<sup>60</sup> Article 216 of the Criminal Code (violence against a community).

<sup>61</sup> European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 41.

<sup>62</sup> Amnesty International Hungary, [A Missed Opportunity to do more on Hate Crime](#), Public Statement, 27 June 2012, EUR 27/003/2012.

necessary in a democratic society.”<sup>63</sup> Another shortcoming in the field of combating hate speech is the strict interpretation of what constitutes incitement to hatred resulting from case-law of the Supreme Court and the Constitutional Court. ECRI stressed that only most extreme forms of incitement to hatred, i.e. incitement liable to provoke immediate violent acts, were outlawed under the Hungarian Criminal Code. In its 2011 Interim Follow-up Conclusions, ECRI noted with particular concern that the Hungarian Constitutional Court does not balance the protection against incitement to hatred and the freedom of expression in the same way as the European Court of Human Rights.<sup>64</sup>

84. In addition to reinforcing the legislative framework, the Hungarian authorities have taken a number of steps to increase the effectiveness of the fight against hate crimes and intolerance. Such steps include the setting up in 2012 of a professional network within national police responsible for dealing with hate crimes. Some specialised training activities on racist crimes have taken place in recent years for law enforcement officials, for instance under the aegis of the ODIHR TAHCLE programme in 2012. The Hungarian authorities have launched a number of initiatives to increase the presence of Roma among the police forces and to reinforce community policing and co-operation with minority self-governments.<sup>65</sup>
85. Despite these positive steps, the Hungarian authorities have often been criticised for failing to identify and respond effectively to hate crimes, including by not investigating possible racial motivation. For the year 2013, the Hungarian authorities indicated that 48 cases of hate crimes (including cases of hate speech) were reported and 30 were prosecuted. This represents an increase in the number of such crimes reported from the 2009 figures (when 15 cases were reported and 18 prosecuted). However, these figures correspond only to the tip of the iceberg as it is generally agreed that the majority of hate crimes are not recorded as such by the police or are not even reported to the police, partly due to the lack of trust in this institution among members of minority groups. Among the reasons behind under-qualification (the prosecution of a crime motivated by hate as a less severe crime) brought to the attention of the Commissioner feature: the lack of specialised guidelines and training for law enforcement officials; the workload and turnover of the few existing specialised hate crime police officers; and the underuse of available means to investigate hate crimes. It also appears that under pressure to deliver results, some public prosecutors may prefer pressing charges in respect of basic crimes as they are easier to substantiate. As concerns more specifically crimes committed by extremist groups, the need for a better co-operation between the police and the intelligence services has also been stressed. Finally, victims of hate crimes do not receive all the necessary and specialised legal and psychological support they need notably due to deficiencies in the public system of support for victims of crime.
86. In another worrying development, the Commissioner’s attention has been drawn to situations in which the hate crimes provisions have been used without real justification to prosecute members of the Roma community in connection with violent reactions they had against persons linked to extremist groups who were “patrolling” Roma neighbourhood during the times when serious racially motivated attacks against Roma were taking place across the country. Roma’s reactions were classified as being motivated by their bias against the “members of the Hungarian community”. The Commissioner shares the concern expressed by his civil society interlocutors about the risk of a double standard whereby Roma are not sufficiently protected against hate crimes committed against them by members of extremist groups and are disproportionately sanctioned instead for offences committed in reaction to these attacks. On a positive note, the Commissioner welcomes the fact that the courts have sometimes corrected such forms of misclassification by prosecutors.

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<sup>63</sup> [Opinion](#) on the Fourth Amendment to the Fundamental Law of Hungary, adopted by the Venice Commission at its 95<sup>th</sup> Plenary Session, 14-15 June 2013, CDL-AD(2013)012-e, paragraph 53. Human Rights Watch, [Wrong Direction on Rights, Assessing the Impact of Hungary’s New Constitution and Laws](#), Report May 2013, p. 28.

<sup>64</sup> See ECRI’s fourth report on Hungary published in 2009 and ECRI’s 2011 Interim Follow-up Conclusions. ECRI’s fifth report was under preparation at the time of writing this report. Documents available at: [www.coe.int/ecri](http://www.coe.int/ecri).

<sup>65</sup> European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 39.

87. As regards racist and extremist organisations, the Commissioner welcomes the dissolution in 2009 by the Hungarian justice system of the Hungarian Guard Association (*Magyar Gárda Egyesület*) created in 2007 by 10 members of *Jobbik*. This decision was unanimously considered by the European Court of Human Rights as not infringing Article 11 of the ECHR (freedom of association) because, amongst other reasons, the organisation of a series of rallies allegedly in order to keep “Gypsy criminality” at bay by means of paramilitary parading could be regarded as implementing a policy of racial segregation.<sup>66</sup>
88. However, an organisation called the New Hungarian Guard (*Új Magyar Gárda*), was created right after the banning of the Hungarian Guard. The Commissioner is seriously concerned at information indicating that this new association is still operating at the time of writing this report despite some attempts by Hungarian authorities to prevent its activities on account of the fact that the new group is fundamentally identical to the now banned Hungarian Guard. On 29 November 2013, media reported that *Jobbik* and uniformed members of the New Hungarian Guard staged a demonstration of public security and a torch-lit march in the city of Kaba.<sup>67</sup> What is also worrying is that despite the strengthening of the legal arsenal against paramilitary and vigilante activities and action taken by some prosecutors and courts, the Hungarian authorities often reportedly fail to act diligently to prevent such activities and do not adequately protect the Roma populations from these forms of intimidation. There is also not enough public and firm condemnation of such threatening activities by mainstream politicians. As concerns racist websites, the Hungarian authorities have sometimes reportedly been confronted with the refusal from the United States, where they were hosted, to close them.
89. The Commissioner welcomes the fact that the prosecution authorities have started a civil case seeking the dissolution of yet another extremist organisation, the Civil Guard Association for a Better Future (*Szebb Jövőért Polgárőr Egyesület*). However, he notes with concern that the Regional Court of Gyula in Békés County on 24 March 2014 rejected the request and deplores that in so doing, it justified the rhetoric of the group, for example by supporting the notion of “Gypsy criminality” and stating as a fact that Roma represent a high proportion of criminals.
90. The Commissioner notes with interest the project (“Creating a National Hate Crime Strategy and Action Plan”) launched in September 2012 by civil society organisations and the work of the non-governmental “Tackling Hate Crime Working Group”, set up in January 2012, in cooperation with the police. The Commissioner finds it encouraging that in some cases, the co-operation between the Hungarian authorities and NGOs to improve combating hate crimes has yielded positive results.

#### 2.1.6 CONCLUSIONS AND RECOMMENDATIONS

91. The Commissioner is deeply concerned at the widespread presence of racist and extremist organisations and movements in Hungary and extremism in the country’s political arena. The Commissioner regrets that rhetoric stigmatising Roma, Jews, migrants and other social groups has been used by Hungarian political leaders including from mainstream parties. He urges the Hungarian authorities and political leaders to abstain from using such stigmatising rhetoric against Roma, Jews, LGBTI persons and migrants, including asylum seekers and refugees, and to condemn firmly and unequivocally all instances of hate speech, in line with the Council of Europe Committee of Ministers Recommendation No. R (97) 20 on “hate speech”,<sup>68</sup> as well as all forms of hate crime. This would send a strong signal to Hungarian society that hate speech and hate crime have no place in a democratic society.
92. The Commissioner calls on the Hungarian authorities to be much more vigilant and proactive and use all available means to end impunity and to combat all kinds of hate crimes and hate speech, especially when they take on the extreme forms that destabilise social cohesion and erode the fundamental human rights principles which Hungary, as a member state of the Council of Europe, has committed to uphold.

<sup>66</sup> [Vona v. Hungary](#), application no. 35943/10, judgment of 9 July 2013, paragraph 69.

<sup>67</sup> European Union Agency for Fundamental Rights (FRA), [Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary](#), 2013, p. 40.

<sup>68</sup> Council of Europe Committee of Ministers [Recommendation No. R \(97\) 20 on “hate speech”](#).

93. Despite some flaws, Hungarian legislation has the potential to curb and prevent the operation of undemocratic, racist organisations and manifestations of racial and other forms of discrimination. However, the lack of application of the provision of the Criminal Code pertaining to racist and other forms of violence is regrettable and can only strengthen the feeling of impunity among perpetrators. This is a very worrying situation. All competent authorities need to realise the human rights and democratic values that are at stake and act appropriately in order to give full effect to existing legislation.
94. Thus the Commissioner urges the Hungarian authorities to enhance training and awareness-raising of police, prosecutors and judges in anti-hate crime law and practice, including anti-racism. Crucially, such training should avert the risk that hate crimes provisions are used in a manner that leaves victims both unprotected and disproportionately sanctioned for offences committed in reaction to attacks. They should also ensure that victims of hate crime have unimpeded access to national justice and effective protection. In addition, under-reporting and under-recording of hate crimes should be addressed. The Commissioner strongly encourages the authorities to draw upon the valuable guidelines of the European Commission against Racism and Intolerance in this domain and to consult civil society with expertise in these fields.
95. The Commissioner recalls that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the European Convention on Human Rights, both ratified by Hungary, make possible the imposition of criminal and other sanctions and restrictions on the activities of individuals and organisations, including political parties, where evidence demonstrates that they advocate for and are involved directly or indirectly in acts of racist violence, incite racial hatred and oppose some of the basic principles of democracy and the rule of law. Such organisations must be banned, as prescribed by ICERD (Article 4 (b)). Measures should be taken to ensure that existing Hungarian legal provisions allowing for the banning of such organisations are duly applied in all relevant cases.
96. Given the deterioration of the general climate of tolerance in recent years, the Commissioner urges the Hungarian authorities to draw up and implement a national action plan on combating intolerance. While some of the measures taken to enhance the fight against intolerance, hate crimes and hate speech could target all relevant individuals and groups at the same time, any such action plan should also take due account of the specificities of some forms of intolerance and include specific measures to address them. The Hungarian authorities could in particular draw inspiration from ECRI's General Policy Recommendation No. 9<sup>69</sup> addressing antisemitism and ECRI's General Policy Recommendation No. 13 on Anti-Gypsyism.<sup>70</sup> Particular measures should be taken to tackle racist extremism and the Council of Europe Parliamentary Assembly's Resolution 1754 (2010) on fight against extremism<sup>71</sup> could give useful guidelines in that regard.
97. The Commissioner calls on the authorities to develop further and implement initiatives aimed at combating racism and extremism in all sections of society. Priority should be given to actions which aim to raise awareness of the dangers of intolerance and racism, promote tolerance and enhance human rights education in schools. The authorities are invited to draw on the guidelines contained in ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.<sup>72</sup>

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<sup>69</sup> European Commission against Racism and Intolerance, [General Policy Recommendation No. 9 on the fight against antisemitism](#).

