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17 August 2018

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Hungary: Police response to complaints lodged by Roma citizens; procedures to lodge a complaint against a police officer; alternate complaint mechanisms for human rights violations, including complaints submitted through the Roma Police Officers Association (2016-July 2018)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Police Response to Complaints Lodged by Roma Citizens

A 2018 report by the UN Human Rights Committee indicates that in Hungary, there is a "prevalence of hate crimes and ... hate speech targeting minorities," including Roma, and states that "police often fail to investigate and prosecute

credible claims of hate crimes and criminal hate speech" (UN 9 May 2018, para. 17). For information on legal provisions regarding hate crimes and recourse available to victims, see Response to Information Request HUN105742 of March 2017.

Minority Rights Group International (MRG) reports that Roma face "continued hostility" from police forces in Hungary, which includes a "failure to protect" them from attacks (MRG Jan. 2018). Amnesty International indicates that the state's response to violence against Roma "has been feeble" and that the police "regularly" treat hate crimes against Roma as "ordinary crimes" (Amnesty International 25 Jan. 2017). The same source describes a crime in 2015 that was recorded as "merely 'illegal entry'" by the police, although the assailants broke into the house of a Roma family and shouted "'Filthy Gypsy, you will die'" (Amnesty International 25 Jan. 2017). Similarly, according to a January 2017 article by the Budapest Beacon, a news website on Hungary, representatives from the Hungarian Helsinki Committee [1] explained the following:

If the police report is lacking in indicating a racial motive, then the police and prosecutors will avoid pursuing charges along those lines.

The work of police is evaluated based on successful investigations, and prosecutors are judged based on the number of guilty verdicts. They are more likely to pursue what sticks, for example, assault and battery, instead [of] trying less certain charges related to hate crimes simply because they're concerned about their own professional advancement. (The Budapest Beacon 28 Jan. 2017)

The European Roma Rights Centre (ERRC) indicates, in a submission prepared for three Hungarian cases before the European Court of Human Rights (ECHR), that it "survey[ed] recent evidence that the national bodies in Hungary responsible for protecting Roma against violence suffer institutional racism, particularly institutional anti-Gypsyism" (ERRC [2015], para. 3). The same source explains that "'institutional racism'" is defined as "'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin'" (ERRC [2015], para. 3). Similarly, in correspondence with the Research Directorate, a representative from the Hungarian Civil Liberties Union (HCLU) [2] explained that in Hungary, Roma "face prejudices and stereotypes" that are "very often present in law enforcement bodies[,] affecting

the procedures in which Roma are involved" (HCLU 24 July 2018). According to the same source, it can be said that, for Roma citizens, complaint mechanisms "might be even less accessible and effective than for non-Roma" (HCLU 24 July 2018).

1.1 Statistics

A 2017 survey by the European Union (EU) Agency for Fundamental Rights (FRA), based on a sample of 1,171 Hungarian Roma respondents (EU Dec. 2017, 119), indicates that on a scale from 1 to 10, Roma respondents in Hungary indicated a 5.0 level of trust in the police (EU Dec. 2017, 101). The same source reports a "[l]ow" level of trust among Roma respondents in member states surveyed, although for Hungary, it is "almost the same as among the general population" (EU Dec. 2017, 100). A survey conducted by the Equal Treatment Authority (Egyenlő Bánásmód Hatóság, EBH), a Hungarian "autonomous administrative body" (Equinet n.d.a), reports an increase of two percent, between 2013 and 2017, in discrimination events involving the police, one of the areas in which discrimination increased "the most" (Hungary 2017a, 13), in comparison with other areas such as workplace recruitment, dismissal, education, medical care, administration of social benefits and transport, among others (Hungary 2017a, 33).

1.2 Court Decisions

In an October 2017 decision, the ECHR established that the Hungarian authorities "failed to conduct an effective investigation" into allegations of ill-treatment of a Roma citizen by the police and that the authorities also "failed to investigate possible racist motives behind the incident" (Council of Europe 31 Oct. 2017a, 14, 19). Regarding this case, the ECHR explains in a press release that, in 2010, the applicant "lodged a criminal complaint alleging that he had been the victim of police brutality and that he had been repeatedly insulted on account of his Roma origin" (Council of Europe 31 Oct. 2017b, 2). According to the same source, in 2010, the prosecuting authorities did not address "[h]is allegation of a racist motive being behind his ill-treatment" and did not pursue the investigation because his version was deemed "not plausible" (Council of Europe 31 Oct. 2017b, 2). In a 2012 "substitute private prosecution," charges were dropped against three of the

defendants and five others were acquitted "due to lack of evidence"; the applicant "was subsequently found guilty of false accusation" (Council of Europe 31 Oct. 2017b, 2).

