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## **LEGISLATION AND GOVERNMENT PROGRAMS RELATING TO THE ROMA POPULATION IN HUNGARY SINCE THE POLITICAL CHANGES OF 1989–90**

After the political changes of 1989–90, the minority issue, which had been neglected in Hungary for decades, became a pressing challenge for the country's first democratically elected parliament and government. There was a particular need for prompt action to address the many unresolved problems of the Roma minority. As far as such action is concerned, the past decade and a half may be divided into two main periods. Between 1990 and 1995, legislation was passed with a view to transforming and restructuring the legal and institutional framework. Then, after 1995, the first government programs were introduced with the aim of improving the living circumstances of the Roma population. Given that Hungary's democratic transition was accompanied by declining living standards throughout society, there was no denying the need for state intervention. The disillusioned masses and growing numbers of jobless were increasingly intolerant of others and indifferent to their problems. As frustrations reached boiling point, policy-makers recognized the urgent need for special government measures promoting the social integration of Roma. They acknowledged that, of Hungary's two million poor people, Roma (accounting for 5% of the country's population of 10 million) had suffered the most from rapid modernization and radical changes in the economy.

Nevertheless, for a proper understanding of the development of legislation in Hungary after 1990, we need also to examine the effect of international requirements. The influence of such factors was particularly strong since European integration was the primary objective of the Hungarian political elite. This overriding aim

placed legal requirements on the country and represented a critical challenge in the field of minority legislation.

### **The Background to Hungarian Legislation**

For many years it was generally believed that in modern civil societies human rights protection fell under the exclusive domestic jurisdiction of states. It was only after the First World War that such protection began to be regulated by international law. Until the end of the Second World War, minority protection was based on international treaties offering collective security to racial, linguistic or religious minorities with the aim of preserving their identity. By preventing the oppression of minorities (dis)placed beyond the borders of their “mother-country” [kin state], such treaties served also to establish and maintain the stability of the new, post-1918 national boundaries. The effectiveness of this collective system of minority protection was, however, questionable. The system, for instance, offered no protection whatsoever to Roma, who were not recognized as a national minority and were without a kin state willing to protect their rights. The weaknesses of the system led to demands, after the Second World War, for international mechanisms protecting human and minority rights.

The matter was initially addressed in the Charter of the United Nations, which, for the first time in international law, listed under its purposes and principles the right to freedom from racial discrimination as a basic individual human right:

To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>1</sup>

The UN General Assembly may initiate studies and make recommendations to promote these goals (Article 13(1)(b)) while the Economic and Social Council may make recommendations for the purpose of promoting the observance of such rights (Article 62(2)). This latter body later established the Commission on Human Rights. Despite this encouraging start, settlement of the issue nevertheless took longer than expected. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948 (as merely a non-binding resolution), made no reference to the protection of racial and national minorities. Article 27 of the International Covenant on Civil and Political Rights (“*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*”<sup>2</sup>), while declaring the protection of minorities, fails to define the term minority or specify requirements with regard to the promotion of rights. The implication is that states merely have to refrain from intervening to the detriment of minorities. Nevertheless, in its commentary on Article 27, the Commission on Human Rights stated that “*there is a need for states to take positive measures to protect the identity of minorities and the rights of their members...*”<sup>3</sup> Moreover, in 1992, the UN General Assembly adopted the non-binding Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, which underlined the responsibility of states to protect the identity of minorities. Still, these provisions refer only to the conduct of states as regards minorities as a group. Indeed, none of the existing international agreements define the rights of minorities in an adequate manner. Few of the provisions contain obligatory requirements, and while several documents state that minority rights are to be exercised both individually and collectively, this does not amount to recognition of minority groups as collective legal entities. One analyst has interpreted the ambiguity of the provisions as follows:

The international community of states refuses to offer definitive guarantees of the rights of national or ethnic minorities; and by refusing to do so, it protects the interests of the dominant national or ethnic groups of various countries.<sup>4</sup>

Minority rights and anti-discrimination measures have received greater attention in European Community law. A ban on discrimination is mentioned several times in the Treaty of Rome, which established the European Economic Community. The purpose of this treaty was Europe's economic integration, and no specific mention is made of the minority issue. Nevertheless, the treaty does contain a prohibition on discrimination with respect to the rights of citizens.<sup>5</sup> It also places a ban on discrimination in employment, remuneration, and other conditions of work, or on the basis of gender.<sup>6</sup> Initially, all these provisions were mere appendages to the economic issues governed by the treaty. Still, a degree of dynamism in the defining of principles has been shown by the case-law of the European Court of Justice (ECJ). Indeed, in its judgments the Court has established the following principles and definitions:

*The principle of equality:*

The Court has consistently held that the general principle of equality, which is one of the fundamental principles of Community law, requires that similar situations not be treated differently unless differentiation is objectively justified.<sup>7</sup>

*A definition of discrimination:*

... discrimination can arise only through the application of different rules to comparable situations or the application of the same rule to different situations.<sup>8</sup>

*A definition of indirect discrimination:*

According to settled case-law, Article 4(1) of the Directive precludes the application of a national measure which, although

formulated in neutral terms, works to the disadvantage of far more women than men, unless that measure is based on objective factors unrelated to any discrimination on grounds of sex.<sup>9</sup>

It is the consistent development of case-law over time that has transformed the economic grouping of earlier decades into the European Union of today. The Union is now founded upon a community of interests governed by real democratic principles and values. This legal progression was reflected in the Treaty of Amsterdam, which amended the Treaty on European Union. One of the amendments was the addition of Article 13(1), authorizing the Council *to combat discrimination*:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

To some observers, progress was rather modest (the measure has no immediate effect, and a unanimous decision is required in the Council before action can be taken). Nevertheless, in our view, this general legal formula may, over time, become an integral part of minority provisions. Certainly, its influence can already be felt. The Treaty of Amsterdam restructured the European Union's third pillar: the Commission began to combat racism and xenophobia; it provided funding for a series of anti-discrimination programs in Member States; the year 1997 was declared the European Year against Racism; and in 1998 the European Monitoring Centre on Racism and Xenophobia was established in Vienna.