<sup>70</sup> European Commission against Racism and Intolerance, [General Policy Recommendation No. 13 on Combating anti-Gypsyism and discrimination against Roma](#).

<sup>71</sup> Council of Europe Parliamentary Assembly, [Resolution 1754 \(2010\)](#), Fight against extremism: achievements, deficiencies and failures.

<sup>72</sup> European Commission against Racism and Intolerance, [General Policy Recommendation No. 10](#) on combating racism and racial discrimination in and through school education.



## 2.2 THE NEED TO FIGHT AGAINST DISCRIMINATION

### 2.2.1 GENERAL CONTEXT

98. The Hungarian legal and institutional infrastructure for combating discrimination has recently been reinforced in several ways. The key legal provision lies in Article XV of the new Constitution.<sup>73</sup> Several statutory laws also provide for the prohibition of discrimination and segregation and the promotion of equal opportunities. The main piece of statutory anti-discrimination legislation is Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities, which prohibits discrimination on 20 grounds that apply to individuals or groups. It covers a broad range of fields including employment, social security, health care, housing, education and training, and supply of goods and services and applies to actors in both the public and private sectors. Hungary has ratified the major international instruments combating discrimination, with the exception of Protocol No. 12 to the European Convention on Human Rights which was signed in 2000.
99. The Equal Treatment Authority was set up in 2004 to deal with individual and public complaints about unequal treatment and to raise awareness on discrimination. The Ombudsman (Commissioner for Fundamental Rights) plays also a role in combating discrimination including through the work of his Deputy responsible for the protection of the rights of national minorities. Despite efforts to establish a legal and institutional framework to combat all forms of discrimination and to train professionals on these issues, members of several groups living in Hungary still experience widespread discrimination, for some of them in their daily lives. In the following sub-sections, the Commissioner wishes to address more particularly discrimination against Roma and LGBTI persons and persons with disabilities as well as discrimination on socio-economic grounds.

#### 2.2.1.1 CONCLUSION AND RECOMMENDATIONS

100. The Commissioner urges the Hungarian authorities to strengthen their efforts to fight against discrimination, notably by ensuring that the Equal Treatment Authority receives sufficient human and financial resources to fully implement its mission. The Hungarian authorities should raise awareness of all public bodies including at the local level on the principle of non-discrimination and the positive obligations it entails for them to promote equal opportunities. Everything should be done to guarantee that all victims of discrimination receive information on their rights and can exercise them and obtain redress, including by ensuring that the Authority's work reaches out to the most vulnerable groups throughout the country. In addition, Hungary should ratify Protocol No. 12 to the ECHR containing a general prohibition of discrimination.

### 2.2.2 DISCRIMINATION AGAINST ROMA

101. Roma, who make up 7.5% of the population in Hungary according to estimates, are still confronted with pervasive discrimination in all fields of life, including education, housing, employment, health and political participation. Reportedly, they are also often subject to ethnic profiling by law enforcement officials notably in the context of the imposition of fines on the basis of the Act on Misdemeanours (on this point see also below the section on discrimination on the grounds of socio-economic status). In this section, the Commissioner wishes to raise a number of specific concerns relating to the segregation of Roma pupils, and discrimination in access to housing and employment.

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<sup>73</sup> "(1) Everyone shall be equal before the law. Every human being shall have legal capacity. (2) Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. (3) Women and men shall have equal rights. (4) By means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion. (5) By means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities."

102. Roma pupils remain strongly disadvantaged in education across Hungary. One of the problems is the lack of access to early pre-school services and kindergarten. Despite a positive legislative change making attendance of kindergarten obligatory as of 1 September 2013 for all children from the age of 3, there are not enough kindergarten places for Roma children who live in segregated areas. On the other hand, early drop-out remains a problem, which the recent lowering of the age of compulsory education from 18 to 16 is said to exacerbate. Participation of Roma in university education remains significantly low.
103. As concerns desegregation of Roma pupils, the Hungarian authorities have long started to take measures to that aim and have until recently made numerous declarations in favour of desegregation, including in the National Social Inclusion Strategy 2012-2014. Nonetheless, the Commissioner is deeply concerned at reports indicating that the problem of segregation of Roma children in education is far from being tackled and has even been on the rise in the last 15 years.
104. As concerns segregation due to placement in schools for special needs, in the 2013 *Horváth and Kiss v. Hungary*<sup>74</sup> judgment, the European Court of Human Rights concluded that the placement in a special school for children with mental disabilities during primary education amounted to discrimination against the applicants on grounds of their Roma origin. According to the Court, the relevant legislation, as applied in practice, lacked adequate safeguards and resulted in the overrepresentation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability. It found Hungary in violation of Article 2 of Protocol No. 1 read in conjunction with Article 14 of the ECHR. The Hungarian authorities have indicated that they have taken measures to avoid this form of segregation, notably by changing the diagnosis test of mental disability and training the relevant staff.
105. Roma pupils are confronted with other forms of segregation in Hungary such as the existence of Roma-only schools reflecting housing segregation.<sup>75</sup> There have also been cases of segregated Roma and non-Roma classes within the same school building, and of segregated buildings within the same school institution.<sup>76</sup> In some specific cases, segregation resulted from what turned out to be an artificial distinction between private and public schools with all the Roma pupils attending classes in the public school. In other cases, it appears that segregation took place under the pretext of education in the minority language. In all such cases, in addition to the problem of ethnic separation, the schools or classes for Roma are generally of a lower standard in terms of teaching quality and material conditions.
106. The problem is not only one of perpetuation of segregation as, worryingly, in some of the above mentioned cases, the segregated settings were (re-)opened in the last few years in contradiction with the official commitment taken towards desegregation. Nonetheless, the Commissioner is pleased to note that the Hungarian courts and, to some extent, the Equal Treatment Authority have consistently concluded that such solutions were in fact discriminating against Roma pupils. The Ombudsman has also made ex officio investigations into the problem of segregation of Roma in education. He stressed that the State authorities had a responsibility in this field and asked for country-wide monitoring of the situation with a view to identifying relevant remedial measures both for systemic and individual cases of segregation.<sup>77</sup> In this context, the Commissioner understands that there is a debate in Hungary on the value of a system of separated “catch-up” schools where Roma pupils would go initially to join mainstream schools only at a later stage. While some public officials have spoken in favour of such a solution, civil society members have pointed at the risk of perpetuating rather than ending segregation as Roma children would remain separated from mainstream pupils for an indefinite period of time.

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<sup>74</sup> [Horváth and Kiss v. Hungary](#), application no. 11146/11, judgment of 29 January 2013.

<sup>75</sup> In a Roma settlement in Nyíregyháza, a segregated school closed down in 2007 and re-opened in 2011 by a church institution in co-operation with the local municipality was considered to be segregated by a court ([BBC press article](#), 28 February 2014). See for several examples of school segregation, the [Report](#) on discrimination of Roma children in education, European Network of Legal Experts in the Non-Discrimination Field, April 2014, p. 20.

<sup>76</sup> For an example of segregation through creating, in the same building, a private school and a public school (mostly attended by Roma who could not afford the fees of the private school), see the Supreme Court decision of 29 June 2011 Pfv.IV.20.037/2011/4 establishing the existence of a segregation in Jászapáti.

<sup>77</sup> See Commissioner for Fundamental Rights, International Romani Day - the Ombudsman and his Deputy on the secondary education of nationalities, [Press release](#), 9 April 2014.