In a January 2017 decision, concerning two applicants, both of Roma origin, who "alleged that the [Hungarian] police had failed to protect them from racist abuse during [a] demonstration and to properly investigate the incident," the ECHR established that the authorities conducted "limited" investigations into the incident and that "the specific context of the abuse" had not been taken into account, which resulted in "shortcomings" (Council of Europe 17 Jan. 2017, 1). The ECHR "was concerned that this could be perceived by the public as the State's legitimisation and/or tolerance of such behaviour" (Council of Europe 17 Jan. 2017, 1).

In April 2016, regarding a complaint concerning the Hungarian authorities' failure to carry out an effective investigation into allegations of verbal violence directed against the applicant (Council of Europe 12 Apr. 2016, para. 40), a Roma citizen, the ECHR established that the applicant was not provided "adequate protection" and that the criminal-law mechanisms were implemented in a "defective" manner (Council of Europe 12 Apr. 2016, para. 91).

Sources report that the Hungarian Supreme Court established, in a February 2017 judgment, that the local police in Gyöngyöspata failed to protect Roma against harassment by extremist groups (US 20 Apr. 2018, 36; HCLU 17 Feb. 2017) "that organized illegal patrols, marching through the Roma rows of the village for several weeks, intimidating local residents" in the spring of 2011 (HCLU 17 Feb. 2017). According to the HCLU, in its February 2017 judgment, the Supreme Court of Hungary "ruled that the failure to protect the Roma from racist harassment amounted to harassment under the [Equal Treatment Act]" (HCLU 17 Feb. 2017).

2. Procedures to Lodge a Complaint Against a Police Officer

Sources indicate that complaints against police officers can be filed according to the Police Act [XXXIV of 1994] by those whose fundamental rights have been violated (Lawyer 1 in Budapest 24 July 2018; Lawyer in Győr 23 July 2018; HCLU 24 July 2018). Other sources specify that complaints can be filed by anyone who "was harmed by the acting police officer due to violating his/her obligations according to

the act, due to his/her actions or failing to carry out activities or by the use of compelling force by the police officer" (Lawyer 2 in Budapest 23 July 2018), or by anyone "placed under a police action," or whose interests "were violated because the police d[id] not act," or if "the police applied unlawfully coercive means, and the person feels that his/her fundamental rights were violated or restricted by the police" (Hungary n.d.a).

According to sources, the procedure to file a complaint is standard across the country (Lawyer 1 in Budapest 24 July 2018; Lawyer 2 in Budapest 23 July 2018; Lawyer in Győr 23 July 2018). Sources explained that complaints against police officers can be filed directly with the police force in question [3] (Lawyer in Győr 23 July 2018; Lawyer 2 in Budapest 23 July 2018; HCLU 24 July 2018). According to sources, the complaint must be submitted within 30 days of the action (or omission) (Lawyer 2 in Budapest 23 July 2018; Lawyer 1 in Budapest 24 July 2018). In correspondence with the Research Directorate, a lawyer in Budapest, whose areas of practice include criminal law, indicated that the chief constable has 30 days to decide on the complaint (Lawyer 1 in Budapest 24 July 2018). The same source added that "[a]n appeal may be lodged against the decision of the chief constable to their superior" and that an appeal is not possible if "the first instance decision was rendered by the National Chief of Police," although a judicial review may be sought (Lawyer 1 in Budapest 24 July 2018).