Despite these developments, the European Union continues to lack, within its own legal framework, compulsory legal norms aimed at defeating racism and discrimination. Nonetheless, Euro-

pean institutions do devote more and more attention to the issue. Each year, new regulations are passed, providing additional legal remedies for cases of discrimination. A key instrument is doubtless the European Convention on Human Rights and Fundamental Freedoms, adopted under the auspices of the Council of Europe. The Convention contains *a general prohibition on discrimination*:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>10</sup>

A peculiar feature of the prohibition is the manner in which it refers back to other provisions of the Convention. Thus, under legal practice, the provision can be applied only if it relates to a violation of a right protected by another article of the Convention. That is to say, a violation of Article 14 is not possible in and of itself. If a violation of Article 14 is established, this automatically acknowledges a violation of the parallel article. With reference to a violation of any other part of the Convention, any applicant may thus request a ruling on a violation of Article 14. The area is problematic because the Convention fails to mention the exceptional cases in which discrimination may be justified. Consequently, the only possible guidance in this area is the legal practice of the European bodies, according to which discrimination does not violate Article 14 if:

- a) it is based on objective and sensible reasons,
  - aa) with special regard for the aims and effects of the measure
  - ab) and the general principles governing democratic societies, and
- b) the measure applied is proportional to its intended objective.<sup>11</sup>

Where an applicant manages to prove a case of discrimination,

the state in question must verify that the principles of necessity and proportionality have been applied. In recent years, however, no state has been reprimanded by the Court for discriminating against Roma—although the Court has in fact received no petitions.

In addition to the conventions and treaties, several other particularly relevant and characteristically European practices should also be mentioned. One such practice is the drafting of “country reports”. Compiled by the Commission, these reports were designed to demonstrate the extent to which countries seeking accession to the European Union comply with membership requirements. The objective criteria for doing so were elaborated at the Copenhagen European Council in 1993 and thus they became known as the “Copenhagen Criteria”. In addition to the rule of law and stable democratic institutions, emphasis was also laid on respect for human rights and minority rights. A prerequisite for requesting accession to the European Union is respect for the following principles:<sup>12</sup>

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.<sup>13</sup>

The reports on Hungary provide insights into the opinions of outsiders—in this case the European Commission—on the situation of Roma in Hungary and on the anti-discrimination measures introduced by the Hungarian state.

The first such report was the Agenda 2000, which arose as an evaluation of the membership application and was published by the Commission at the start of negotiations on accession.<sup>14</sup> The report spoke positively of both the situation of minorities and the implementation of minority rights, but it also identified shortcomings, such as Hungary’s failure to provide parliamentary representation to its minorities.<sup>15</sup> Citing a government report, the report claimed

that Roma regularly suffer discrimination and that Hungary's present legal system fails to prevent ethnic conflicts involving Roma. The Commission's appraisal referred also to inequalities of opportunity between Roma and non-Roma, particularly in the fields of education and employment. The following year's report (1998) also stated that, while Hungary was complying with the Copenhagen Criteria, it should pay attention to improving the living conditions of Roma. The Commission's report in 1999 noted the lack of any significant changes in the situation of Roma. The Commission was of the view that in many areas Roma fared worse than other Hungarians, owing to prejudice and discrimination in everyday life.

In addition to the annual country reports, in early 2001 the Commission also published an overview<sup>16</sup> of the situation of Roma in Hungary and other accession countries. The section relating to Hungary formulated some of the criticisms noted above. It mentioned the racist attacks on Roma, which, it said, the state authorities refused to acknowledge, or even acquiesced to. It then cited the racist public discourse, which occasionally can be heard even in the Parliament. Alongside other criticisms, the report argued that the anti-discrimination rules were poorly applied in practice. Once again it called for anti-discrimination legislation.

In addition to the above, the Vienna Declaration adopted in 1993 established the European Commission against Racism and Intolerance (ECRI) under the auspices of the Council of Europe. An important part of the ECRI's work is to examine the anti-discrimination guarantees of the Convention. This has led it to propose supplementary amendments to the text of Article 14. It has also made general policy recommendations to the member states of the Council of Europe. General Policy Recommendation No. 3 addresses the Roma issue.<sup>17</sup> In addition, the ECRI also draws up so-called "country-by-country reports". Its second report on Hungary, published in the summer of 1999,<sup>18</sup> discussed the situation of Roma in a section entitled "Issues of particular concern". According to the

ECRI, Hungary was failing to provide equal access to education, and Roma also faced substantial discrimination in the field of employment. It recommended the more effective implementation of existing legislation. If this proved ineffective, Hungary should adopt anti-discrimination legislation.

### **Reform of Hungarian Legal Regulations and Institutions**

After the political changes of 1989-90, the Hungarian political elite was in effect compelled to act by requirements in the international field. In order to achieve EU membership, the country had no choice but to rapidly reform its legal system and institutions. As far as minority policy was concerned, the first step forward was the “rewriting” of the Hungarian Constitution. As we have already noted, over the years fundamental human rights have become an integral part of international law. As inviolable and inalienable rights, they may be found in the basic laws or constitutions of all democratic countries. We cite the following sections of the Hungarian Constitution relating to the national and ethnic minorities (including Roma):

- Article 8      (1) The Republic of Hungary recognizes the inviolable and inalienable fundamental human rights; to respect and to protect thereof shall be a primary duty of the State.
- (2) In the Republic of Hungary, the rules respecting fundamental rights and obligations shall be determined by law which, however, shall not limit the substantial contents of any fundamental right.”<sup>19</sup>

This general declaration fully complies with the international requirements and satisfies the need for constitutional rules. Two particularly important sections of the Constitution should be underlined:

- Article 68      (1) National and ethnic minorities living in the

Republic of Hungary shall share in the power of the people: they shall be components of the state.

(2) The Republic of Hungary shall protect national and ethnic minorities. It shall ensure their collective participation in public life, foster their culture, the use of their mother language, school instruction conducted in their language, and the right to use their names in their own language.

(3) The Laws of the Republic of Hungary shall provide for the representation of the national and ethnic minorities living within the territory of the country.