107. As concerns access to housing for Roma, those living in extreme poverty are confronted with homelessness and share the difficulties experienced by other Hungarian citizens who live on the street or in huts and shacks at the outskirts of big cities (see below, section on discrimination on socio-economic status). According to estimates, around 130 000 Roma live in segregated settlements and several hundreds of these settlements lack basic infrastructure. Roma often face discrimination in accessing social housing. Reportedly, some local authorities have imposed discriminatory measures on Roma settlements, as was the case in the summer of 2013 in Ozd, where the municipality shut down public wells which constituted the only access to water for inhabitants of the Roma settlement. In another case which received widespread coverage and was under investigation by the Ombudsman at the time of the Commissioner's visit, the authorities of Miskolc took drastic measures to resettle outside the city persons, mainly of Roma origin, living in one of the city's settlements. Such measures have been described as constituting at least indirect discrimination, if not (covert) direct discrimination against Roma inhabitants.
108. Concerning employment, direct and indirect discrimination prevents a great portion of the Roma population from breaking the vicious circle of poverty in which they are caught. Roma are also overrepresented among the persons participating in informal work, which makes them vulnerable due to the absence of legal protection. The Hungarian authorities have taken measures in favour of access to employment of persons with multiple disadvantages including many persons of Roma origin, as indicated in the National Social Inclusion Strategy. While measures aimed at reintegrating Roma in the primary labour market are to be welcomed, the Commissioner is concerned at information according to which the system of national and municipal public work programmes introduced in 2012 does not reach its announced goals of reintegration into the active labour market. It could even be counter-productive and discriminatory against the Roma if no measures to redress existing serious shortcomings are taken. As concerns the municipal public work scheme in particular, the main problems identified by, among other stakeholders, the Ombudsman<sup>78</sup> include: lack of social protection of employees; salaries below the minimum wage; absence of or inadequate, training programmes, hampering the reintegration into the active labour market; and the linking of entitlement to social assistance to the requirement of a 30-day registered employment status, which leaves those who cannot enrol in public work without social assistance. While, according to official data, almost 200,000 persons were employed under public work programmes, an estimated 300,000 persons live without any job or social benefits in Hungary. Moreover, the Commissioner received worrying reports indicating that Roma workers are discriminated in various ways by employers in some municipalities when applying for and taking part in public work.

### 2.2.2.1 CONCLUSIONS AND RECOMMENDATIONS

109. School segregation of Roma children should be vigorously combatted in all its forms, as clearly spelled out in various judgments of the European Court of Human Rights on this issue.<sup>79</sup> It violates the European Convention and its Protocol No. 1 read in conjunction with Article 14 of the ECHR and the child's right to education on the basis of equal opportunities, and to develop his/her personality, talent and abilities to the fullest potential, protected by the UN Convention on the Rights of the Child, which is binding on Hungary.
110. The Hungarian authorities should step up their efforts to improve access to education of Roma children. In particular, they should continue desegregating Roma pupils placed in special schools for children with mental disabilities. They should also intensify their efforts in combating all forms of school segregation of Roma children by creating a comprehensive strategy, accompanied by a detailed schedule including clear targets and indicators for monitoring the desegregation process, as well as the funding required for this purpose. The Commissioner considers that the complexity of this problem demands not only a reform of the education system, but also the implementation of profound, long-term, effective measures aimed at combating institutionalised anti-Gypsyism, poverty and social exclusion, as well as at overcoming the resistance to change by various stakeholders. A first step in the right direction would be

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<sup>78</sup> See "Their shield is the law: The Ombudsman's protection for vulnerable groups", 2013, p. 80.

<sup>79</sup> See, for a summary of the case-law of the Court on segregation in schools, the Registry Press Unit [Factsheet](#) on Roma and Travellers.

that the Hungarian government sends out an unambiguous signal to all stakeholders that the goal is to have an inclusive education system.

111. The Commissioner is concerned about the dire housing situation of Roma in Hungary and urges the authorities to address this problem as a matter of priority, in line with the Council of Europe Committee of Ministers Recommendation Rec(2005)4 on improving the housing conditions of the Roma and Travellers in Europe. The Commissioner calls on the authorities to take urgent measures to protect Roma from forced evictions. The Commissioner stresses the importance of ensuring that local authorities are made accountable for any policies and actions leading to segregation.
112. Concerning employment discrimination, the Commissioner urges the authorities to monitor closely the measures taken in the context of the public work programmes to ensure that the basic social rights of the employees are fully respected in all cases and without discrimination and that such programmes help them to access rapidly the primary labour market and do not isolate them further from it.

### 2.2.3 DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

113. Hungary was the first European country to ratify in 2007 the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and its Optional Protocol providing for an individual complaints mechanism. Since then, it has taken a number of legislative and other steps to implement this Convention. However, persons with disabilities living in Hungary remain confronted with difficulties in exercising their rights under the UN CRPD owing, in particular, to shortcomings in the system for social care, budgetary cuts in the disability pension scheme and limited accessibility of public spaces and services. In this section, the Commissioner wishes to focus on two specific issues: the persisting institutionalisation of persons with disabilities and the inadequacy of the framework and arrangements regarding the legal capacity of persons with disabilities.
114. Currently, there are 25,000 adults with disabilities living in social care institutions in Hungary. The majority of them still live in large institutions. The Commissioner visited the integrated social care home in the outskirts of the city of Polgárdi, an institution with a capacity of 240 where at the time of the visit, 190 persons with intellectual and psycho-social disability were living. The Commissioner could note that a number of the residents had been living there for a very long time. While some would have been ready to live in the community rather than in this isolated setting, should they have an opportunity to do so, others felt unsure about their ability to do so after spending such a long time in the institution. The Commissioner was impressed by the professionalism of the staff working with the residents and encouraged by their awareness of the residents' right to live independently in the community, in conformity with Article 19 of the UN CRPD and Article 15 of the European Social Charter (Revised).<sup>80</sup> In this connection, these provisions stressed the importance of ensuring that all necessary means are made available, including training of relevant professionals, to ensure a smooth process of deinstitutionalisation.
115. The Commissioner is pleased to note that Hungary has expressed its commitment toward deinstitutionalising the persons with disabilities to enable them to live within the community notably by adopting a Strategy on Deinstitutionalising Social Care Institutions for Persons with Disabilities. However, much more needs to be done to ensure that all persons with disabilities benefit from that process. The Commissioner considers that the 30-year period (2011-2041) chosen by the government for completing the deinstitutionalisation process is far too long. Indeed, progress in this field is slow: the Commissioner understands that since the beginning of the implementation of the strategy only about 700 persons out of 25,000 were in the process of moving out from large institutions.<sup>81</sup> In addition, the

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<sup>80</sup> Under Article 19 of the UN CRPD, States Parties recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community. Article 15 of the Revised European Social Charter provides that "disabled persons have the right to independence, social integration and participation in the life of the community."

<sup>81</sup> See Mental Disability Advocacy Center (MDAC), [My Home, My Choice in Hungary](#) - The right to community living for people with mental disabilities in 2014, September 2014.

strategy crucially does not cover deinstitutionalisation of children or of adults with intellectual or psycho-social disabilities and is therefore not comprehensive.

116. Under the strategy, persons with disabilities can be placed in flats, group homes or living centres. The staff of the Polgárdi centre was for instance managing a group home for 8 persons based in the village. As concerns living centres, the Commissioner is relieved to note that under pressure from civil society organisations, the initial plan of using EU funds to build institutions of up to 150 residents has been abandoned. However, the current tender for Structural Funds proposals allows for the building of institutions for up to 50 persons, which clearly remains too high a number in the Commissioner's view. The Commissioner understands that in practice and for the time being only new living centres for up to 25 persons are being set up with the help of the EU funds. However, the Commissioner wishes to stress that the more specific services are provided within the residence, the less opportunities for contacts with the outside world become available to the residents in practice, as highlighted in the Issue Paper published by the Commissioner's Office on the right of people with disabilities to live independently and be included in the community.<sup>82</sup> A 2012 study on Article 19 of the CRPD prepared by the UN Office of the High Commissioner for Human Rights, also underlines that "[s]maller institutions are no less objectionable than larger ones particularly where the structural opportunities for real engagement in community life are absent. Congregated settings generally draw attention to the commonality of their residents (disability) rather than to their innate personhood and thereby militate against open intercourse with civil society".<sup>83</sup>
117. Also of serious concern to the Commissioner are reports according to which public funds and EU structural funds have been used to refurbish large institutions. The Committee on the Rights of Persons with Disabilities expressed in 2012 a number of concerns about the lack of progress in deinstitutionalisation, stressing in particular that Hungary "has dedicated disproportionately large resources, including regional European Union funds, to the reconstruction of large institutions, which will lead to continued segregation, in comparison with the resources allocated for setting up community-based support service networks".<sup>84</sup>
118. The Commissioner welcomes reports according to which there are a number of small promising pilot projects of genuine deinstitutionalisation across the country but they have not been scaled up to benefit more people with disabilities, including psychosocial disabilities, so far.
119. As concerns the right to legal capacity, the Commissioner understands that there are currently more than 55,000 persons under guardianship in Hungary. Compared to the total population, this represents, according to civil society organisations, possibly the highest percentage of persons placed under guardianship in Europe.<sup>85</sup>
120. The Commissioner regrets that, following the inclusion of the abolition of plenary guardianship in a Civil Code of 2009 which never entered into force, the new Hungarian Civil Code (which entered into force in March 2014) allows for the possibility of "full limitation of legal capacity". By so doing, the Hungarian authorities ignored the call of the UN Committee for the Rights of Persons with Disabilities in 2012 "to use effectively the [...] review process of the Civil Code and related laws to take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respects the person's autonomy, will and preferences and is in full conformity with article 12 of the Convention, including with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to

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<sup>82</sup> Council of Europe Commissioner for Human Rights, [Issue Paper](#) on the right of people with disabilities to live independently and be included in the community, 2012, p. 13.

<sup>83</sup> See OHCHR Regional Bureau for Europe, [Getting a Life: Living Independently and Being Included in the Community](#), April 2012.

