

## **Non-paper on the recent attacks against members of the Roma community in Hungary**

Over the last year there have been several attacks against members of the Roma community. These deplorable crimes have been firmly condemned by the Hungarian Government. Prime Minister Bajnai has called the latest murder a “disgraceful, sinister and shameful assassination”. A minister of the Government, several members of parliament, from both the ruling and opposition parties, as well as the head of Hungarian police were present at the funeral of the latest murder victim to demonstrate their solidarity.

The Prime Minister has pledged that the Government will do its utmost to help the investigation and to strengthen public safety in particular the safety of the members of the Roma community so that no one in Hungary has to live in fear, and those who commit a crime are brought to justice. The Government has already decided to initiate the necessary legislative measures and the negotiations are under way at the Hungarian Parliament. The proposal aims to regulate “hate speech” in a more concrete and precise way.

As far as the concrete attacks against members of the Roma community are concerned law enforcement agencies are also stepping up their efforts to finding the perpetrators expeditiously. A special police task force has been created to deal with these heinous crimes and the chief of the police has offered a reward of around 200.000 euro for any information that would lead to the arrest of the perpetrators. Currently 100 police officers are working on these cases and as a result of the investigation a couple of suspects have already been arrested. Police presence has been reinforced in the most vulnerable 180-200 communities/small villages to ensure public safety and prevent further violence. We are very grateful to the United States for dispatching FBI experts to Hungary who will help their Hungarian colleagues to create the profile of the perpetrators.

In the recent months, two regional conferences have been organized upon the initiative of the Head of the National Police. The purpose of this initiative was to inform the Roma communities about the results of the investigations and to start a dialogue about the possibilities of preventing discrimination and crime against Roma people. Furthermore, it has also meant to demonstrate the cooperation between the police and the communities. The law enforcement authorities have expressed their unambiguous commitment fighting against hate crime.

In one case (Pécs), the Police have already produced results. The supposed offenders have been arrested recently. In this case the racist motive can be excluded, as the victims and the suspects belonged to the same community. Obviously, until the court decision, the presumption of innocence is the legal due of all persons, and a final standpoint cannot be taken yet in this case either. In the other three cases, the investigation is still under way, however there was no sign (inscription, flyer, etc.) that would have indicated a clearly racist motive, and neither is there any extremist or illegal organisation, which would have “assumed responsibility” for the act. According to criminologists, other motives cannot be excluded, either, as of yet.

All necessary legislation is in place to tackle the so called hate crimes. According to Hungarian law, in a criminal case it is the final judgement of the court that establishes the person of the offender, and consequently the motive. Thus, the “racist motive” cannot be considered as proven before the establishment of the person of the offenders and before the court takes its decision.

Criminal law protection against non-violent conducts motivated by racism or xenophobia is provided under Section 269 of the Penal Code. According to that anyone inciting to hatred before the general public against the Hungarian nation or any national, ethnic, racial group or certain groups of the population, shall be punishable for a felony offence with imprisonment up to three years. In the past twenty years the National Assembly has made several attempts to modify this provision. The Constitutional Court, however, has always ruled that the proposed modifications are unconstitutional.

Incitement against a community is committed where incitement to hatred is made before the general public. According to Section 137 point 12 broad publicity shall, among others, be established when a crime is committed through publication in the press, another mass media or by reproduction, or by the publication of electronic information in a telecommunications network. In view of the present form of the Constitutional provision governing the right to freedom of expression and with regard to the Constitutional Court’s consistent practice on this issue, at present incitement to hatred is regarded to be the conduct with respect of which the imposition of criminal law threat is constitutionally justified. In respect of alleging, denying, glorifying or minimizing the significance of certain historical facts the imposition of criminal law threat cannot be considered to be justified. Moreover, the criminalization of these conducts under the Penal Code would not survive constitutional review as they have vague meaning.