- Article 70/A (1) The Republic of Hungary shall ensure human and civil rights for everyone within its territory without discrimination of any kind, such as race, color, sex, language, religion, creed, political or other opinion, national or social origin, property, birth or other status.
- (2) Any prejudicial discrimination of people as described in paragraph 1 shall be punished severely by law.
- (3) The Republic of Hungary shall promote the attainment of the equality of rights also by measures aimed at eliminating inequalities of opportunity.”<sup>20</sup>

Under minority protection, the State is required to achieve two goals: first, it must ensure that individuals belonging to the minority should not be discriminated against in the exercise of their fundamental rights; secondly, it may guarantee to minority communities and to individuals belonging to a minority additional rights that help to alleviate disadvantages stemming from their minority status and that ultimately prevent their assimilation into majority society.<sup>21</sup>

These conclusions are mirrored in the articles of the Constitu-

tion cited above. Thus even if a person belongs to a national or ethnic minority group, he or she is still a component (constituent element) of the state—with full and equal rights, just like members of the ethnic majority. Members of minorities may not be discriminated against as they seek to foster and preserve their identity, culture and language. Moreover, special rights help to preserve their minority identity. This is why they are offered parliamentary representation<sup>22</sup> and self-governing bodies for administering community affairs. Act LXXVII of 1993 (the Minorities Act) formulates these rights.

Reviewing the contents of the second cited constitutional article, we come to the issue of positive discrimination—now at the constitutional level. The protection offered by minority rights must entail the concurrent protection of individual and community rights (which we may refer to as anti-discrimination) as well as special guarantees for the minority rights of minorities and citizens belonging to such minorities (which we may refer to as positive discrimination). In our view, anti-discrimination is of a procedural legal nature; it does not offer additional rights and relates to the practice of existing rights. This seems to be indicated by Article 70/A (1) of the Constitution, according to which the legal system shall offer protection to minority communities or to individuals belonging to a minority if they have been discriminated against due to their minority status. Positive discrimination, on the other hand, rather than offer special privileges to certain groups, acts to ensure the implementation of existing rights by providing extra guarantees. This entails the provision of additional rights and thus positive discrimination is of a material legal nature. It seems to be offered by Article 70/A (3), which foresees the adoption of measures aimed at removing inequalities of opportunity.<sup>23</sup>

The above demonstrates that the Hungarian Constitution, which has been completely transformed since the original version of 1949, seeks to ensure the fulfillment of international require-

ments by applying the principles of democracy and the rule of law. As a result, Roma in Hungary are provided with a framework enabling them to live under proper conditions. The presence of shortcomings in Hungary's legal regulations (at levels beneath the constitutional)—and particularly in the operation and application of such regulations – does not automatically imply deficiencies at the constitutional level.

### **The Minorities Act**

As various analysts have pointed out,<sup>24</sup> two practical considerations guided the Hungarian political elite as they drafted the minority legislation. On the one hand, they wished to show Hungary in a favorable light as the newly democratic country sought membership of the European institutions. Faced with grave economic problems, Hungary could not afford to forfeit the chance of assistance by failing to pass legislation on human and minority rights. There was also an awareness of the unresolved problems of Hungarians living outside Hungary and a desire to “show an example” to other countries—particularly since in Hungary, given the dispersion of the country's various ethnic groups, there was no risk of demands for territorial autonomy. The purpose of the Minorities Act<sup>25</sup> was to formulate the detailed rules governing the application of the principles that had been declared by the Constitution. This is illustrated in the preamble of the Act, which recognizes that *the harmonious co-existence of the national and ethnic minorities with the majority nation is a part of international security*” and that *“the right to national and ethnic self-identity is one of the universal human rights.”* It is important to note that the minorities were not given special privileges:

All these rights are neither a gift from the majority nor a privilege of the minority, and their source is not the relative numerical strength of the national and ethnic minorities but the

right of difference based on respect for individual freedom and societal peace.

The Act contains the principles and values it wishes to protect and foster:

The language, material and spiritual culture, and historical traditions of national and ethnic minorities of Hungarian citizenship living within the territory of the Republic of Hungary, as well as other features associated with their minority status, are part of their individual and community self-identity.

A further point of emphasis is the declaration of the right to self-government:

The self-governments constitute the foundation of the democratic system; the establishment and operation of minority self-governments, as well as the cultural autonomy they provide, are considered by the Parliament to be a main prerequisite for the particular application of the rights of minorities.

This leads us to assert one of the most important features of the Act: it not only recognizes, protects and supports individual rights, but also contains community (collective) rights. The system of minority self-government is the most evident manifestation of this. Developed legal systems in other parts of Europe have tended in the past to avoid any such definitive declaration. For this reason, Hungary's legislation was regarded for many years as exceptional and novel.

Defining the personal scope of the Act was one of the most difficult tasks facing the drafters of the legislation, since the minorities were vocal in their opposition to any form of registration. Consequently, the rights contained in the Act may be exercised by anybody who professes to belong to a national or ethnic minority. This is founded upon the free choice of identity or, to express it slightly

differently, the free acknowledgement of identity.<sup>26</sup> Any person may decide, based on their descent, to belong to a minority group. Furthermore, the Act does not preclude the expression and recognition of multiple ethnic ties. Acknowledgement of one's belonging to a minority constitutes a piece of personal data and is therefore subject to strict protection. It may only appear in records if strict rules are kept. The basic provisions of the Act contain a general ban on negative discrimination, as well as specific cases of such, but they do not provide a definition of discrimination.

The Act not only lists the national and ethnic minorities that are to be the recipients of rights but also defines the criteria for "becoming a minority." Thus, a national or ethnic minority is any group that has been living within the territory of Hungary for at least 100 years, which constitutes a numerical minority of the population, whose members are Hungarian citizens and differ from the rest of the population in terms of their own mother tongue, cultures and traditions, and whose sense of belonging (national or ethnic cohesion) aims at preserving all these and at safeguarding the interests of the respective historically developed community.