<sup>84</sup> UN Committee on the Rights of Disabled Persons, [Concluding Observations](#), Hungary, 22 October 2012, CRPD/C/HUN/CO/1, paragraph 33.

<sup>85</sup> See Mental Disability Advocacy Center (MDAC), [Legal Capacity in Europe](#), A call to Action to Governments and to the EU, October 2013, p. 55.

choose a place of residence.”<sup>86</sup> The Commissioner notes that the Ombudsman challenged the new Civil Code provisions on legal capacity before the Constitutional Court on grounds that they violated Article 12 of the UN CRPD, but the Court found in April 2014 that the current system was in accordance with Hungarian Constitution and Article 12 UN CRPD.<sup>87</sup>

121. Another serious concern which was raised by the Commissioner’s interlocutors lies in the restrictive approach of the Civil Code which, while introducing a system of supported decision-making, makes it only available to persons who “due to a minor decrease in their mental capacity need help in dealing with some of their affairs and in making decisions”. This means that in fact not all persons with disabilities will have access to the system of supported decision-making.
122. As concerns the right to vote of persons with disabilities, the Commissioner notes that the previous Constitution of Hungary provided for an automatic exclusion of the right to vote for persons placed under guardianship. In 2010, this arrangement was found by the European Court of Human Rights to be in violation of Article 3 of Protocol No. 1 to the ECHR.<sup>88</sup> Under the new Constitution, every adult has the right to vote, but a court can remove the right to vote and to be elected from a person “with limited mental ability”. Under the new system, the right to vote is therefore subject to a separate decision by a court and not linked to the placement under guardianship. The Commissioner notes that the UN Committee on the Rights of Persons with Disabilities concluded that this provision was in breach of Article 29 of the UN CRPD on participation in political and public life. The Committee recommended that Hungary consider repealing it and enact laws that recognise, without any “capacity assessment”, the right to vote for all persons with disabilities, including those with more need of support, and provide for adequate assistance and reasonable accommodation in order for them to be able to exercise their political rights. In particular, the Committee considered that Hungary should adapt its voting procedures, by ensuring that they are appropriate, accessible, and easy to understand and use and allowing, where necessary, assistance in voting upon request of the person with disability.<sup>89</sup>

### 2.2.3.1 CONCLUSIONS AND RECOMMENDATIONS

123. Isolating persons with disabilities in institutions perpetuates their stigmatisation and marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 UN CRPD.<sup>90</sup> Under this Article, Hungary is bound to take measures to ensure that persons with disabilities have effective access to a range of community-based arrangements including the personal assistance necessary to support independent living and inclusion in the community. The Hungarian authorities are encouraged to create new living settings which comply with this requirement and avoid opening new - even if smaller - institutions. The first step in this respect should be to immediately stop new placements in institutions.
124. The Commissioner strongly urges the Hungarian authorities to make progress in ensuring compliance with Article 19 UN CRPD. To this end he calls on the Hungarian authorities to speed-up the process of deinstitutionalisation of persons with disabilities and review the current 30-year long strategy, with the active involvement of persons with disabilities and their respective organisations. He stresses that EU Structural Funds can help the process of deinstitutionalisation, provided that they are not used to renovate or build large institutions for persons with disabilities or other accommodation not complying with the requirements of the UN CRPD. Hungary should take due account of the Concluding Observations of the Committee on the Rights of Persons with Disabilities in this field.

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<sup>86</sup> UN Committee on the Rights of Disabled Persons, [Concluding Observations](#), Hungary, 22 October 2012, CRPD/C/HUN/CO/1, paragraph 26.

<sup>87</sup> Constitutional Court, Case No. II/01096/2013, 1 April 2014.

<sup>88</sup> [Alajos Kiss v. Hungary](#), application no. 38832/06, judgment of 20 May 2010. See also: [Gajcsi v. Hungary](#), application no. 62924/10, judgment of 23 September 2014.

<sup>89</sup> See UN Committee on the Rights of Persons with Disabilities, Views on Communication No. 4/2011, [Zsolt Bujdosó and five others v. Hungary](#), 9 September 2013, [CRDP/C/D/4/2011](#).

<sup>90</sup> See also the Commissioner’s [Issue Paper](#) on the right of people with disabilities to live independently and be included in the community, 2012.

125. The new strategy should be comprehensive and cover children with disabilities and persons with psychosocial disabilities. It should set ambitious measurable goals by incorporating quantitative and qualitative indicators, which should be consistently monitored in order to sustain progress. This strategy should include the necessary retraining of service providers, such as staff at large institutions and mental health professionals, with a view to reorienting the provision of services and support towards the community. The authorities should also take measures to offset potential short-term economic effects which may create resistance to deinstitutionalisation at the local level, and address the deep-seated fears and prejudices of the general public towards persons with disabilities through education and awareness-raising.
126. The Commissioner also invites the Hungarian authorities to move resources from institutions to the development of individualised support services. The authorities should pursue and expand, as far as possible and in accordance with the principle of progressive realisation, the policies aimed at providing individualised support in housing, work and life planning, so as to prevent the isolation of persons with disabilities from society and promote their full and equal participation, without that support being contingent on a particular living arrangement. The authorities are further urged to take appropriate measures to ensure that the physical environment, as well as all services open to or provided to the public, including transportation, information and communication are accessible and effectively available to persons with disabilities on an equal basis with others. Useful guidance in this context is provided by the Council of Europe Committee of Ministers Recommendation Rec(2006)5 and the accompanying Disability Action Plan 2006-2015.<sup>91</sup> The Commissioner also draws the Hungarian authorities' attention to the Issue Paper published by his Office on the right of people with disabilities to live independently and be included in the community,<sup>92</sup> which contains indicators and guiding questions to help member states to monitor their progress towards full compliance with this right.
127. As concerns the right to legal capacity of persons with disabilities, the Commissioner has not yet seen a genuine shift from the substitute decision-making paradigm to one that is based on supported decision-making. The Commissioner urges the Hungarian authorities to take effective measures with a view to replacing substituted decision making with supported decision making, so as to comply as soon as possible with the requirements of Article 12 of the UN CRPD. As a first step, plenary guardianship should be abolished. The Commissioner invites the authorities to use the guidance provided in General

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<sup>91</sup> [Council of Europe Committee of Ministers Recommendation Rec\(2006\)5](#) and the accompanying Disability Action Plan 2006-2015.

<sup>92</sup> Office of the Commissioner for Human Rights, [Issue Paper](#) on the right of people with disabilities to live independently and be included in the community, 12 March 2012.

Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities and in the Issue Paper published by the Commissioner's Office on the right to legal capacity for persons with intellectual and psychosocial disabilities.<sup>93</sup>

128. As concerns the right to vote, the Commissioner calls on the Hungarian authorities to review their legislation to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others in line with Article 29 of the UN CRPD. This implies considering repealing the provisions of the Constitution allowing for a court to deprive a person's right to vote and to be elected on the basis of a disability. The Commissioner wishes to draw the Hungarian authorities' attention to the Council of Europe Committee of Ministers Recommendation on the participation of persons with disabilities in political and public life, which calls on Council of Europe member states to ensure that persons with disabilities, including with intellectual impairments, are not deprived of their right to vote and to be elected by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity.<sup>94</sup>

#### 2.2.4 DISCRIMINATION AGAINST LGBTI PERSONS

129. In Hungary, discrimination on the grounds of sexual orientation and homophobic and transphobic hate speech and hate crimes are explicitly sanctioned by law. However, Article 15 of the new Constitution on equality and non-discrimination does not expressly include sexual orientation as a ground for discrimination despite recommendations made in this sense by several international stakeholders, including the Venice Commission. While same-sex partnerships have been recognised since 1996 and registered partnerships granting same-sex couples rights similar to those of spouses have been in place since 2009, same-sex marriage is not legal and the provisions on registered partnerships were taken out from the Civil Code to become a separate piece of legislation in 2013. In addition, following several changes brought to the Constitution in 2012 and 2013, the Constitution defines family as "marriage and parent-child relationships", excluding cohabitants and same-sex couples. Transgender people have access to gender recognition without compulsory medical treatment. However, further progress is needed in the fields of parenting and public funding for gender reassignment treatments.
130. The Commissioner wishes to express his concern about the reportedly resurging climate of hostility towards LGBTI persons in the country resulting in some cases in hate speech and hate crimes targeting these persons. In February 2014, the Appeal Court of Debrecen confirmed a life imprisonment sentence against the murderer of a gay person, taking into account the homophobic bias as an aggravating circumstance. The May 2013 LGBT Survey by the European Union Agency for Fundamental Rights (FRA) found that 28% of Hungarian LGBT respondents had been physically/sexually attacked or threatened with violence in the past 5 years, while 50% were personally harassed. In most cases (59% and 75% respectively), physical attacks and harassment happened partly or completely because the respondent belonged to the LGBT community. 68% avoid certain places or locations for fear of being assaulted, threatened or harassed because of lesbian, gay, bisexual or transgender. According to reports, bullying in schools of LGBTI students is very frequent.
131. There have been several attempts to introduce legislation criminalising the "promotion" of homosexuality. While they have not succeeded, they are a worrying indicator of the recrudescence of the climate of hostility towards LGBTI persons in the country.
132. Another indicator is the reactions to the annual Pride March, which has been organised in Budapest every year since 1997. Since 2011, organisers have faced several obstacles, including attempts by the Budapest Police to ban the event in 2011 and 2012 on the grounds that it would impede traffic. Each

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<sup>93</sup> See the Commissioner's Issue Paper ["Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities"](#), 2012.

