



*Exercise yard at the Budapest 5<sup>th</sup> district police station. ©HCC/Lenke Szilagyi*

**IHF FOCUS: freedom of expression and media; judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; national minorities; asylum seekers and immigrants; homosexuals' rights.**

Government attempts to exercise control over public service media remained a concern, while draft legislation that would have restricted the freedom of the print media to publish critical opinions on public figures was declared disproportionate by the Constitutional Court.

Although the basic independence of the judiciary was guaranteed, government policies suggested a dubious attitude towards the separation of power. Torture, ill-treatment and misconduct prevailed within the ranks of the police, following a pattern already persistent for many years, while only a few victims were given adequate remedies through the courts. The country's prisons remained overcrowded and the prison authorities adhered to an overly strict policy on granting leave to inmates.

Discrimination against Roma persisted in many spheres of society. At the same time, no comprehensive anti-discrimination legislation was adopted, and the existing provisions were not enforced effectively. The Government's action plan, which aimed at improving the situation of the Roma, was only superficially implemented. This was due to a number of reasons, including problems related to the coordination of measures and to the use of available resources.

The Asylum Act was amended to bring it further in line with legislation in current EU member States. New provisions on an accelerated procedure for processing asylum applications and on grounds for rejecting an application as manifestly unfounded

gave rise to concern since they were not counterbalanced by sufficient safeguards against *refoulement*. Following the terror attacks in the US on 11 September, asylum seekers from Afghanistan were met with heightened suspicion and had their rights curtailed in a blatant manner at the Debrecen reception centre.

The debacle surrounding the summer music festival in Budapest, where the local authorities attempted to ban events related to homosexuality, proved that the political climate still allowed persons holding prominent positions to express open hostility towards homosexuals. However, the incident also re-awoke the public debate on the rights of homosexuals.

### **Freedom of Expression and Media**

The Government continued to attempt to influence the work of public service media. As in previous years, no parliamentary opposition parties were represented in the presidium of the boards of trustees entrusted with the task of supervising the lawful operation of public service media. The anomaly of this was reflected in the appointment of a new President for the Hungarian TV. By choosing a candidate who was a registered member and a local council representative of the ruling party, the Fidesz - Hungarian Civic Party, the board of trustees of the state-owned TV turned a blind eye to another better qualified candidate, who also pledged to work for a symbolic salary of 1 HUF until he had transformed the TV into a profitable company.

In June the Parliament adopted amendments to the Civil Code that made it possible to oblige printed media to publish comments of those persons targeted in previously published material. These amendments, known as *Lex Repassy*, had been proposed in 2000 by Robert Repassy, an MP representing the governing party. However, President Ferenc Madl refused to sign the law as amended and requested that the new provisions be reviewed by the

Constitutional Court, arguing that they violated freedom of speech, freedom of press and the rule of law. According to the 4 December ruling of the Constitutional Court, the obligation on papers to publish replies to value judgments was not unconstitutional *per se*, but the restrictions that the new provisions imposed on free speech and free press were disproportionate to the legitimate aim of protecting human dignity.

### **Judicial System and Independence of the Judiciary?**

Basic guarantees of independence and the functional separation of powers among the different branches were firmly established in constitutional jurisprudence, and broad powers of administration were located in the autonomous National Council of Justice (thus separating it from the executive). In general, respect for the principles of judicial independence and the role of judges in a free society were accepted by politicians and the public.

However, the positive changes initiated in the early 1990s and advanced comprehensive reforms of the judiciary in 1997, including a significant improvement in judges' social status, were not yet completed and were partly reversed. In particular, public criticism of the judiciary by government officials, the delays in establishing appellate courts and the extension of lustration laws to the judiciary gave cause for concern, as did the executive's continued control of the budget process, sub-standard working conditions and enormous case-load of judges. There was also concern that the Government had unduly politicised judicial reform in a manner that undermined its commitment to judicial independence.