The closing provisions of the Act contain a list of the thirteen groups qualifying as national or ethnic minorities: "*Under the terms of this Act, the indigenous groups in Hungary are as follows: Bulgarian, Roma, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovak, Slovene, and Ukrainian.*"<sup>27</sup>

Several further issues require clarification in respect of the personal scope of the Act. First, the scope of the Act does not extend to refugees, immigrants, and permanent foreign residents or to stateless people of whatever nationality. Second, as several authors have pointed out,<sup>28</sup> various additional problems have arisen. Apart from the minorities listed in the Act, there are officially no other persons who might belong to other ethnic groups. Another point of

dispute is the requirement that a minority should have lived in Hungary “for 100 years”—a criterion some of the officially recognized groups fail to meet. One could argue that there was never a unified “*cigány*” group in Hungary, and that this was just an “invention” of the government in power as it sought to simplify political relations in the country. Roma themselves differentiate between several groups among their own population. Moreover these groups have different languages, customs, and cultural traditions.

Regarding the substance of the Act, one of the aims of legislators was to establish the institutional foundations that were deemed necessary for minority life, including contacts with kin state and nations, and also to alleviate or eliminate the disadvantages stemming from minority existence. These goals necessitated the establishment of a democratic system of institutions, as well as the possibility of cultural autonomy. Chapter II of the Act deals firstly with individual minority rights and then, in subsequent sections, addresses them in greater detail. Under the provisions, persons professing an ethnic identity have the right to foster their traditions and to hold church services in their native language. They have the right to choose their own names and given names, as well as those of their children, to register their names in accordance with the rules of their native language, and to have them displayed as such in official documents. Persons belonging to minorities have the right to become acquainted with, foster, develop and pass on their native language, history, culture and traditions. They also are entitled to participate in education and culture in their native language and to have their personal data concerning their minority status kept secret. Chapter III of the Act relates to community rights. Under the Act, community rights of the minorities include, the right to preserve, foster, strengthen and pass on minority self-identity, to foster and develop their traditions, culture and language, to foster and develop their material and spiritual culture, to use their symbols, and to attend to their memorials and places of memorial. They may

establish civil society organizations, local and national self-governments, and a national educational and scientific network. They have a right to education and culture in the native language. The Act then mentions the right to produce programs in the public media, the right of minorities to parliamentary representation, and even the appointment of a parliamentary commissioner (ombudsman) for national and ethnic minority rights.

The primary area for the application of minority rights is the system of minority self-governments.

In villages, towns and districts of Budapest, the various minorities may, under the provisions of this Act, establish minority settlement self-governments or, by direct or indirect means, local minority self-governments; they may also establish national (country) minority self-governments. In Budapest, local minority self-governments may be established by direct or indirect means.<sup>29</sup>

Thus personal cultural autonomy may be regarded as a primary goal of the Minorities Act and the system of minority self-governments as the organizational manifestation of this objective. At present, the system consists of two levels: local and national. There are three different means of establishing a local minority self-government. A minority self-government may be formed—in the case of Roma this has happened sporadically—if more than half of the representatives obtaining seats in the course of a local government election are elected as representatives of a given minority: the elected body may then transform itself into a minority settlement self-government. In such cases, the elected body fulfills the tasks that normally fall within the scope of a local (settlement) self-government—such as official legal functions, public services. A second possibility—also rare in practice—arises when 30 per cent of the representatives of the local (settlement) self-government are elected as the representatives of a given minority: in such cases, the

minority representatives can establish, indirectly, a local minority self-government. A third possibility—this covers the majority of cases—is the directly established local minority self-government. In this instance, a person can register as a minority candidate on the basis of just five nominations. Given the manner in which a person may profess (acknowledge) his/her identity—the drawbacks of which we have already mentioned—candidates are not required to declare their minority status, either before or after an election. They are merely required to undertake representation of a given minority. Local (settlement) and minority self-government elections are held at the same time, and there are no records on ethnic background, which means that all Hungarian citizens have the active and passive right to vote in minority self-government elections.<sup>30</sup> Under current rules, the elections take place as follows: the local electoral committee must announce the holding of a local minority self-government election if at least five citizens of voting age, who profess to belong to the same minority and are permanent residents in the settlement in question, request an election by filling out the form appearing in the annex to the Minorities Act. Anybody that is entitled to vote for the local self-government representatives may also vote in the local minority self-government elections. The names of voters for both bodies are recorded in a common local register. The two elections take place on the same day and at the same voting stations. Voters receive the voting slip for the minority self-government election irrespective of whether they are members of the minority community. The minority self-governments are elected according to the rules of the so-called “small-list system.” The number of candidates that voters may vote for may not exceed the number of members of the body. The names of candidates appear on the voting slip in alphabetical order. Under the provisions of the Act, there may be three or five minority self-government representatives, depending on the population of the given settlement. A voter may only vote for the candidates of one minority—

otherwise his/her voting slip will be considered invalid. Candidates receiving the greatest number of votes are elected as representatives. An election is valid if at least 50 voters—or 100 voters in settlements with more than 10,000 inhabitants and in the districts of Budapest—cast valid votes.

Local minority self-governments established in this manner are bodies of public law; they perform their tasks in co-operation with the local (settlement) self-governments. With the exception of minority settlement self-governments—which “run” whole settlements—the other two models have the same tasks and competencies under a complex system of rules. On the one hand, minority self-governments have their own sphere of competencies—use of own assets, economic management, defining organizational and operational rules, choice of name, deciding upon festivals of local minority, making scholarships and awards, setting up institutions, etc. On the other hand, a local (settlement) self-government may delegate competencies to a minority self-government—although it is under no obligation to do so. Further, a minority self-government may have competencies that it exercises in conjunction with the local (settlement) self-government. In such instances, it has rights of consent or regulation or the right to express an opinion. Legal oversight is the task of the local Office of Public Administration, while the State Audit Office may undertake audits of minority self-governments.