2.1 Independent Police Complaints Board (the Board)

According to sources, complaints against police officers in Hungary can also be submitted to the Board (Lawyer 2 in Budapest 23 July 2018; Hungary 12 Feb. 2016, para. 19; HCLU 24 July 2018), "an independent, parliament-elected body" (Hungary 12 Feb. 2016, para. 19). According to sources, complaints filed with the Board must be submitted within 20 days of the police action [or omission] (Lawyer 1 in Budapest 24 July 2018; Lawyer 2 in Budapest 23 July 2018; Hungary n.d.a), or at a later date calculated from the date the complainant "became aware of the infringement" (Hungary n.d.a). The Board's website indicates that complaints can be submitted in person during office hours, by an "authorized person" or a legal representative, by mail (the complaint has to be signed by the complainant), by fax, by email, or through the online form, available on the Board's website (the complaint, with the complainant's signature, must be sent later by mail, fax or email) (Hungary

n.d.a). The same source adds that there is no fee for the complaint process (Hungary n.d.a). The website of the Board also indicates that the decision can be requested at the National Police Headquarters, free of charge, after the Board's examination and legal conclusions (Hungary n.d.a).

According to the HCLU representative, the Board "does not hold hearings, it only works [based on the] documentation [provided] and if the victim and the police contradict each other, it concludes that it cannot decide on the dispute" (HCLU 24 July 2018). In correspondence with the Research Directorate, another lawyer in Budapest whose areas of expertise include civil and criminal law explained that complaints filed with the Board are examined by the Board and, if it is established that there was a violation of the complainant's basic rights, "the leader of the involved police department/organization is entitled and obliged to resolve on the complaint" (Lawyer 2 in Budapest 23 July 2018). The first lawyer in Budapest specified that the Board has 90 days to conduct an inquiry and render "its position paper" to the relevant decision-making body (the National Chief of Police, the Director of Internal Affairs or the Director of the Anti-Terrorist Agency) (Lawyer 1 in Budapest 24 July 2018). The same source added that the decision-making body then decides within 30 days on the complaint and that reasons are given when the decision differs from the Board's position (Lawyer 1 in Budapest 24 July 2018). According to sources, the Board's positions are not binding for the police (Hungary n.d.a; HCLU 24 July 2018). The HCLU representative further explained that the Board adopts opinions that are transferred to the police, who decide whether the police violated the rights of the complainant or not (HCLU 24 July 2018). According to sources, a judicial review of the decision taken by the police may be sought (HCLU 24 July 2018; Lawyer 1 in Budapest 24 July 2018).

A 2016 report prepared by the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities indicates that the Board "can make recommendations to the Head of the National Police General Directorate," but that these recommendations "are followed in a minority of cases" (Council of Europe 12 Sept. 2016, para. 105). The HCLU representative stated that the "HCLU believes that the police complaint mechanisms are not effective in Hungary" (HCLU 24 July 2018).

According to the website of the Independent Police Complaints Authorities' Network (IPCAN), an "informal network of exchange and cooperation amongst independent structures [from about 20 countries] in charge of external control of security forces" (IPCAN n.d.a), including the Board in Hungary (IPCAN n.d.b), the Board received 235 complaints in 2016 concerning mainly "the right to fair proceedings (39,1 %), the right to human dignity (23,7 %), [and] personal freedom (15,7 %). The most frequently violated fundamental rights were in [2017]: the right to fair trial (31,1 %), the right to human dignity (28,1 %) and personal freedom (21,5 %)" (IPCAN n.d.c).

3. Alternate Complaint Mechanisms

3.1 Office of the Commissioner for Fundamental Rights (the Office) [Ombudsman]

According to sources, the Office is composed of the Commissioner for Fundamental Rights, as well as two Deputy-Commissioners, including one responsible for the rights of national minorities (Hungary n.d.b; US 20 Apr. 2018, 28). Sources explain that the Office reports to Parliament (Hungary n.d.b; US 20 Apr. 2018, 28). On its website, the Office provides the following information regarding its proceedings:

Anyone may turn to the Commissioner for Fundamental Rights, if in his/her judgement, the activity or omission of the public and/or other organs performing public duties ... infringes a fundamental right of the person submitting the petition or presents an imminent danger. When the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her. (Hungary n.d.b)

"[L]aw-enforcement organ" is included on the list of organs against which a complaint can be submitted (Hungary n.d.b). Similarly, the US Department of State's *Country Reports on Human Rights Practices for 2017* indicates that the Office can "initiate proceedings to defend the rights of citizens from abuse by government authorities and entities providing public services" (US 20 Apr. 2018, 28). According to the

Office's website, complaints can be submitted in writing or orally, as well as via email; it further explains that an appointment has to be made in order to file a complaint in person (Hungary n.d.b).