<sup>94</sup> [Recommendation CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, adopted on 16 November 2011.



time, a court annulled the police decision and the March could therefore take place. In addition, on 16 January 2014, the Metropolitan Court of Budapest found that the Budapest Police committed direct discrimination and harassment based on sexual orientation when banning the Budapest Pride March in 2012. This decision was upheld by a decision of the Regional Court of Appeal of Budapest on 18 September 2014 under which the Budapest police was ordered to issue a letter of apology and refrain from continuing with this practice. While the 2013 Pride March was not banned, it was marked by serious incidents, when people leaving the demonstration were attacked by a group of 30 persons wearing neo-nazi uniforms. The July 2014 March went on peacefully but only because of the strong police presence and cordon along the route that prevented dozens of extremist protesters from approaching the March as well as the quick police reaction when some of them nonetheless managed to break into the crowd.

#### 2.2.4.1 CONCLUSIONS AND RECOMMENDATIONS

133. While he welcomes the progress made in the fight against intolerance and discrimination against LGBTI persons, the Commissioner calls on the authorities to take all necessary measures to ensure that all cases of physical or other violence against LGBTI persons are promptly and adequately investigated, prosecuted and sanctioned. The authorities are encouraged to continue taking strong public positions against violations of the human rights of LGBTI persons and to promote the public's awareness of diversity and respect for all persons' sexual orientation and gender identity, notably through human rights education and awareness-raising campaigns. Further measures should be taken to address all cases of discrimination in law and practice against LGBTI persons.

#### 2.2.5 DISCRIMINATION ON GROUNDS OF SOCIO-ECONOMIC STATUS

134. In the last three years, the Hungarian authorities have taken several measures to prohibit rough sleeping and construction of huts and shacks. These measures, which have attracted significant national and international criticism, have been taken in the context of an increasing number of persons living on the street due to the financial and economic crisis in Hungary. The latter have already been negatively impacted by social benefits cuts and some have experienced evictions or are at constant risk of being evicted. The number of homeless people who live on the street or in shelters in Hungary is estimated at not less than 30,000. Some politicians, in support for the repressive measures taken against homelessness, have referred in a hostile way to the need to eliminate homelessness and scapegoated poor and homeless persons giving the worrying impression, as stressed by the Ombudsman in his 2013 Annual Report, that their fight was against the "problematic persons" rather than the problem itself.<sup>95</sup>
135. In 2012 the Parliament adopted a law making the use of public spaces for habitual residence or storage of personal property a petty offence, with repeat offenders liable to imprisonment, a fine, or both. In November 2012, the Constitutional Court ruled, upon submission by the Ombudsman, that the law was unconstitutional and in breach of the human dignity of homeless persons. The Court noted in particular that homelessness was a social condition and not a subjective specific behaviour that could be punished as such by law. By a complementary decision of the Constitutional Court, all penalty fees had to be paid back to those who had been fined under the law.
136. However, in March 2013, the Constitution was changed to enable local governments to enact a decree that "may, with respect to a specific part of public space, provide that staying in public space as a habitual residence shall be illegal." While the same provision states that Hungary and local governments should "strive" to guarantee housing for homeless people, they are not obliged to do so by the Constitution. On 30 September 2013 the Hungarian Parliament voted a law allowing local governments to prohibit rough sleeping in some public places and evict people living in huts or shacks with the aim of protecting public order, security, health, and cultural values. Offenders can be punished with fines, community service, or even imprisonment. Following this change in the legislation, a number of local

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<sup>95</sup> Commissioner for Fundamental Rights, [Annual Report](#) on the activities of the Commissioner for Fundamental Rights and his Deputies 2013, p. 43.

governments, including in Budapest, Debrecen and Pécs, adopted decrees making habitual residence in public places a petty offence.

137. According to reports, several homeless people have already been fined for sleeping rough in public spaces, and some were subjected to confinement due to their inability to pay the fines: under the previous and now repealed law, 2,202 homeless persons were affected by police procedures, of whom 1,037 people were fined (with the fines varying between 15 EUR and 250 EUR), and for 24 homeless people the fines were converted into incarceration.<sup>96</sup> It has been reported to the Commissioner that since the entry into force of the new law, charges have been filed against some 200 offenders in Budapest.
138. The Commissioner notes that the UN Working Group on Arbitrary Detention conducted a mission in Hungary in autumn 2013. In its report on this mission, the Working Group stressed that the Act on Misdemeanours makes a number of petty offences punishable with confinement, including the living and storing of personal material on public premises. The working group interviewed a number of detainees who were serving time ranging from 10 to 38 days in confinement for offences such as having a broken bicycle light. They stressed that a common reason for not paying a fine was financial constraints and that there have been alleged cases of automatic conversion of a fine into confinement without the offender being in court to challenge it. As rightly stressed by the UN Special Rapporteur on extreme poverty, one can wonder “how the poorest and most marginalised in Hungarian society are expected to pay these substantial fines, which only serve to push them deeper in poverty”.<sup>97</sup>
139. The Commissioner is concerned at information indicating that the current system of emergency shelters in Budapest is obsolete and overcrowded. During a visit to the Isola shelter in the fourth district of Budapest, the Commissioner met with a number of homeless persons, some of whom were working without earning enough to afford decent housing. He could see how the staff of the shelter was committed but struggling to keep the shelter open and in as decent conditions as possible with the little public funds they receive.
140. Some facilities for homeless persons in the city centre have been closed and even if new ones have been opened, they do not meet the need for beds for the homeless of a capital like Budapest. In particular, the current system does not cater for the need of homeless families. This is all the more worrisome in the light of credible allegations received by the Commissioner concerning cases of deprivation of parental rights and taking away of children on the grounds of socio-economic status.
141. In 2013, the UN Special Rapporteur on adequate housing stressed that Hungary did not have a national housing strategy or a long term plan for the almost 30,000 homeless persons living in the country.<sup>98</sup> While there have been a number of pilot projects, essentially run by NGOs, the State has not focused on finding durable solutions for families living in extreme poverty as all the current social housing schemes are more targeted towards lower-middle class families.
142. The Commissioner notes two interesting judicial developments which took place after his visit. Firstly, in a decision of 9 September 2014,<sup>99</sup> upon request by the Ombudsman, the Supreme Court ruled against a Budapest government decree providing for a too broad prohibition of rough sleeping. The Court stated that the possibility of prohibiting rough sleeping and rummaging through garbage should be interpreted in a restricted manner and applied only in public places where this can pose a real danger for society. It asked the municipality to change the decree before the end of 2014.<sup>100</sup> Referring directly to the above-

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<sup>96</sup> FEANTSA (European Federation of National Organisations working with the Homeless), *FEANTSA and its Hungarian members concerned by Hungarian Government Stance on Criminalising Homeless People*, [Press Release](#), 6 May 2013.

<sup>97</sup> See: Hungary is entrenching the criminalisation of homelessness – UN Experts on Poverty and Housing, UN OHCHR [Press Release](#), 3 April 2013.

<sup>98</sup> *Ibid.*

<sup>99</sup> Supreme Court, [Decision](#) No. 5020/2014/6 of 9 September 2014.

<sup>100</sup> The Supreme Court submitted to the Constitutional Court the question of whether the Capital’s districts have the legal power to make regulations concerning the sanctioning of homelessness and, at the time of drafting this report, was still awaiting the response to conclude on the legality of other aspects of these decrees.

mentioned 2012 Constitutional Court decision, the Supreme Court in turn said that housing poverty – and the rummaging through garbage which is closely connected to it – is a state of being which creates social obligations also for the community: homeless living cannot be punished in the absence of a danger to society and does not in general allow public authorities to constrain someone to choose between social care, living at the periphery, or assuming a penalty. The other case concerns a forced eviction without alternative solution of six homeless persons living in shacks at the outskirts of Budapest. In this case, the Court of Appeal confirmed the decision by the first instance court according to which the municipality violated the personal rights of the plaintiffs, including their rights to human dignity and equal treatment.

#### 2.2.5.1 CONCLUSIONS AND RECOMMENDATIONS

143. The Commissioner deeply regrets the decision of the Hungarian legislator to persist in adopting measures which have been widely criticised for endangering the exercise of basic human rights by the poor. The Act on Misdemeanours and related secondary legislation on rough sleeping has already had a discriminatory impact on those who are poor and may not have the means to provide financial assurance against confinement. He urges the Hungarian authorities to review these regulations and their application in light of internationally agreed standards binding Hungary and guaranteeing human dignity in order to ensure that no person is disproportionately charged for petty offences.
144. The Commissioner stresses that the Hungarian authorities should stop using repressive and discriminatory tools and start to adopt a truly inclusive approach to the fundamental social right of housing, guaranteeing the dignity of all persons living in Hungary. Hungary has an obligation under the International Covenant on Economic, Social and Cultural Rights to provide adequate housing for all without discrimination and without encroaching upon other fundamental rights such as the right not to be deprived of one's liberty.
145. As concerns people living currently on the street, the Commissioner expresses his concern at the generally poor state of affairs in the field of access of homeless persons to emergency shelters notably due to the lack of financial means granted by the public authorities. The Hungarian authorities should urgently review their system of emergency shelters in Budapest and other cities to ensure that it is in full compliance with international standards on the right to adequate housing. Specific attention should be given to create shelters for homeless families.
146. The Commissioner urges the Hungarian authorities to investigate allegations of cases of forced evictions without alternative solutions and take any necessary remedies. They should also investigate reports of children being taken away from their families on the grounds of poor socio-economic conditions and take all necessary remedies, as this constitutes discrimination and goes against the best interests of a child. Such interferences have been found by the Court to be at variance with the right to respect for private and family life protected in Article 8 of the ECHR.<sup>101</sup> These children should not be separated from their families who should be provided with health and social support to help them out of poverty.
147. Hungary's obligations towards the full realisation of the right to adequate housing go beyond providing emergency and individual solutions. They include taking measures to prevent homelessness such as determining the extent of homelessness and, above all, adopting a national social housing strategy reflecting extensive genuine consultation with the homeless. On this point and all others, the Hungarian authorities could draw inspiration from the guidelines contained in the Commissioner's Office Issue Paper on Housing Rights.<sup>102</sup>

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<sup>101</sup> For instance, in [R.M.S v. Spain](#) (application no. 28775/12, judgment of 18 June 2013), the Court stated that a situation of material deprivation in itself cannot be a sufficient ground for ordering the separation of a child from his/her natural family and that it constitutes a breach of Article 8.