The local (settlement) self-governments must provide the infrastructure necessary for the operation of minority self-governments. This includes accommodation and the necessary technical equipment. Funding of operations is provided by the normative sums determined in the annual budgetary legislation. But there are several channels of funding. The state normative payment may be supplemented by the local (settlement) self-government. In addition, there are opportunities for minority self-governments to win grants from abroad, to obtain donations, or to benefit from

business ventures. All such funds, however, must be managed in accordance with the rules of budgetary management. The budget of a local minority self-government must be fully integrated into the budget of the local (settlement) local government. Still, the local (settlement) self-government has no rights of decision concerning such funds. Nevertheless economic management of the minority self-government can only be performed by the office of the self-government. The notary of the local (settlement) self-government is entitled to undertake financial commitments, make remittances, and to endorse transactions. The right of endorsement pertains to the existence of funds and the legality of the expenditure.

Separate mention should be made of the national self-governments, because the Minorities Act also provides for the integration of the local minority self-governments at national level, enabling each of the minorities to establish a national self-government. The national self-governments are elected by means of a system of minority electors. All local minority representatives or spokesmen—regardless of the method of their original election—are classified as minority electors.<sup>31</sup> If a settlement has no such persons, three citizens residing in the settlement and professing to belong to the minority may initiate the election of an elector. If, during the national elections, at least 50 per cent of electors are present throughout the election procedure,<sup>32</sup> then the assembly will be considered to be quorum. The representatives of the national self-government are then elected by the group of electors in accordance with the rules of a small-list vote. National minority self-governments may have between 13 and 53 members. One of their basic tasks is to represent the interests of local minority self-governments at national and county level. Nevertheless, there is no hierarchical relationship between the national and local levels, and they are not required to report to each other. In terms of their tasks and competencies, the national self-governments have almost the same rights as the local bodies. Thus, they may establish institutions to

promote the cultural autonomy of minorities and then co-ordinate their work. A national self-government may decide on the establishment of its institutions; on the organizational and operation rules of such institutions, their maintenance and operation; on the operation of a theatre; on the establishment and maintenance of a museum or a public collection with national scope; on the maintenance of a minority library; on founding and operating an artistic and academic institute and publishers; on maintaining secondary and higher educational institutions of national scope; on establishing and operating legal aid services; and on providing for other tasks placed among its competencies by the law. It expresses an opinion on draft legislation affecting the minority it represents, including the decrees of the county assemblies and the Budapest assembly; it may ask for information about public administrative bodies in issues affecting minority groups and may make proposals on their behalf or request measures in matters falling within their competence; it co-operates with the competent state bodies in the professional monitoring—for the minority it represents—of minority classes in primary, secondary and higher education. The national minority self-governments have the right of consent with regard to the compilation of basic teaching material for minority education, with the exception of higher education. A national self-government may issue calls for tender in its field of operation and may establish scholarships. An important difference is that although the State Audit Office may audit a national minority self-government, no state body is responsible for its legal oversight—a fact that has been pointed out by the minority ombudsman on several occasions.

We should briefly note that the regulations outlined above are sometimes difficult to implement. This has led some to question the effectiveness of the provisions of the Act. Particularly contentious are the anomalies surrounding the election of the minority self-governments, including the fact that all Hungarians of voting age have an active and passive right to vote in the elec-

tions to the minority bodies. In practice, therefore, mostly non-Roma people elect the Roma minority self-governments; and this contradicts the basic principle of self-governance. In extreme cases, non-Roma people elect other non-Roma as Roma minority self-government representatives. Another acute problem is that—unlike in the case of the other minorities—cultural autonomy, as formulated in the Act, is an insufficient means of resolving the grave challenges facing Roma. The primary needs of the Roma population are job creation, solutions to their dire social situation, and less ostracizing by society. These are the things they expect from their elected minority representatives. The latter, however, are unable to satisfy such expectations, as they lack the necessary legal authorization and financial resources. In this way, the provisions of the Act—which function relatively well in the case of the other minorities—come into conflict with the expectations of Roma people. Since the minority bodies are unable to respond to these challenges, many in the community question their necessity, and this diminishes their legitimacy. The principle of self-governance is undermined.

The most important piece of minority legislation to be adopted after the political changes of 1989–90 was the Minorities Act of 1993. Adopted with a parliamentary majority of 96 per cent, the Act established the institutional framework and served as a foundation for further progress. It was an important step forward, because, for the first time in Hungary, Roma were legally recognized as a minority in line with international requirements.

Additional important legislation affecting the situation of Roma in Hungary was subsequently adopted. For instance, several amendments were made to the Minorities Act. In such amendments, the national and local minority self-governments received information about opportunities relating to the foundation and maintenance of public educational institutions. Later on, sections of the anti-discrimination legislation were included in the Act. A particularly important piece of legislation for Roma was Act LIX of 1993 on a Parliamentary Commissioner for National and Ethnic

Minority Rights. The task of the minority ombudsman as laid down in the Constitution is to investigate, or have investigated, any irregularities concerning constitutional rights which come to his attention, and to initiate general or individual measures in order to remedy them. Of similar significance is the 1996 amendment to the Criminal Code (Act IV of 1978), which introduced the crime of “violence against a member of a national, ethnic, racial or religious group” (Section 174/B). Also to be noted is the—frequently amended—regulation concerning “incitement against the community” (Section 269).

Government Decree No. 1121/1995 (XII.7.) established the Public Foundation for Roma in Hungary, with the aim of reducing inequalities.

A particularly noteworthy event was the adoption of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. Various parties, including the European Union, had been calling for such anti-discrimination legislation. In 2001, the Minister of Justice established the Interdepartmental Committee on Anti-Discrimination with the task of reviewing the whole body of Hungarian law. A professional strategy for a bill on equal treatment and equal opportunities was completed in late 2002 after the change of government. The strategy included the following major elements:

- Distinctions made on the basis of race, color of skin, language, disability, religion, opinion, gender, sexual orientation, age, descent and financial situation, as well as harassment, would qualify as discrimination, in both direct and indirect cases.
- The alleged perpetrator would have to prove that correct procedures had been followed; in other words, the burden of proof would be reversed.
- The scope of the legislation would not cover private legal relationships, but it would extend not just to public and self-

government bodies but also to “public private legal relationships”—when public registration would establish legal capacity.

- Appropriate damages would serve as a sanction against discrimination and in cases where a person suffered detriment because s/he requested legal redress.