According to a report published by the Office, there were 200 minority rights-related complaints submitted to the Commissioner or the Deputy Commissioner for National Minorities in 2016, "lodged mainly by Roma complainants," and the Deputy Commissioner conducted approximately 300 proceedings "in her field of responsibility" during the same period (Hungary [2017]b). According to the Council of Europe, the Deputy Commissioner for National Minorities is "restricted" in terms of "competences and the freedom to act" (Council of Europe 12 Sept. 2016, 1). The same source adds that the Commissioner for Fundamental Rights has the right to inquire into alleged violations, and that the Deputy Commissioner "is limited principally to observation, evaluation and awareness raising" (Council of Europe 12 Sept. 2016, para. 45). The European Network of Equality Bodies (Equinet), a network of European organizations [including the Hungarian Commissioner for Fundamental Rights (Equinet n.d.a)] that works against discrimination (Equinet 10 Apr. 2012), states that the Commissioner for Fundamental Rights' decisions on complaints are "[n]ot legally binding" (Equinet n.d.b). The same source adds that 5,440 cases were handled in 2015, 5,454 cases were handled in 2014, 7,631 cases in 2013, and 7,861 cases in 2012 (Equinet n.d.b). According to the UN, the Office "lacks the human and financial resources necessary to carry out its mandate effectively" (UN 9 May 2018, para. 13). Equinet indicates that the operating budget for 2014 was approximately 4.1 million euros (Equinet n.d.b).

3.2 EBH

The website of the EBH indicates that it is responsible for investigating complaints of discrimination based on different grounds, including ethnic origin, and that complaints may be submitted against law enforcement bodies, among others (Hungary n.d.c). According to the same source, procedures can be initiated by victims or by the EBH itself, among others (Hungary n.d.c). Equinet describes EBH as "an independent and autonomous administrative body" (Equinet 27 Mar. 2018).

According to Equinet, in 2015, 407 cases were handled by the EBH, by 10 staff members (Equinet n.d.a). A 2015 report prepared by Hungary and submitted to the Council of Europe indicates that 95 percent of the complaints submitted to the EBH by members of minority groups are from Roma citizens or NGOs representing Roma (Hungary 7 Apr. 2015, 76). According to the same source, 128 complaints of Roma-related issues were submitted to the EBH in 2010, 118 in 2011, 81 in 2012, and 58 in 2013 (as of 31 October 2013) (Hungary 7 Apr. 2015, 76-77). Among the complaints on Roma-related issues submitted, the EBH established that the law had been violated in 6 cases in 2010, in 6 cases in 2011, in 4 cases in 2012, and in 3 cases in 2013 (Hungary 7 Apr. 2015, 76-77). The Council of Europe notes that the number of complaints received by the EBH has decreased in recent years, "possibly due to the lack of trust in the system, as violations are established by the [EBH] only in less than 10% of cases" (Council of Europe 12 Sept. 2016, para. 38). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Roma Police Officers Association

Information on the Roma Police Officers Association and whether an individual can submit a complaint to this association could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Hungarian Helsinki Committee is a human rights organization that provides "help to refugees, detainees and victims of law enforcement violence" through "legal and public activities" (Hungarian Helsinki Committee n.d.).

[2] HCLU is an NGO that "monitors legislation, pursues strategic litigation, [and] provides free legal aid assistance," as well as training and "awareness raising media campaigns" (HCLU n.d.).

[3] According to sources, a complaint can be filed with the "acting police force" (Lawyer in Győr 23 July 2018); with the "police department the police officer is part of" (Lawyer 2 in Budapest 23 July 2018); with the "relevant police constabulary" (Lawyer 1 in Budapest 24 July 2018); or with the "competent police office" (HCLU 24 July 2018).

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Oral sources: 4 lawyers in Hungary; European Roma Rights Centre; Fraternal Association of European Roma Law Enforcement Officers; Hungarian Helsinki Committee; Nemzeti és Etnikai Kisebbségi Jogvédő Irodát; Roma Rendőrök Országos Egyesülete.

Internet sites, including: Hungary – National Police Headquarters; Human Rights Watch; International Crisis Group; Romea.cz; United Nations – Refworld; Working Group Against Hate Crimes.

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