### **Torture, Ill-treatment and Police Misconduct**

The scope of the problem of torture, ill-treatment and misconduct by law enforcement officials remained more or less

the same as in previous years. Roma and foreigners were still those most likely to fall victim to abuse. In a report published in March, the European Committee for the Prevention of Torture evaluated its 1999 visit to the country, stating that: "[t]he great majority of the allegations heard were consistent as regards the form of ill-treatment inflicted. Persons alleged that they had been struck with truncheons, punched, kicked or slapped by police officers. In addition, verbal abuse of persons detained by the police was apparently common. Foreign nationals, juveniles and Roma seemed to be particularly at risk of such ill-treatment. In some cases, the delegation gathered medical evidence consistent with allegations of ill-treatment [...] In the light of all the information gathered during the 1999 visit, the Committee must emphasise that it remains concerned about the treatment of persons detained by the police in Hungary [...]"<sup>3</sup>

Statistics from the Public Prosecutor's Office showed that 850 cases of ill-treatment during official proceedings and 283 cases of forced interrogation were reported in 2000.<sup>4</sup> In accordance with the trend of previous years, only 11% of the reported cases of ill-treatment and 8% of the reported cases of forced interrogation ended with the Prosecutor's Office pressing charges against the accused police officers. The problem was aggravated by the fact that the sentences of the cases that ended up in court were lenient. According to statistics from the Ministry of Justice, out of 101 sentences for ill-treatment during official proceedings and forced interrogation, effective imprisonment was imposed in only two cases (or less than 2%) in 2000. Most perpetrators got away with suspended prison sentences and fines. By contrast, 68 of the 332 defendants (or more than 20%) found guilty of violence against an official received an effective prison sentence.<sup>5</sup> Figures for 2001 were unavailable at the time of writing.

### Conditions in Prisons and Detention Facilities

In March 2002, the Hungarian Helsinki Committee (HHC) released a report on the findings from its Prison Monitoring Programme titled *Double Standard: Prisons Conditions in Hungary*. In 2000 and in January 2001, HHC visited a total of nine larger prison institutions, and spent an average of four to five days in each of them. On the basis of the monitoring, HHC concluded that overcrowding remained a serious problem within the country's prison system. At the same time, inmates were only allowed restricted access to sports facilities, while the policies regarding remuneration for inmate labour continued to violate the anti-discrimination clause of the Constitution.<sup>6</sup>

The number of days outside prison granted to inmates also remained low. In compliance with international legal instruments such as the European Prison Rules, the Hungarian legislation stipulated that inmates were allowed to take short-term leave on certain conditions. The aim was to facilitate their reintegration into society upon release. However, as a result of a 1999 order of the National Prison Administration Commander, in practice inmates were almost never permitted to take leave. The order called upon prison wardens to apply strict caution when deciding on these days of release. Firstly, it stated that the person who had recommended, proposed or permitted a leave could be examined in the case that an inmate committed a new crime or caused any other extraordinary event while on temporary leave. Although this provision was only applicable to leave granted to inmates serving sentences for certain crimes, it affected the policies regarding almost one third of the prison population, mainly because robbery was included on the list of relevant crimes. Secondly, the order instructed the person deciding on a leave to pay due attention to assessments from the police and the municipal administration in the inmate's place

of residence. However, the local authorities were not obliged by law to prepare assessments and were often reluctant to do so. Aware of the risk of an ensuing disciplinary process against them, and the difficulties they would have in order to prove that they had taken all necessary precautions before granting a leave - in particular if they had not received any assessment from the local authorities - most prison wardens preferred not to issue any leave permits.

The use of so-called lenient executive rules (EVSZ) can be given as an example of the trend in the policies for granting leave to inmates. The 1979 Law on the Implementation of Punishments established that these rules could be applied if an inmate had already served half of the time for conditional release, spent at least six months in a medium-security prison and at least three months in a low-security prison and his/her personal circumstances motivated this. The rules permitted the inmate to leave the prison for a maximum of 24 hours (exceptionally 48 hours) four times per month at the most. According to data provided by the National Prison Administration, inmates were granted leave under these rules on 19,873 occasions in 1998, while the corresponding number for 2000 was only 2,542.

### **National Minorities<sup>7</sup>**

Hungary's 1993 Minorities Act promises thirteen recognized minorities a considerable degree of cultural autonomy as well as a wide range of educational and linguistic rights through a system of local and national "minority self-governments." In addition, Hungary has established an independent institution to monitor the implementation of minority rights and investigate complaints of violations - the Parliamentary Commissioner on the Rights of National and Ethnic Minorities (Ombudsman). An active non-governmental sector, including minority and human rights organisations as well as a nascent public interest law movement, frequently challenged discrimination.