- In order to implement the ban on discrimination, a five-person “equal treatment committee” would be established. The head of state would appoint members, and the committee would be entitled to initiate inquiries and legal actions.

The much-awaited legislation came into force at the beginning of 2004; it was constructed around the principles outlined above. The office foreseen by the Act as the body responsible for investigating violations of the law and for conducting the necessary procedures, was not established immediately established. Since this institution began its work only in early 2005, we are unable to report on its findings concerning the implementation of the legislation.

### **The Establishment and Restructuring of Institutions Events in Government and in Society**

A new institution with national scope was established as early as 1990: the Office for National and Ethnic Minorities (ONEM). Its primary task was to prepare the minority policy decisions of the government in power and to lay the theoretical foundation for a coordinated minority policy. A further task was the on-going monitoring of the situation of the minorities, to draw up analyses, and to maintain contact with representatives of the minorities. From the mid-1990s, it played a major role in the elaboration of short- and medium-term programs addressing the Roma population. A universally welcomed development was the appointment, in 1998, of a

deputy chairman responsible for coordinating Roma affairs within the Office. From 1998, supervision of the work of ONEM was transferred from the Prime Minister's Office to the Ministry of Justice. Although everyone considered its overall activities necessary, ONEM's potential was severely limited between 1998 and 2002 by its position within the governmental structure and public administration. Following the change of government in 2002, Roma affairs were placed once again under the direct supervision of the Prime Minister's Office. A political state secretariat and associated Office for Roma Affairs were established. However, the set-up did not last long: first, Roma affairs were placed under the direction of the Minister without Portfolio for Equal Opportunities and then, somewhat later, a department was established within the new Ministry for Youth, Family, Social Affairs and Equal Opportunities.

### **The Medium-Term Program**

Since 1995 the most important elements of government policy have constituted so-called "medium-term programs." Government Decree No. 1120/1995 (XII.7.) was the first major government measure to seek specifically to resolve the growing problems of Roma. The first step in the process was the establishment of the Coordination Council for Roma Affairs, whose task was to coordinate the work of the ministries and national bodies with a view to addressing the problems of Roma and promoting their social integration. Its declared tasks included the elaboration of a medium- and long-term program and the need to reduce inequalities. Related measures were formulated in Government Resolution No. 1125/1995 (XII.12.), which addressed the most urgent tasks relating to the situation of Roma. Recognizing the urgency of governmental measures, the Resolution stipulated that the ministries should elaborate action programs in certain areas.

The first medium-term program [Government Resolution No.

1093/1997 (VII.29.)) was based upon the resolutions of 1995. The program attempted to assess and define, in a comprehensive manner, the tasks necessary for the social integration of Roma. The first part of the program contained the measures to be implemented in 1997 and 1998. In the *field of education and culture*, the program identified the need to develop further and rationalize the school fee system and child welfare system, to prevent segregation in education, to develop regional programs for talented children (e.g. Gandhi Grammar School and Students' Hostel), to expand the network, and to establish students' hostels for talented children. In the *field of employment*, the program's stated aim was to eradicate isolated or segregated Roma settlements, to develop employment programs and further develop existing programs, to integrate Roma students in the vocational training system, and to implement agricultural and stock-breeding programs. In the *social field*, the program prescribed the establishment of a force-majeur crisis management fund. In the *field of regional programs*, it proposed the realization of complex crisis management programs in settlements with relatively high percentages of multiply disadvantaged groups, including Roma. As regards the *anti-discrimination programs*, the program recommended an evaluation of the possible necessity of additional legislation and it underlined the importance of integrating knowledge of Roma into police training programs. In the *field of communication*, the program identified the necessity of PR work in connection with the development of the living circumstances of Roma. In the second part of the package of measures, the Resolution set out guidelines for tasks to be undertaken later on. Thus, it mentions the promotion of higher education among Roma students, the necessity of cultural institutions, the role of minority self-governments in defeating unemployment, an extension of the network of clinics as a means of improving the health of Roma, support for legal aid services as a means of managing conflicts, and the need to develop a realistic image of Roma in the public media.

In 1998, the new government considered it necessary to redraft

the medium-term program. The contents of Government Resolution No. 1047/1999 (V.5.) adhere in principle to the goals formulated in 1997, but prioritize tasks in the field of education and culture. Thus, in the *field of education*, the stated aim was to develop the content of education at primary school level (regular pre-school attendance and a reduction in truancy) and to reduce the dropout rate in secondary and higher education (by establishing students' hostels and awarding scholarships). Concerning *cultural aspects*, the aim was to develop the system of cultural institutions linked with group formation, to offer further training to professionals, to produce professional material. Meanwhile in the *field of employment*, the objective was to assist the long-term and young unemployed, to organize public works and public benefit programs, and to elaborate a social land program. Concerning the *anti-discrimination programs*, the requirement was to ensure the application of the laws in force, while the *communication strategy* sought to explain to majority society why programs for Roma were needed.

In order to implement the medium-term program successfully, the new government also considered it necessary to alter the management body. Thus, in Government Resolution No. 1048/1999 (V.5.), the Co-ordination Council for Roma Affairs was abolished and replaced by the Interdepartmental Committee on Roma Affairs. Positive changes were as follows: the new forum could establish sub-committees; Roma civil society organizations were to be invited to take part—with the right of consultation—in committee meetings (to be held at least four times a year); both the Parliamentary Commissioner for National and Ethnic Minority Rights and the chairs of the Public Foundation for Roma in Hungary and the Gandhi Public Foundation would be entitled to attend committee meetings.

In recent years a long-term Roma strategy was also elaborated. However, it is difficult to know whether it still exists and whether or not a government body or NGO is working on it. It is

still mentioned occasionally—for instance, most recently as part of the “Roma Decade” program initiated by György Soros and supported by the World Bank. At the time of writing, however, little is known of this latter program. Moreover, the strategy appears subject to constant change and is therefore difficult to define.