<sup>102</sup> Office of the Council of Europe Commissioner for Human Rights, [Issue paper](#), Housing Rights – the duty to ensure housing for all, 2008.

### 3 HUMAN RIGHTS OF IMMIGRANTS, ASYLUM SEEKERS AND REFUGEES

148. Hungary is at the juncture of various migration routes in Central Europe and a gateway to the European Union. In 2013, the country faced an 876% increase in applications for asylum, which has put a strain on its asylum system. The situation seems to have stabilised in 2014, with 4836 applications for the first two quarters (compared to 11607 applications over the same period in 2013). In 2014, most applicants came from Afghanistan, Syria and Kosovo\*.
149. The Commissioner notes from the outset that the government's policy concerning asylum has been markedly shaped by considerations relating to the fight against irregular migration and the prevention of possible abuse of the asylum system. This policy is based on the premise that Hungary is a transit country and most of the migrants, including asylum seekers, will therefore not stay in the country. The government has however recently adopted a Migration Strategy for the period 2014-2020, covering objectives in all fields of migration, including visa policy, free movement and legal immigration, the fight against irregular migration, international protection and integration.
150. As regards asylum, the Office of Immigration and Nationality (OIN) is notably responsible for asylum and statelessness procedures, as well as the provision of reception services.

#### 3.1 DETENTION OF ASYLUM SEEKERS

151. The detention of asylum seekers has been a long-standing problem in Hungarian asylum law and practice. The introduction of changes extending the use of detention for asylum seekers in 2010, which at some point resulted in 100% of asylum seekers being detained, led to numerous criticisms by both international bodies, such as the United Nations High Commissioner for Refugees (UNHCR) and the UN Working Group on Arbitrary Detention,<sup>103</sup> and national institutions such as the Ombudsman.<sup>104</sup> UNHCR in particular issued critical observations in 2012<sup>105</sup> followed by a request to refrain from transferring asylum seekers under the Dublin Regulation to Hungary, in cases where those asylum seekers have or may have been in Serbia prior to entering Hungary.<sup>106</sup> As a consequence, several EU member states (Austria, Belgium, Germany, Italy, the Netherlands and Slovakia) have temporarily suspended a number of Dublin returns to Hungary. The European Court of Human Rights has also repeatedly found Hungary in breach of the ECHR in connection with the detention of asylum seekers. In the case of *Lokpo and Touré v. Hungary*,<sup>107</sup> the Court found a violation of the right to liberty and security (Article 5 § 1 (f) ECHR) of the applicants, two asylum seekers from Ivory Coast, due to their unlawful detention with a view to expulsion for five months in 2009, which was prolonged automatically merely because the refugee authority had not initiated their release.
152. The authorities have responded to some of these criticisms by adopting several amendments to the asylum legislation.<sup>108</sup> The last series of amendments, which entered into force in July 2013, introduced a new regime of "asylum detention", providing grounds for detention of asylum seekers.<sup>109</sup> Under the new provisions, an asylum seeker may notably be detained when there is a risk of absconding, a need to

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\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

<sup>103</sup> UN Working Group on Arbitrary Detention, [Statement](#) upon the conclusion of its visit to Hungary (23 September - 2 October 2013). See also the [Report](#) following the mission to Hungary, published on 3 July 2014, A/HRC/27/48/Add.4.

<sup>104</sup> See [Report](#) 4019/2012 on Békéscsaba Detention Facility (June 2012) and [Report](#) 1953/2012 on Nyírbátor Detention Facility (September 2012).

<sup>105</sup> [UNHCR paper](#), Hungary as a country of asylum: Observations on the situation of asylum-seekers and refugees in Hungary, 24 April 2012.

<sup>106</sup> [UNHCR paper](#), Note on Dublin transfers to Hungary of people who have transited through Serbia, October 2012.

<sup>107</sup> [Lokpo and Touré v. Hungary](#), application no. 10816/10, judgment of 20 September 2011. The execution of this (lead) case is currently under standard supervision by the Council of Europe Committee of Ministers. See also [Al-Tayyar Abdelhakim v. Hungary](#), application no. 13058/11, and [Hendrin Ali Said and Aras Ali Said v. Hungary](#), application no. 13457/11, judgments of 23 October 2012.

<sup>108</sup> Act LXXX of 2007 on Asylum.

<sup>109</sup> Section 31/A of the Act LXXX of 2007 on Asylum.

establish his or her identity or when the person has previously hidden from the authorities or obstructed the course of the asylum procedure in another manner. Detention may not be ordered for more than seventy-two hours; it can be extended by a maximum of sixty days by the competent court, which can then prolong this period twice for another two sixty-day periods. The maximum period of asylum detention foreseen by the law is six months. The new provisions also introduced alternatives to detention (“measures securing availability”) in the form of bail, assignment to residence (“designated place of residence”) and periodic reporting obligations.

153. These changes have been positively assessed by the European Court of Human Rights, in a July 2014 judgment concerning the transfer of an Afghan asylum seeker from Austria to Hungary under the Dublin Regulation.<sup>110</sup> While noting that the grounds for detention were still vaguely formulated, and that there was no legal remedy against asylum detention, the Court stressed in particular that “there is no systematic detention of asylum seekers anymore, and (...) alternatives to detention are now provided for by law. The maximum period of detention has been limited to six months”.<sup>111</sup> The Court therefore concluded that the transfer of the applicant would not violate Article 3 ECHR (prohibition of torture and inhuman or degrading treatment or punishment) as reports available did not indicate systematic deficiencies in the Hungarian asylum and asylum detention system.<sup>112</sup>
154. The Commissioner notes, however, that the new detention regime only led to a decrease of the number of asylum seekers being detained and remains concerned about several shortcomings in the implementation of the new legislative framework.

### 3.1.1 SHORTCOMINGS OF THE CURRENT DETENTION REGIME

155. The Commissioner was informed that at the time of his visit, 386 asylum seekers were detained in the three asylum detention centres operating in Hungary (Békéscsaba, Nyírbátor and Debrecen),<sup>113</sup> while 1 557 asylum applications were being processed. This represents about 25% of all asylum seekers and 42% of single men asylum seekers. These figures suggest that very little use of alternatives to detention is made in practice. Bail is rarely applied: for example, according to the Hungarian Helsinki Committee, between 1 July 2013 and 31 March 2014 bail was only used in 32 cases (compared to 2372 decisions ordering detention over the same period).<sup>114</sup> The average amount of bail ordered so far was 1000 EUR but this amount recently increased to 2000 EUR, an amount which appears to be too high for the majority of asylum seekers and which might explain that almost no-one applies for it anymore. Alternatives to detention are also reportedly often not examined in detail, with only few detention orders referring to specific reasons for not applying alternatives to detention. Several interlocutors indicated that one of the reasons for the scarce use of bail was the lack of clear guidelines with respect to its application, which resulted in it being applied in a non-transparent and inconsistent manner throughout the country.
156. The Commissioner remains particularly worried by the arbitrariness which characterises the asylum detention regime. Although the law specifies that an individual assessment should take place, in practice asylum seekers are reportedly detained according to criteria such as the availability of places in detention centres or the nationality of the asylum seeker. The UNHCR reported for instance that, among ten Pakistani asylum seekers apprehended by the Border Police for unlawful entry into Hungary in September 2013, four were sent to an open reception centre and six were detained. An analysis of

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<sup>110</sup> [Mohammadi v. Austria](#), application no. 71932/12, judgment of 3 July 2014.

<sup>111</sup> *Ibid.*, paragraph 68.

<sup>112</sup> *Ibid.*, paragraph 74.

<sup>113</sup> These detention centres are managed by the OIN. There are a total of 472 asylum detention places, in addition to 1 564 places in open reception centres.

<sup>114</sup> See Hungarian Helsinki Committee, [Information Note on asylum-seekers in detention and in Dublin procedures in Hungary](#), May 2014, p. 11.

decisions ordering detention indicates that these decisions are not individualised but use identical wording, without elaborating on the proportionality and necessity to impose detention on a given individual.<sup>115</sup>

157. In addition, the Commissioner is concerned by the lack of effective judicial review. According to the law,<sup>116</sup> there is no appeal against the decision of the OIN ordering asylum detention. The lawfulness of the detention will therefore only be examined in the context of the automatic court review system, performed at sixty-day intervals by criminal law judges, who are also competent for immigration detention cases. However, the Commissioner notes that the Supreme Court of Hungary found the judicial review in immigration detention cases to be ineffective,<sup>117</sup> since it led to detention being discontinued in only three cases out of 8000 decisions adopted in 2011, while for the rest detention was simply prolonged without any individual reasoning.