Article 50 subsection (3) of the Constitution provides that judges shall be independent and shall be subjected only to the laws. The Supreme Court, however, is responsible for ensuring unified application of law; therefore its rulings are obligatory for all the courts. In this context it has to

be noted that though the Constitutional Court has no powers to examine, from constitutional aspect, the judicial application of law, or to interpret a law in itself, independently of any constitutional issue, or to pass decisions. However, in order to ensure unified application of the law, the interpretations contained in the Constitutional Court decisions may influence the legal practice. The Constitutional Court decisions on incitement against a community fall into this category.

With respect to the offence mentioned in the “Personal violence” topic, it has to be noted that on its 10 November 2008 Session the National Assembly adopted Act No. 79 of 2008 amending certain Acts with a view to protecting public order and the operation of justice, which modified Section 174/B of Act No. 4 of 1978 on the Penal Code with effect from 1 February 2009. Based on the amendment, violence against a member of a national, ethnic, racial or religious group became extended so as to cover any group of the population, irrespective of the ground of discrimination (national, ethnic, racial, religious or any other). The name of the offence was also modified, the new name is: *violence against a member of a community*. As a result of the amendment persons engaged in preparation for violence against a member of a community shall also be held criminally liable.

Even though serious and regrettable crimes have been committed recently in Hungary against certain Roma families, it would be misleading to judge the situation of Roma in Hungary exclusively from these crimes. Since the beginning of the democratic transition, Hungary has done a lot for the amelioration of the situation of Roma. Without aiming at completeness, it has to be mentioned here the setting up of around 1000 Gypsy minority self-governments, the anti-discrimination lawyer network, the establishment of the independent Gypsy radio, Radio-C, and many other civil, cultural and political initiatives.

Roma communities have been invited to participate in the planning and the monitoring of the governmental measures. The government adopted the Governmental Decree on the establishment of the Council of Roma Integration (hereinafter: CRI) in December 2006. Members of the CRI include, besides the representatives of the ministries concerned, the Chairman of the National Gypsy Self-government, and seven persons invited for 2 years by the Minister of Social Affairs and Labour on the basis of the proposals made by the Roma NGOs. The CRI is a consultative, advisory body, which participates in the preparation, the implementation and the monitoring of government decisions aiming at the social inclusion of Roma. The Civil Umbrella, set up in 2007, is a consultative, advisory civil organisation operating besides the CRI. The so-called Roma Steering and Monitoring Committee operate within the

context of the Council of Roma Integration – primarily based on the participation of the civil delegates in the Council.

The participation of Roma was a determining factor in the national public utility and public employment programs. In 2008, the national budget ensured HUF 3.5 billion for the implementation of the public employment programs, which involved the employment of 13,500 persons during the year. The activity of Roma in labour market training programs and adult training programs is gradually increasing. The number of Roma participating in vocational training within the central program called “One Step Forward!” aiming at the improvement of the labour market chances of those with a low level of education was considerable. In 2007-2008, the national budget ensured HUF 10.6 billion for the implementation of the “One Step Forward!” program. The main goal of the program called “The Road to Work” is to give incentives to those assisted by social aid while being long-term unemployed so that they seek work and to improve the terms of their employment. According to plans, the program beginning on 1 April 2009 will achieve the temporary employment in 6 hours of about 60-66 thousand persons yearly.

Hungary concurs with the view that increased efforts are needed to address the situation of Roma and Sinti. Consequently, Hungary, in close cooperation with other EU partners, is currently addressing the situation of Roma from a comprehensive perspective, approach that reflects the commitments undertaken by the EU Member States including in the framework the OSCE Action Plan for the Improvement of the Situation of Roma and Sinti in the OSCE Area.

In this respect, we take the opportunity to draw your attention to the launch of the EU Platform for Roma Inclusion on 24 April 2009 in Prague. The Platform provides a flexible framework in which EU institutions, national governments, international organizations and NGOs can interact and formulate strategic advice for decision-makers on the effective inclusion of Roma aspects into European and national policies.