### **Government Activities in Practice**

Few of the fine objectives have actually been accomplished—in a manner perceptible to the public. Nevertheless, there is no denying that the latter part of the government term between 1998 and 2002 saw the construction of the Gandhi Grammar School in Pécs, a minority institution belonging to Roma in Hungary. Under a framework agreement signed with the Gandhi Public Foundation in December 2000, the Gandhi Grammar School investment was funded by the central budget. The project was concluded on schedule and was inaugurated in April 2002. This was a particularly significant event, since the school was—and remains—the only Roma minority grammar school in Europe.

Other areas of emphasis during the government term were scholarships for Roma students and financial support for action against discrimination. There were reports of substantial sums in both areas. A brief review of the ONEM data reveals the following:

In the academic year 2001–2002, scholarships were awarded to 12,777 Roma students (7027 upper primary students, 4505 secondary students, and 1217 college and university students, as well as 28 persons studying abroad).

Financial support awarded in the first half-year of the academic year 2002–2003 amounted to HUF 499,190,000. This enabled scholarships to be awarded to 18,911 Roma students (9996 primary school students, 7103 secondary students, 1748 students in higher education, and 64 persons studying abroad).

Nevertheless, the census data of 2001 indicate 81,099 Roma

primary students, 13,035 Roma secondary students, and 188 Roma college and university students. It is thought that just 0.3 per cent of Roma are in the process of obtaining, or have already obtained, a college or university degree. The contradiction in the figures is certainly worth noting; it would seem that the system of scholarships has failed to achieve the desired effect. There are three possible explanations for this: non-Roma students have been awarded the grants; Roma studying at college or university inevitably lose their identity; or some other explanation.

On 15 October 2004 the Ministry of Justice, in conjunction with the National Roma Self-Government and the Office for National and Ethnic Minorities, established the Anti-Discrimination Roma Customer Service Network. The Ministry of Justice uses its own budgetary appropriation to fund the operation of the Network and to pay for the further training of lawyers working for the Network. Legal aid services were commenced within the Network at 24 sites and with the participation of 22 lawyers. The aim of the Network is to develop legal aid services specifically for cases in which clients suffer legal grievances owing to their Roma descent. The lawyers cooperating in the Network have been asked to provide legal advice to clients, to initiate lawsuits in anti-discrimination matters, and to represent clients at courts of law. The services are offered free of charge.

In addition to its immediate governmental role, the Office for National and Ethnic Minorities has also supported, in conjunction with the Public Foundation for Roma in Hungary, the work of the civil legal aid offices and the activities of organizations and institutions involved in conflict prevention and conflict management. In both 2001 and 2002, the Office provided sums of HUF 20 million for the support of civil institutions engaged in such work. Based on the applications received, grants were awarded to 21 offices in 2001 and 29 offices in 2002. This included a grant of HUF 1 million to the interactive legal aid services of Radio C, a Budapest

radio station broadcasting a weekly legal advice show, with the assistance of a specially chosen lawyer.

In connection with the medium-term program, the Public Foundation for Roma in Hungary announced a special allocation of HUF 25 million annually for the operation of the Roma Legal Aid Offices. Given the large number of subsequent applications, the amount available was increased in both years. In 2002, out of 74 applicants, 30 organizations received support worth in total HUF 37.4 million. The sum of available funds was further increased by the second sub-project of the Phare Roma Integration Program initiated by the Office for National and Ethnic Minorities. The sub-project consisted of two main parts. The aim of the first part was to develop the Roma legal aid offices, while the second part comprised support for anti-discrimination training sessions that were planned for Hungary's seven regions. A call for tenders relating to the development of the legal aid offices was announced in July 2001. Support was then granted to eleven existing and four new offices. Office development projects worth HUF 53 million were begun under the program. In 2002, HUF 3 million was awarded to existing offices while the new offices received office equipment support worth HUF 5 million.

Prior to the elections, a co-operation agreement was signed between Prime Minister Viktor Orbán and Flórián Farkas, chairman of Lungo Drom and of the National Roma Self-Government. The two men foresaw the establishment of a Roma Integration Office, whose work would have been assessed every six months at a cabinet meeting. The change of government meant that this plan never came to fruition.

The year 2002 saw significant changes in Roma politics and in the general political situation. The spring election campaign included some debate about the Roma issue. Politicians on both sides of the political divide claimed Roma descent. Owing to how they were placed on the parties' candidate lists, there were four cer-

tain winners at the elections. Thus, Roma were once again elected as members of parliament—as representative of the major national parties. The increasing vitality of Roma political life is demonstrated by the fact that in the autumn of 2002, Roma minority self-governments were elected in 998 municipalities. Roma mayors were elected in four villages, and there were 545 Roma local (settlement) government representatives. These figures compare favorably with the 1998 data, when about 3000 Roma representatives were elected to serve in 740 Roma minority self-governments.

In the light of these developments, a shift in Roma policy at government level was to be expected. An important factor in this was the appointment by the Prime Minister of an advisor of Roma descent to assist him in his work. On entering office in the summer of 2002, the government thus defined as a priority task the promotion of equal opportunities for Roma within society. A separate subchapter of the government's program (rather oddly placed under "Social Policy") was devoted to measures assisting the Roma—after a short appraisal of the situation faced by the country:<sup>33</sup>

C. Tasks associated with the social and political integration of Roma in Hungary

1. We consider the social deprivation of our fellow Roma citizens to be the result of a wide-ranging and dramatic social process rather than an ethnic problem. An improvement in the situation of Roma and integrating them into society as fully as possible will benefit all of us. For this reason, we are initiating a wide-ranging anti-poverty program in order to prevent a further deterioration in their social situation and to improve equal opportunities.
2. The government is to restore the governmental co-ordination status of Roma policy. It will provide budgetary resources and forms of co-operation offering the broadest possible coalition of social forces, with a view to accomplishing the tasks of the program with the active involve-

ment of those affected.