### ***Roma Minority***

Despite the Government's commitment to improve the situation of the large Roma minority, Roma were subjected to persistent patterns of racial discrimination, harassment and violence. Studies undertaken by both domestic NGOs and international organisations indicated that Roma continued to experience widespread discrimination in education, employment, the criminal justice system and access to public services. The well-documented practice of placing Roma children into separate schools for the mentally handicapped and/or segregating them into classes with inferior curricula and lower teaching standards remained a pertinent problem. Given high levels of unemployment among the Roma, they were often dependant upon local authorities for the distribution of welfare and other forms of social protection. Yet Roma also experienced discrimination in this respect. According to statistics, some 48% of the complaints that Ombudsman received in 2000 had been filed by Roma against local authorities.

No effective remedies for discrimination of ethnic minorities existed at the end of 2001. The anti-discrimination legislation remained fragmented, lacked a consistent framework for imposing sanctions and did not meet the standards required by the EU Race Equality Directive. Neither the Ombudsman nor the minority self-governments, foreseen by the 1993 Minority Act, were empowered to raise direct legal challenges to discrimination, and state bodies were either unwilling or unprepared to act. In consequence, the task of enforcing anti-discrimination provisions was left to civil society organisations, which did not have the institutional capacity to do so systematically. Following active advocacy from the Ombudsman, the Ministry of Justice in March finally established an ad hoc committee to review the possibility of developing comprehensive anti-discrimination legislation.

The Government's 1997 package of measures for the improvement of the living conditions and social situation of the Roma (Mid-term Package), outlining measures to be taken in the spheres of education, culture, employment, housing, health, anti-discrimination, and communication, had yet to show effective results. Implementation of the package was hampered by several factors. Firstly, official bodies assigned to coordinate implementation were not invested with sufficient authority to oblige ministries to fulfil – or even report consistently on – their obligations. A lack of coordination between the implementing bodies allowed some goals of the package to be subordinated to other, sometimes inconsistent, social policy initiatives.

Secondly, neither the Mid-term Package itself nor the relevant ministerial budgets specified any funds for implementation, thus complicating monitoring and evaluation. In part due to an inadequate review of public expenditure on education, state funds intended to support Roma minority education were used to fund segregated and poor quality "catch-up" classes. In the absence of accurate public information, officials sometimes exaggerated the amount and efficacy of spending on assistance for Roma or blurred the distinction between policies targeting Roma and those addressing general poverty. This ambiguity reinforced prevailing stereotypes of Roma as "parasites", consuming a disproportionate share of public expenditure, and diminished the prospects for improved relations between Roma and majority society.

Thirdly, the impact of EU Phare funding earmarked to support implementation of the Mid-term Package was limited by ineffective governmental planning. For example, a five-million Euro Phare grant earmarked in 1999 to support education programmes was only disbursed in May 2001 due to delays in the development and submission of a practicable government proposal. Moreover, critics maintained that the "pilot

projects" to be funded under the proposal, largely in the field of education, did not reflect a coherent government policy to address entrenched discrimination against Roma in the educational system.

The EU Commission has repeatedly drawn attention to discrimination against Roma in Hungary. Its 2000 report continued this trend, evaluating the continued over-representation of Roma in special schools as "a sign of institutional prejudice and the failure of the public education system." Strangely, the same report concluded that Hungary had fulfilled its short-term political priorities, *inter alia*, its obligations to "implement measures aimed at fighting discrimination [...] and increase access to education." Some Hungarian experts questioned whether the specific initiatives praised in the report – scholarships for Roma students, and the recruitment of Roma into the police forces – were sufficient to address institutional discrimination.

As a consequence of the anti-squatting legislation that was adopted in 2000 many Roma remained vulnerable to eviction. This legislation, which gave notaries the power to order eviction from flats within eight days, notwithstanding the outcome of legal or other appeals that may be underway, triggered a wave of evictions. NGOs estimated a steady increase in Roma evictions and charged local authorities for having seized the opportunity to repossess and sell municipal properties. In his 2000 report, the Minority Ombudsman also expressed regret that local authorities had failed to adopt policies to enable vulnerable groups to move or legally retain occupied flats.