### 3.1.2 VULNERABLE ASYLUM SEEKERS

158. According to a number of the Commissioner's interlocutors, the asylum system in Hungary is not properly equipped to deal with vulnerability. In particular, a screening mechanism to identify persons with special needs is lacking. As a result, vulnerable people, such as traumatised people, minors or transgender persons, have sometimes been detained without any special measures in place. This includes special measures which should exist for illiterate persons as all requests have to be made in writing.
159. A particular issue that was brought to the Commissioner's attention is the detention of unaccompanied asylum seeking minors, despite the fact that it is prohibited by the law.<sup>118</sup> Civil society organisations have reported cases where asylum seekers visibly under 18 had been detained, probably due to incorrect age assessments. In 2013, the Ombudsman warned the authorities about deficiencies in the system of identification of minors, documenting instances where separated children were subject to detention.<sup>119</sup> There are indications that about 500 to 1000 unaccompanied minors, mainly from Afghanistan, are detained every year in Hungary, sometimes for long periods, together with adults. This is due to the lack of a proper age assessment mechanism, which currently consists in a physical observation by a police-employed doctor, sometimes with X-ray examination of the collarbone or wrist. No psycho-social assessment is carried out. It appears that the OIN, when dealing with asylum applications of alleged minors, do not request a new age assessment, basing its conclusions on the age assessment ordered by the police upon interception only.
160. Finally, while the law provides for the detention of families with minors for a maximum period of 30 days, the Commissioner is pleased to note that in practice families with children (as well as single women) are no longer detained in asylum detention centres.

### 3.1.3 CONCLUSIONS AND RECOMMENDATIONS

161. Hungary still makes extensive use of detention for asylum seekers. In recent years, the authorities have persistently defended the use of asylum detention, often as a means to deter asylum applications in the country. Punishing those who are seeking safety in Europe is however not acceptable: the Commissioner recalls that these persons are not criminals and should not be treated as such.

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<sup>115</sup> *Ibid.*, p. 6.

<sup>116</sup> Section 31/C of the Act LXXX of 2007 on Asylum. The asylum seeker can only file an objection against an order of asylum detention.

<sup>117</sup> Advisory Opinion of the Hungarian Supreme Court adopted on 30 May 2013 and approved on 23 September 2013, available in Hungarian at:

[http://www.lb.hu/sites/default/files/joggyak/idegenrendeszeti\\_osszefoglalo\\_velemenye\\_kuria.pdf](http://www.lb.hu/sites/default/files/joggyak/idegenrendeszeti_osszefoglalo_velemenye_kuria.pdf).

<sup>118</sup> Section 31/B of the Act LXXX of 2007 on Asylum: "Asylum detention may not be ordered in the case of an unaccompanied minor seeking recognition".

<sup>119</sup> Shortcomings in the Asylum Regulation related to Unaccompanied Minors – The Ombudsman's report, [Press release](#), 1 March 2013.

162. While he welcomes the recent amendments which provide legal grounds for the detention of asylum seekers, with a view to reducing its use, and which introduce alternatives to detention, the Commissioner underlines that the grounds provided for in the law are too vague. Moreover, the main purpose of asylum detention, namely to ensure the availability of the applicant throughout the asylum procedure, raises questions of compatibility with Article 5§1(f) of the ECHR. The Court has stressed that, to avoid arbitrariness, detention under Article 5§1(f) “must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country (...); and the length of the detention should not exceed that reasonably required for the purpose pursued.”<sup>120</sup>
163. The Commissioner calls on the authorities to ensure that the detention of asylum seekers is only used as a last resort, for the shortest possible period of time and on the basis of individual assessments. Alternatives to detention should be considered in priority: detention should only be used after first reviewing all other alternatives and finding that there is no effective alternative. Furthermore, there is a need to improve the judicial review of asylum detention, which should be sped up and conducted on the basis of a real individual assessment.
164. The Commissioner draws the authorities’ attention to the recently adopted UNHCR Global Strategy on Detention,<sup>121</sup> which aims at ending the detention of children; ensuring that alternatives to detention are available in law and implemented in practice; and ensuring that conditions of detention, where detention is necessary and unavoidable, meet international standards. In this context, Hungary has been identified as one of the countries to work with to revisit its detention practices and strengthen alternatives to detention. The Commissioner thus encourages the Hungarian authorities to co-operate with UNHCR with a view to making the use of detention of asylum seekers an exceptional measure in practice.
165. The Commissioner reiterates that children should not be detained under any circumstances as detention is not in their best interests. The authorities should establish an adequate system of age assessment in order to avoid placing unaccompanied minors in detention. More generally, greater attention should be paid to improving the identification of persons in vulnerable situations and ensuring that adequate measures are available to meet their needs and ensure their protection.
166. Although there have been no cases of detention of asylum seeking families recently, the Commissioner notes that their detention is still provided for by the law. The Court has spelled out that the child’s best interests call not only for families to be kept together but also for the authorities to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve their right to family life (Article 8 ECHR).<sup>122</sup> The Parliamentary Assembly of the Council of Europe has also recently called on member states to adopt alternatives to detention that fulfil the best interests of the child and allow children to remain with their family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved.<sup>123</sup> In the Commissioner’s view, children should not be subjected to immigration detention, whether with or without their families. The Commissioner thus exhorts the authorities to remove the possibility of any such detention from the law.

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<sup>120</sup> [Saadi v. the United Kingdom](#), application no. 13229/03, Grand Chamber judgment of 29 January 2008, paragraph 74.

<sup>121</sup> UNHCR, [Beyond Detention: A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014-2019](#), 2014.

<sup>122</sup> [Popov v. France](#), applications nos. 39472/07 and 39474/07, judgment of 19 January 2012, paragraph 147.

<sup>123</sup> Parliamentary Assembly of the Council of Europe, [Resolution 2020 \(2014\)](#), *The alternatives to immigration detention of children*, adopted on 3 October 2014, paragraph 9.7.

## 3.2 INTEGRATION OF REFUGEES AND OTHER BENEFICIARIES OF INTERNATIONAL PROTECTION

### 3.2.1 INTEGRATION FRAMEWORK

167. The Hungarian authorities granted international protection to 415 persons, including 87 refugees, in 2012 and 415 persons, including 198 refugees, in 2013. In spite of these relatively limited numbers, the Commissioner is concerned that refugees and other beneficiaries of international protection in Hungary face serious integration challenges which threaten their enjoyment of social and economic rights, including a real risk of becoming homeless, high levels of unemployment, and problems in accessing health care services.
168. The case of a group of seventy-two Afghan beneficiaries of subsidiary protection in Hungary, who left Hungary in June 2013 to seek asylum in Germany, provides an illustration of these difficulties.<sup>124</sup> Following a 12-month-stay in the Bicske reception centre near Budapest (“Pre-Integration Camp”), extended for a couple of months after they had campaigned for better living conditions and integration possibilities, this group of persons, mainly composed of families with children, had to leave the centre and became homeless as the authorities could find no solution other than the placement in homeless shelters, separated from their children. The Commissioner notes that a number of subsequent transfers, including of members of this group, from Germany to Hungary were since suspended in consideration of the systemic deficiencies in the Hungarian reception system for beneficiaries of subsidiary protection.<sup>125</sup>
169. During his visit, the Commissioner was informed of recent changes introduced in Hungarian integration policy. Since 1 January 2014, a person recognised as a refugee or beneficiary of subsidiary protection may sign an integration contract with the OIN. The promotion of social integration of refugees and the implementation of integration contracts have been entrusted to the family support service. According to the legislation,<sup>126</sup> after an integration contract is concluded and the person has moved out of the reception centre, where refugees can stay for a maximum of 60 days following the date of the final decision on recognition, a worker of the family support service should keep contact with the signatory of the contract and assist him or her, notably in finding suitable accommodation and job opportunities, as well as identifying available education and language training. The signatory is also eligible for financial support for the duration of the integration contract (usually two years), although its amount decreases every 6 months.
170. According to information received by the Commissioner, however, the system to support the integration of refugees and other beneficiaries of international protection in Hungarian society still suffers from several deficiencies, mainly connected with the insufficient funding of the system, notably in the areas of interpretation and training, and problems of coordination between the various actors involved in its implementation.

### 3.2.2 FAMILY REUNIFICATION

171. Hungarian law provides for the right to family reunification for beneficiaries of international protection.<sup>127</sup> One condition is the holding by the family member abroad of a valid travel document. During his visit, several interlocutors informed the Commissioner about rules on travel documents which in practice prevent family members from joining beneficiaries of international protection in Hungary. This is the case for instance for persons whose passports are not recognised by the Hungarian

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<sup>124</sup> See *Pro Asyl, Hungary: Refugees Between Detention and Homelessness - Update and supplement to the report of March 2012*, April 2014 (English Translation), available at <http://bordermonitoring.eu/files/2012/03/Hungary-Report-English-Translation.pdf>, p. 4 and p. 12.

<sup>125</sup> See for instance Decision no. A 8 K 2283/13, available (in German) at: <http://bordermonitoring.eu/files/2012/03/VG-Karlsruhe-9-10-2013.pdf>. See also the report *Hungary: Refugees Between Detention and Homelessness* (above), p. 38, for a list of German decisions relating to returns to Hungary.

