European Commission against Racism and Intolerance

ECRI

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ECRI CONCLUSIONS ON THE IMPLEMENTATION OF THE RECOMMENDATIONS IN RESPECT OF HUNGARY SUBJECT TO INTERIM FOLLOW-UP

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[1] Except where specifically indicated, any developments which occurred after 15 January 2018, the date on which the response of the Hungarian authorities to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, have not been taken into account in this analysis.

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FOREWORD

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012[1], not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

[1] CM/Del/Dec(2012)1154/4.2.

1. In its report on Hungary (fifth monitoring cycle) published on 9 June 2015, ECRI strongly recommended that open reception facilities are used to accommodate asylum seekers, in particular families with children.

ECRI notes that the situation regarding the reception of asylum seekers in Hungary has changed significantly since its fifth report, following the arrival of an unprecedented number of migrants and refugees in 2015 and 2016.

In March 2017 amendments were introduced to the Act on Asylum.[1] According to these, the government can declare a "state of crisis caused by mass migration" under which special rules apply. In particular, applications for asylum may only be submitted in a transit zone and it became mandatory for all asylum seekers, including families with children and unaccompanied minors over the age of 14, to be kept within specifically designated areas of transit zones for the entire duration of the asylum application process. The law describes this practice as "assigned residency". Moreover, all those already accommodated in open reception centres should be transferred to the transit zones. The previous maximum of 28 days of stay in a transit zone has been removed.

The government first declared a state of crisis in September 2015 and has extended it ever since. The infrastructure developed to implement the state of crisis includes a four-metre high double razor-wire fence constructed along the borders with Serbia and with Croatia, night-vision cameras and motion-sensing systems, four transit zones, two of which (Röszke and Tompa) have been enlarged to house up to 700 persons, and military accommodation for several thousand soldiers who patrol the border alongside the police.

The Hungarian authorities do not consider "assigned residency" to amount to detention, since no detention order is issued and there is freedom of movement "in the direction of Serbia". ECRI reminds them that the European Court of Human Rights found Hungary in violation of Article 5 of the ECHR (right to liberty and security) in the case of Ilias and Ahmed v. Hungary in March 2017 for unlawfully depriving migrants of their liberty for 23 days in a transit zone.[2] This case has been referred to the Grand Chamber and a hearing will be held on 18 April 2018. Further, the Special Representative of the Secretary General on migration and refugees and the UN High Commissioner for Refugees have both visited the transit zones and noted that asylum seekers are held in restricted spaces and cannot move freely, and that they are escorted by guards whenever they have to move outside their designated areas. They are housed in shipping containers with rolls of razor-blade wires on top and the transit zones are surrounded by barbed-wire fences. ECRI considers that these features strongly resemble imprisonment. The average duration of stay in transit zones is reported to range from a few weeks to three months.

Particular concern has been expressed over the confinement of children. On 17 January 2018, the UNHCR reported that 208 children were detained in the transit zones, including 22 unaccompanied minors. Their psycho-social and recreational needs are not being met and the physical setting may have a long-term negative impact on their psychological well-being.

ECRI notes that the authorities currently only allow around five asylum seekers per working day to enter each transit zone to claim asylum. Others wait outside the border in the hope of accessing the asylum procedure in Hungary. The UNHCR has described conditions for those waiting to enter as dire; individuals and families stay in the open or in tents on muddy fields next to the border fence, with health and sanitation being major challenges.

[1] The Law "On the amendment of certain acts related to increasing the strictness of procedures carried out in the areas of border management" of 7 March 2017.
[2] *Ilias and Ahmed v. Hungary,* Application No.47287/15, 14 March 2017.

While acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, ECRI is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should as a matter of urgency end detention in transit zones, particularly for families with children and all unaccompanied minors.

ECRI regrets that its recommendation has not been implemented.

2. In its report on Hungary published on 9 June 2015, ECRI strongly recommended that the central Government takes action in all cases where local authorities attempt to force Roma out of social housing, evict them from their homes without ensuring suitable alternatives or subject them to directly or indirectly discriminatory rules in respect of housing.

ECRI recalls that in its fifth report it described a number of instances where local authorities were obstructing access to housing for the Roma. It referred in particular to methods of forcing Roma out of social housing in order to sell apartments or land at a profit; planned evictions of hundreds of Roma families in the "Numbered Streets" neighbourhood of Miskolc without provision of alternative accommodation; and indirectly discriminatory provisions in a municipal decree on rental agreements in the town of Miskolc.

ECRI notes that the above measures in respect of the housing of Roma residents of Miskolc have been condemned as unlawful and discriminatory by the Curia (Hungarian Supreme Court) in April 2015, the Commissioner for Fundamental Rights (Ombudsman) in June 2015 and the Equal Treatment Authority in July 2015. ECRI welcomes the subsequent deletion by the municipality of Miskolc of the indirectly discriminatory provisions in its municipal decree on rental agreements.[3] However, despite this series of judgments, evictions were reportedly carried out even in late November 2015. In January 2016, the Council of Europe Commissioner for Human Rights wrote to the Hungarian authorities raising numerous questions about the housing situation of Roma and measures to prevent future forced evictions.

ECRI welcomes the fact that the National Social Inclusion Strategy for the period up to 2020 includes improving the housing situation of Roma as an area requiring urgent intervention. In August 2015, the Policy Strategy to Manage Segregated Housing was adopted with the aim of eradicating segregated settlements listed in the National Database of Segregated Areas which are not suitable for human use, or renovating them. Development funds are available under various programmes. The authorities informed ECRI that, in the segregated area of György-telep in the town of Pécs a complete row of houses was renovated in successive stages. During the entire time, the inhabitants were temporarily relocated to vacant council-owned flats before being returned to their own refurbished flats.

The authorities also indicated that should local governments later decide to sell such renovated flats, tenants complying with the contract terms would enjoy pre-emption rights. ECRI is again concerned by this, since the majority of inhabitants of segregated housing are Roma who might not be in a position to buy their flat, particularly at a higher price following renovation.

ECRI notes that urban planning is the exclusive competence of municipal councils. Moreover, in March 2015, housing allowance was removed from the social law, and local governments now also have responsibility for providing social aid and housing-related allowances at their own discretion.

[3] See § 91 of ECRI's Fifth Report on Hungary.

Regrettably, therefore, the authorities at the national level have limited tools to ensure that international human rights obligations relating to adequate housing are upheld at local level.

In light of these elements, and despite some positive developments to improve the housing conditions of Roma, ECRI considers that its recommendation has not been implemented.