◆ On the evening of 13 November, a peaceful protest of a group of human rights and Roma rights activists, public figures and two MPs against the unlawful eviction of a Roma family was disrupted by police in Budapest. All demonstrators except the MPs were handcuffed and taken to the police station, where ultimately they were

merely reprimanded. The eviction of the Roma family, however, was prevented.

Nonetheless, despite persisting problems, the existing conditions in Hungary provided a foundation for significantly improving the situation for the minorities, provided that public authorities demonstrate the political will to carry through necessary measures, stated the HHC. These include providing effective support for civil society organizations, including Roma rights groups; expeditiously transposing the Race Equality Directive into Hungarian law; making clear in public statements by senior government officials that racism is unacceptable in Hungary; and implementing the Mid-term Package effectively, with provision for an authoritative implementing body, transparent accounting methods and credible monitoring and evaluation mechanisms.”

### **Asylum Seekers**

#### *New Legislation on Aliens and Asylum*

On 29 May, the Parliament adopted a new Act on the Entry and Stay of Foreigners, which replaced the 1993 Aliens Act, and made substantial amendments to the 1997 Asylum Act. In addition, several amendments to the 1993 Citizenship Act and the 1997 Border Guarding Act were passed. In a follow-up, on 26 September, the Government issued executive decrees establishing a detailed regulation of procedures foreseen by the new Aliens Act and the amended Asylum Act. All the new legislation was due to enter into force on 1 January 2002. During the preparatory phase, the HHC actively sought to influence the legislative process through lobbying. As a result of these efforts, a number of positive changes were made to the draft bills and were reflected in the legislation that was adopted.

The new Aliens Act provided for a number of positive changes. Firstly, a legal remedy against rejection of visa applications was introduced. Secondly, while the

existing alien policing detention was complemented with two new types of detention – i.e. detention when entry is denied and pre-expulsion detention – it was established that the total duration of the three forms of detention should not exceed 12 months. Thirdly, closed border guard community shelters for aliens were to be transformed into open institutions.

With the amendments to the Asylum Act, a definition of unaccompanied minors was introduced, while the notions of “temporary protection” and the “safe third country” were redefined. A two-instance administrative procedure was also established, according to which field offices of the Office of Immigration and Naturalization (OIN) were to examine applications in the first instance and OIN itself in the second instance. However, as the independence of the field offices from OIN was not guaranteed, the effectiveness of appeals under the new procedure seemed questionable. The existing two-level judicial review procedure was maintained, but the time available for both submitting an appeal and requesting judicial review was extended to 15 days.

In line with examples set by EU member States, an accelerated procedure for processing asylum applications was introduced, and the number of grounds for rejecting an asylum claim as “manifestly unfounded” was increased. The HHC feared that this legislative change would result in the failure to examine a growing number of asylum applications thoroughly enough. The authorities were also granted the possibility to order an expulsion simultaneously whilst rejecting an asylum claim.

#### *Accommodation of Afghan Asylum Seekers in Debrecen*

On 23 September, the authorities ordered a reorganisation of the accommodation of Afghan asylum seekers in the country. As a result, a large number of the non-Afghan asylum seekers who were accommodated at the reception centre in Debre-

cen were transferred to other reception centres to make room for Afghan asylum seekers from all over the country. As of 1 October, 812 Afghans had been re-accommodated at the Debrecen centre. Following their arrival, the reception centre was closed from the outside world for approximately two weeks, during which time armed border guards prevented persons from entering and leaving the area.

According to Hungarian law, asylum seekers must reside in reception centres or other OIN-designated places, which they were not allowed to leave for more than 24 hours without a specific permit. A more far-reaching restriction on their freedom of movement could not be imposed unless an administrative order - subject to legal challenge - or a court decision was at hand. However, the measures taken at the Debrecen refugee centre, which altogether deprived the Afghan asylum seekers of the possibility to leave the centre, were taken on the sole basis of an internal OIN order.

The OIN attempted to justify the measures by stating that they did not apply to asylum seekers who had been recognised as refugees under the Geneva Convention or authorised to stay for humanitarian reasons or whose identity had been verified. The OIN also claimed that the measures were necessary because some of the Afghans had not yet been declared free from infectious diseases. However, when HHC representatives visited the centre at the beginning of October they found no evidence that the ban on leaving the area had been selectively applied or that some inhabitants had been separated from the rest as possible disease carriers. During a fact-finding mission to Debrecen on 3 December, the HHC also found that a few Afghan asylum seekers were still not allowed to leave the area even for short periods of time.