<sup>126</sup> Paragraph 61 of Government Decree 301/2007 (XI.9.) on the implementation of the Act on Asylum.

<sup>127</sup> Section 19 of Act II of 2007 on the Entry and Stay of Third-Country Nationals.



authorities. This mainly concerns Somali nationals, since Hungary, similarly to the vast majority of EU member states, does not accept Somali travel documents, but Syrian nationals or stateless Palestinians from Syria are also affected. Travel documents issued by the International Committee of the Red Cross are not accepted either.

172. Unlike other European states, Hungary has not identified a practical alternative in order to overcome this obstacle. As a result, it is almost impossible for a whole range of beneficiaries of international protection to enjoy their right to family reunification, with highly negative consequences on their possibilities for integration, too.
173. The Commissioner is aware of the decision of the Constitutional Court of Hungary<sup>128</sup> which concluded that Somali nationals were not prevented from enjoying the right to family reunification as other means, such as a visa issued on separate forms,<sup>129</sup> were available. It seems, however, that alternative measures are not used in practice and no solution could be found to facilitate the travel to Hungary of a number of family members of refugees, who are still unable to enjoy their right to family reunification several years after the initial request for reunification has been made.

### 3.2.3 CONCLUSIONS AND RECOMMENDATIONS

174. The Commissioner urges the Hungarian authorities to strengthen their efforts to improve the integration and the enjoyment of social and economic rights by recognised refugees and other beneficiaries of international protection. While he notes with interest that the Hungarian authorities have started to address this issue, he calls on them to ensure that their integration efforts are supported by adequate financial and human resources and start at the earliest possible time. He also stresses the need for better coordination of the different actors involved and for further efforts to improve the availability of interpretation services and training.
175. The non-enjoyment by refugees and other beneficiaries of international protection of their right to family reunification, due notably to bureaucratic problems, is of particular concern to the Commissioner. He recalls that, in its recent case-law, the Court has reiterated that family unity was an essential right for refugees and that family reunification was a fundamental element in enabling persons who had fled persecution to resume a normal life.<sup>130</sup> The Court also stressed that there existed a broad consensus at the international and European level concerning the need for refugees to benefit from a more favourable family reunification procedure than that foreseen for other foreigners.<sup>131</sup> In a number of cases, the Court concluded that, since the national authorities had not given due consideration to the applicants' specific circumstances, the family reunification procedure had not offered the requisite guarantees of flexibility, promptness and effectiveness to ensure compliance with their right to respect for their family life (Article 8 ECHR).
176. The Commissioner also draws the attention of the Hungarian authorities to the Recommendation of the Council of Europe Committee of Ministers to member states to "deal with applications for family reunion from refugees and other persons in need of international protection in a positive, humane and expeditious manner."<sup>132</sup>
177. The Commissioner therefore calls on the Hungarian authorities to ensure that beneficiaries of international protection can fully and effectively enjoy their right to family reunification, including by

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<sup>128</sup> Decision 766/B/2009 of the Constitutional Court of the Republic of Hungary, 20 December 2010. In this case, four Somali nationals who were granted refugee status in Hungary had introduced a motion to the Constitutional Court alleging that Somali refugees were unable to reunite with their family members in Hungary as the national passport of Somalia was considered not valid by Hungary.

<sup>129</sup> Pursuant to Council Regulation (EC) No. 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form.

<sup>130</sup> [Tanda-Muzinga v. France](#), application no. 2260/10, judgment of 10 July 2014, paragraph 75.

<sup>131</sup> *Ibid.*

<sup>132</sup> Recommendation N° R (99)23 of the Committee of Ministers to member states on family reunion for refugees and other persons in need of international protection, 15 December 1999, [Rec\(99\)23](#), paragraph 4.

rapidly developing alternatives,<sup>133</sup> such as issuing a one-way *laissez-passer* to family members who do not have valid travel documents.

### 3.3 STATELESSNESS

178. The Commissioner welcomes that Hungary has ratified the main international and European treaties in the field of combatting statelessness<sup>134</sup> and put in place a procedure to assess and confer formal status on stateless persons. Furthermore, the Hungarian Government has honoured its pledges at the ministerial meeting in Geneva in December 2011 commemorating the anniversaries of the 1951 and 1961 UN Conventions and has notably withdrawn the declaration made to Articles 23 and 24 of the 1954 UN Convention relating to the Status of Stateless Persons, thus ensuring the full enjoyment of the rights contained in those Articles (access to public relief, labour legislation and social security) to all stateless persons recognised by Hungary.
179. Stateless status determination is carried out by the OIN: since July 2007, 200 applications have been processed and 113 persons have been recognised as stateless.
180. The Commissioner notes, however, that the Hungarian legislation<sup>135</sup> still prevents persons who are not lawfully residing in Hungary from applying for stateless status, despite repeated calls from UNHCR and other stakeholders (including the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) to remove the requirement of lawful stay in the country.
181. During his meeting with the Deputy State Secretary at the Ministry of Interior, the Commissioner was informed that the main aim of this limitation was to avoid any “pull factor”, *i.e.* to prevent unlawfully staying non-nationals from submitting an application for stateless status with the sole purpose of avoiding deportation. It was also explained that, in practice, a person unlawfully staying in Hungary but willing to be recognised as stateless should ask for asylum in the first place, as asylum seekers are provided with humanitarian residence permits during the asylum procedure. With this residence permit, the person would thus meet the criteria of the Hungarian legislation and could start a procedure for the determination of his or her stateless status. The Commissioner understands, however, that it is disputed whether a humanitarian residence permit issued on the basis of an on-going asylum procedure constitutes a proof of lawful stay, when the asylum seeker entered Hungary irregularly. More importantly, he emphasises that the 1954 UN Convention does not foresee unlawful stay as a ground for excluding stateless status.
182. Despite safeguards against statelessness existing in domestic legislation, statelessness at birth also remains an area of concern. Recent research<sup>136</sup> has identified three particular groups at risk of statelessness: children born in Hungary to stateless persons with no domicile, children born to parents who are unable to pass on their nationality to their children (because of *jus soli* or gender discrimination, for instance) and certain children born to beneficiaries of international protection. It has also been reported that several children of beneficiaries of international protection have remained of “unknown nationality” for many years, although their parents could have theoretically passed on their nationality to their children, but were unable to do so in practice, due to the impossibility of contacting the authorities of the country of origin.

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<sup>133</sup> See UNHCR’s recommendations in this regard in *Refugee Family Reunification, UNHCR’s Response to the European Commission Green Paper on the Right to Family Reunification of Third Country Nationals Living in the European Union (Directive 2003/86/EC)*, February 2012, available at: <http://www.refworld.org/docid/4f55e1cf2.html>, p. 15.

<sup>134</sup> The 1997 European Convention on Nationality (ratified in 2001), the 2006 Council of Europe Convention on the avoidance of statelessness in relation to State succession (ratified in 2009), the 1954 UN Convention relating to the Status of Stateless Persons (acceded to in 2001) and the 1961 UN Convention on the Reduction of Statelessness (acceded to in 2009).

<sup>135</sup> Section 76(1) of Act II of 2007 on the Entry and Stay of Third-Country Nationals.

<sup>136</sup> See Gábor Gyulai, *Nationality Unknown? An Overview of the Safeguards and Gaps Related to the Prevention of Statelessness at Birth in Hungary*, Hungarian Helsinki Committee, January 2014, available at: <http://www.refworld.org/docid/5310640b4.html>.

### 3.3.1 CONCLUSIONS AND RECOMMENDATIONS

183. While commending Hungary's efforts to combat statelessness, the Commissioner calls on the Hungarian authorities to amend their legislation so as to remove lawful stay from the pre-conditions for applying for stateless status in Hungary. The Commissioner shares UNHCR's views that this limitation is in breach of Hungary's international obligations under the 1954 UN Convention and that everyone in a state's territory must have access to statelessness determination procedures.<sup>137</sup> In practice, this limitation excludes a group of persons in a situation of particular vulnerability, stateless irregular migrants, from the statelessness determination procedure. It is also "particularly inequitable given that lack of nationality denies many stateless persons the very documentation that is necessary to enter or reside in any State lawfully."<sup>138</sup>
184. Regarding statelessness at birth,<sup>139</sup> the Commissioner calls on the authorities to take all necessary measures to close the gaps which may impede children's right to acquire a nationality and may thus lead to statelessness. In this respect, the Commissioner recalls Article 7 of the UN Convention on the Rights of the Child, which provides that all children have a right to a nationality, Article 1 of the UN 1961 Convention on the Reduction of Statelessness, which requires states parties to grant nationality to a person born on their territory who would otherwise be stateless, and Article 6 of the 1997 European Convention on Nationality, which requires states parties to provide in their internal law for their nationality to be acquired by children born on its territory who do not acquire at birth another nationality.
185. The Commissioner would also like to draw the authorities' attention to the Recommendation on the nationality of children, adopted by the Committee of Ministers of the Council of Europe in 2009, and which stressed that member states should register children as being of unknown nationality only for as short a period as possible.<sup>140</sup>

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<sup>137</sup> UNHCR *Handbook on Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/docid/53b676aa4.html>, paragraph 69.

<sup>138</sup> *Ibid.*

<sup>139</sup> See also the Commissioner's [Human Rights Comment](#) "Governments should act in the best interest of stateless children", 15 January 2013.

<sup>140</sup> Recommendation [CM/Rec\(2009\)13](#) of the Committee of Ministers to member States on the nationality of children, paragraph 8.



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