



COMMISSIONER FOR HUMAN RIGHTS
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Mr Gordon BAJNAI
Prime Minister of Hungary

Strasbourg, 22 October 2009

Dear Prime Minister

Further to our meeting in Budapest on 13 October, I should like to take this opportunity to follow up on the constructive dialogue that I had with you and the other authorities during my visit to Hungary from 12 to 14 October.

As you know, all my discussions focused on the fight against intolerance, discrimination and racism affecting members of minority groups, especially Roma, a number of whom have migrated, occasionally even seeking asylum in other Council of Europe member states.

During my meetings I expressed to the authorities my grave concern about the observed rise of extremism, intolerance and racism which has been specifically aimed at members of the Roma minority, estimated at 7% of Hungary's population. I noted that this concern was shared by all government representatives that I met.

Of particular concern to me is the public use of anti-Roma, hate speech by certain public figures and the lack of strong condemnation of and effective measures against a reoccurrence of such incidents. During my visit, I appealed to all party leaders to exclude such language from any political debates and to ensure that no xenophobic or anti-Roma statements be made in the forthcoming election campaign.

I should like to refer to the valuable, relevant work of the European Commission against Racism and Intolerance (ECRI) which in 2005 published a study and a declaration on the use of racist, antisemitic and xenophobic elements in political discourse, upon which Council of Europe member states, including Hungary, may usefully draw. ECRI stressed that political parties can play an essential role in combating racism, by shaping and guiding public opinion in a positive fashion. It has suggested the following, useful practical measures:

- Self-regulatory measures which can be taken by political parties or national parliaments
- The signature and implementation by political parties of the Charter of European Political Parties for a Non-Racist Society which encourages a responsible attitude towards problems of racism, whether it concerns the actual organisation of the parties, or their activities in the political arena
- Effective implementation of criminal law provisions against racist offences (including those establishing racist motivation as an aggravating circumstance) and racial discrimination, which are applicable to all individuals

- The adoption and implementation of provisions penalising the leadership of any group that promotes racism, as well as support for such groups and participation in their activities
- The establishment of an obligation to suppress public financing of organisations which promote racism, including public financing of political parties.

I have also taken note of the discussion in Hungary regarding the right to freedom of expression and to what extent this right may be curtailed when certain individuals' or groups' rights are threatened, as in cases involving incitement to violence or hate speech.

The right to freedom of expression is enshrined in Article 10, paragraph 1, of the European Convention on Human Rights. The exercise of this right, however, has limits given that it carries with it duties and responsibilities for the protection, *inter alia* of the reputation or rights of others, as provided for by the second paragraph of Article 10. In such cases, the European Convention provides that proportionate "formalities, conditions, restrictions or penalties", as are prescribed by law, may limit the right to freedom of expression.

The European Court of Human Rights has emphasised that given that tolerance and respect for the equal dignity of all human beings are the foundations of a democratic, pluralistic society, "as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance...concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention" (case of *Gündüz v Turkey*, paragraphs 40-41 of the judgment, 04/12/2003).

In addition, it is recalled that Article 17 of the Convention provides that no state, group or person may engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms enshrined in the Convention or at their limitation to a greater extent than is provided for therein. Extremist acts as, for example, the public denial of the reality of clearly established historical facts relating to crimes against humanity as those of the Holocaust, have been viewed by the European Court of Human Rights as serious threats to public order which fall into the category of aims prohibited by Article 17 (case of *Garaudy v France*, page 23 of admissibility decision, 24/06/2003).

In view of the above, I encourage the Hungarian authorities to reflect further and to adopt urgent measures in order to fully protect the human rights of all members of minorities affected by intolerant, hate speech and to align legislation and practice with the Convention and the Court's case law. In this context, the authorities are invited to give effect to the recommendations made by ECRI in its report of 24/02/2009.

Also, recalling the Council of Europe Committee of Ministers Recommendation Rec(2004)4 *on the European Convention on Human Rights in university education and professional training*, I wish to underline the importance of initial and continuous professional training, especially of judges and prosecutors, for a Convention-compliant interpretation and application of domestic legislation. To this end, I fully encourage the continuation and reinforcement by the Ministry of Justice of the relevant legal and human rights capacity building programmes, possibly in co-operation with the Council of Europe.

I welcome the efforts made by the competent authorities in order to identify, arrest and punish those responsible for the nine brutal attacks against Roma in late 2008 and in 2009. I have been informed by the Hungarian authorities that four men were taken into custody on 21 August; two of the four were accused of the six murders while the other two were accused of perpetrating attacks. I should like to stress that unlawful killing, including that related to hate crimes, should be subject to effective investigations by competent authorities and lead promptly to the identification and punishment of those responsible, in accordance with the established case law of the European Court of Human Rights. Racist motivation in this context of criminal law should constitute an express aggravating circumstance.