Moreover, as of the end of the year, approximately 200 Afghan asylum seekers remained detained in the border guard shelter in Szombathely.

### *Planned Reception Centre in Kalocsa*

In October, shortly after the extraordinary measures at the Debrecen reception centre, the Ministry of Interior announced that a new reception centre was to be opened in Kalocsa. With a capacity for 1,000 persons, the former military barracks chosen to house the centre was primarily to accommodate Afghan asylum seekers. The announcement was followed by wide-scale public protests in Kalocsa. The protests were led by the mayor, who said that the military barracks were unsuitable for the purpose since the asylum seekers would pose a security risk due to the proximity of the Paks nuclear power plant. The mayor also stressed the outright hostility among the inhabitants of the town against foreigners, and in particular against Afghans.

As a result of the public outcry, the Ministry of Interior gave notice of a change of plans: no more than 500 European asylum seekers (mainly from former Yugoslavia) would be accommodated in the new centre. On 30 October, the first group of asylum seekers arrived at Kalocsa. In line with an agreement between the Government and the town, a consultative committee, composed of representatives of the OIN, the municipal and county governments, the archdiocese, the Hungarian Red Cross, IOM, UNHCR and the HHC, was set up to provide information to the local population, to mediate between the local population and the centre management in case of contentious issues and to monitor developments in the Kalocsa reception centre.

### **Homosexuals' Rights**

A few weeks before the annual Pepsi Island music festival (which attracts around 300,000 visitors every year) was scheduled to take place in Budapest, the local authorities attempted to ban events related to homosexuality. This was in spite of the fact that advocacy for equal rights for gays and lesbians had traditionally been a part of the NGO programme at the festival. Istvan

Tarlos, Mayor of the Budapest 3<sup>rd</sup> district, where the festival was due to be organised, reportedly threatened to close down the festival if any events that contained homosexual elements were allowed to take place. An agreement between the mayor, representatives of the district, Budapest police and the company organising the festival was also concluded to that end. According to Mayor Tarlos, events on the theme of homosexuality would endanger the morale of the young festival visitors and it was the duty of the authorities to protect the youth. The Mayor also expressed regret that he was not able to forbid homosexuals from entering the festival area, as that would amount to illegal discrimination. A number of government officials either tacitly or publicly supported the views of the Mayor.

The four-party agreement and the statements made by Mayor Tarlos attracted enormous attention in the media and revived a virtually dormant public debate on the rights of homosexuals in the coun-

try. While representatives of several human rights NGOs demonstrated against the attempted ban in front of the Mayor's office, the Hatter Support Society for Gays and Lesbians in Hungary filed a lawsuit against the signatories of the contract. The Society claimed that the provisions of the agreement violated the anti-discrimination clause of the Constitution and were therefore void. The first instance court also ruled that interim measures should be taken to suspend the entry into force of the contract. However, in November the second instance court reversed the decision on interim measures.

Ultimately, all homosexual-related events that had been scheduled were carried out at the festival without interference. However, according to HHC, the incident proved that public figures were able to make openly discriminatory statements in public, in the hope of gaining political support, without serious repercussions.

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## Endnotes

<sup>1</sup> Unless otherwise noted, based on the Hungarian Helsinki Committee, *Human Rights in Hungary 2001*.

<sup>2</sup> Based on the executive summary from the chapter on Hungary in Open Society Institute, *Monitoring the EU Accession Process: Judicial Independence*, September 2001, at [www.eumap.org](http://www.eumap.org)

<sup>3</sup> [www.cpt.coe.int/reports/inf2001-02en.htm](http://www.cpt.coe.int/reports/inf2001-02en.htm). Points 14 and 18.

<sup>4</sup> 2001 statistics were not available at the time of writing.

<sup>5</sup> Statistical Department of the Ministry of Justice

<sup>6</sup> For more information on the problems of overcrowding, access to sports facilities and inmate labour see IHF, *Human Rights in the OSCE Region: the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2001*.

<sup>7</sup> Based on the executive summary from the chapter on Hungary in Open Society Institute, *Monitoring the EU Accession Process: Minority Protection*, September 2001, at [www.eumap.org](http://www.eumap.org)