I also welcome the positive measures adopted or under way by the Hungarian government aimed at integrating the Roma minority into the public sector, such as through the recruitment of 67 Roma by the police force and the aim to increase this number to 300 by 2013. The determination shown by the government to make possible the prompt recruitment of 200 Roma graduates into the public services is another positive step that may serve as an example to other Council of Europe member states.

Such measures should, however, be accompanied by others aimed at increasing public awareness of and sensitivity to the situation of national minorities and other communities which suffer from discrimination or intolerance, such as the Roma, the Jewish community and LGBT (lesbian, gay, bisexual, transgender) people. Antidiscrimination roundtables, such as the one organised in Budapest in September by the Council of Europe Documentation and Information Office and the one scheduled to be organised by ECRI in November constitute good practice.

What is equally important is to increase such awareness in children's education, especially in primary and secondary schools. For this reason, I recommend the use in schools of the *Factsheets on Roma History*, published by the Council of Europe. A copy has been sent to the Minister of Foreign Affairs who showed a keen interest in this publication. I hope that these Factsheets on the history of Roma, the biggest minority in Hungary, will be usefully incorporated into the curricula and shared by pupils in the country.

During my visit, I also had the opportunity of going to the primary and secondary school of Erdélyi street in the 8th district in Pest, hosting approximately 400 pupils. The pupils in the first eight grades reportedly are primarily of Roma origin, while approximately 40% of those in grades 9-12 declare themselves as Roma. This school, situated in one of the most underdeveloped areas of the country's capital is de facto segregated. On the basis of the discussion that I had with the director, deputy director, teachers and pupils of the school, I believe that teachers in this school are deeply committed and willing to work hard for the education of the pupils. However, I have noted with regret expert reports, such as ECRI's latest report on Hungary, indicating that schools with high proportions of Roma pupils tend to have lower quality infrastructures and sometimes unqualified, frequently less well trained teachers than schools with few or no Roma pupils.

Both national and local authorities have a major role to play if this situation is to be improved. Following the amendment of the Public Education Act in 2007, school maintainers are now required to take measures to ensure that there is no more than a 25% disparity in the proportions of "multiply disadvantaged children"¹ attending the various schools in the area they supervise. This rule appears not to be abided by in practice. ECRI has indicated that the lack of attentiveness of certain local authorities, which have a large degree of autonomy in this field, and the non-existence of an effective monitoring system for implementing the legislation have contributed to the persistence of de facto segregated schools, which act to the detriment of Roma children, in particular. I call on the authorities to look into this matter urgently.

It is equally important to support Roma who, despite all the hardships they encounter, manage to enter higher education. Reportedly most of them originate in underdeveloped regions in Hungary and have attended substandard primary and secondary schools. During my visit to Budapest, I had the opportunity to discuss with people from the *Romaversitas* centre, an independent organisation which for ten years has supported Roma students in higher education by providing fellowships and training programmes. It was with regret that I was informed that the above centre, despite its commendable work, faces serious financial constraints that make its survival very difficult.

¹ These are children whose parents meet two criteria: firstly, they receive welfare benefits, and secondly, they did not themselves progress beyond primary education. Children are recognised as falling into this category on the basis of a voluntary declaration made by their parents.

Education-related efforts by the authorities should be combined with measures to improve the living conditions of the Roma minority in the country, one third of which reportedly still lives in approximately 550 settlements. I was informed that the government has earmarked a part of the ordinary budget for the purpose of eliminating 100 settlements over the next three years. Children living in such dire conditions may hardly attend schools. I refer to the Hungarian government's responsibility under the European Social Charter to provide adequate housing, and to ensure the protection of family life. I also urge the authorities to enhance social housing, especially for Roma families whose sole alternative is that of a settlement. Again in this sector, the action or policies of local authorities should be closely and effectively monitored by the government. Reported practices, such as requesting proof of a high income or barring persons caught squatting, that directly or indirectly exclude Roma and other vulnerable social groups from social housing, should cease.

Finally, I seize the opportunity to recommend the prompt ratification by Hungary of Protocol N° 12 to the European Convention on Human Rights, containing a general prohibition of discrimination, and the acceptance of the collective complaints procedure under the European Social Charter. Both these treaties constitute invaluable instruments for the fight against discrimination in Europe.

I look forward to receiving your reply and to continuing my constructive dialogue on the above questions with the Hungarian Government.

Yours sincerely

Thomas Hammarberg