3. We shall submit and adopt anti-discrimination legislation. We shall place punitive measures on the discrimination causing and accelerating the social exclusion of Roma by introducing special sanctions. We shall examine which means are the most effective in combating incitement to hatred.
4. We shall restore or, indeed, establish equality in communication between majority society and Roma. We shall give emphasis to the quality training of mediators and we shall support an increase in the number of Roma professionals by offering scholarships and by other means.
6. We shall draft a long-term program for eradicating isolated and segregated Roma settlements, for establishing humane living conditions, and for strengthening residential mobility.
7. Using budgetary resources, we shall support human rights organizations that seek to combat discrimination, we shall assist the development of Roma civil legal aid organization as well as their work. We seek to increase the role of civil initiatives in preventing and managing local conflicts and in developing and implementing programs promoting integration.
8. Preserving the ethnic and cultural identity of Roma is a task to be realized in conjunction with the process of social integration. In order to protect the language and culture of Roma, we shall provide the same guarantees to Roma that are currently enjoyed by the other minorities.
9. The government's comprehensive anti-poverty program is based on developing education and training and on improving the equal opportunities of children. We wish to reduce the disadvantages of poverty from pre-school education onwards. We shall enable the employment of assistant Roma staff and kindergarten teachers and the development

of relationships of trust between Roma families and kindergartens. We shall take measures to ensure that a larger percentage of disadvantaged children receive pre-school education for a longer period of time—if necessary within the framework of special programs.

10. The government shall give special attention in schools to the situation of Roma children, to their inclusion in schools, and to ending segregation. We shall review the system of transferring schoolchildren and prevent Roma children's registration as private [home] students from leading to their exclusion from the school system.
11. We regard the right of Roma to independent education towards strengthening their culture as a constitutional right. We shall encourage and support classes teaching Roma culture and the operation of such schools, but this may not become grounds for segregation in education.
12. Based on cooperation between teachers and family assistance services, we shall enhance the value Roma families attach to school qualifications. We shall give special attention to the vocational training of children of poorer families and to improving their participation rates in higher education. We shall launch scholarship and apprenticeship programs for talented Roma young people, drawn up in cooperation with civil organizations and businesses offering sponsorships.
13. We shall launch programs specifically targeting Roma in adult education and adult training. Our goal is to improve the education and training of Roma and to improve their chances of finding employment. We shall launch development programs that also take into account regional differences. In doing so, we shall also make use of the existing educational and cultural infrastructure.
14. We shall give special attention to assisting unemployed

Roma to return to work. We shall prescribe the appointment of special employment organizers for Roma in labor centers.

15. We shall support the traditional employment sectors of Roma where these are efficient in economic and environmental terms. We shall assist local governments in their initiatives promoting the leasing of land and agricultural production. We shall give special attention to ensuring that Roma have access to jobs in services, tourism and social services, rather than merely low prestige jobs.

An extract from the chapter on education should also be noted: 4.8. Education is one of the keys to improving the situation of the Roma population and to reducing prejudice against Roma. For this reason:

- we shall ensure a place at kindergarten for each Roma child;
- we wish to offer targeted support, professional assistance and a supplementary teachers' allowance to those schools and teachers that are effective in implementing the integrated education of Roma students. At the same time, we shall also support schools for Roma children established by means of civil initiatives;
- we shall create a scholarship fund in order to maximize the number of teachers with Roma identity (or a commitment to the community) trained at the teacher training colleges, and also in order to ensure that teachers at all levels are trained for the special tasks of educating Roma children.

As a first step in realizing the goals formulated in the government program, significant organizational changes were made. Thus, Roma affairs were placed once again under the immediate direction of the Prime Minister's Office. A political state secretariat and an associated Office for Roma Affairs were set up. For the

first time in Hungarian political life, persons of Roma descent were appointed as political state secretary and as head of office. Roma policy issues of strategic importance were placed under their supervision and management, having been removed from the Office for National and Ethnic Minorities. Also linked with the government's announced program was the launching of a plan to appoint Roma civil servants in each of the government ministries—who would then be responsible for managing Roma policy matters in the individual ministries. Several ministries have appointed such members of staff; they are working as desk officers and ministerial commissioners. A particularly important appointment was the ministerial commissioner at the Ministry of Education. He and his colleagues regard the eradication of segregation in schools as their main task. Legislation introducing an “integration normative payment” was recently passed, and the long-term aim is to end the practice of segregation in schools.

As of 2002 the main areas of activity were returned to the Prime Minister's Office. The State Secretariat for Roma Policy and the Office for Roma Affairs—both established in 2002—began work in the following areas:

- In Government Resolution No. 1186/2002 (XI.5), the government defined the new institutional framework for the social integration of Roma, as well as the guidelines enabling the practical fulfillment of the goals outlined in the government program.
- Assisting in drawing up proposals for Roma involvement in the National Development Plan (associated with Hungary's accession to the European Union) and its operative programs.
- The Council for Roma Affairs was established under the direction of the Prime Minister. The Council is an independent consultative body comprising distinguished experts of both Roma and non-Roma descent. The purpose of the body is to express opinions on strategic issues and to formulate guide-

lines.

- The State Secretariat for Roma Policy began a complete revision of the attitudes and professional approach embodied in Government Resolution No. 1047/1999 (V.5.). In the course of this work, a new government program began to take shape with a view to realizing the goals formulated in the election manifesto. Targeting Roma but not excluding others, this package of measures was the first element of the Government's effort to establish equal opportunities for all socially marginalized groups. Plans foresaw a detailed, project-based government program, including an action plan. The program would have been structured around the following main priorities:

*Legal equality*—this area included the elaboration of anti-discrimination legislation, a revision of the Minorities Act, modernization of the electoral system and procedures, further training for civil servants in line with EU standards, and establishing a legal framework for more effective action against racially motivated crimes.

*Improving the quality of life*—this area included the realization of model programs serving as examples for the on-going reintegration of marginalized regions, the strengthening of health and social services and new approaches to their operation, the eradication of slums, and assistance for businesses providing people with livelihoods.

*Education*—his area included measures to overcome the disadvantages stemming from the education system—from pre-school to university graduation. Measures such as greater access to pre-school education, providing the background conditions for educational study, multicultural education, reintegration of students who prematurely drop out of the education system, and ending the practice of segregation in schools.

*Employment*—this area included job creation in those skilled trades that have marketing potential in the long term, and providing temporary employment to those who have dropped out of the labor market.

*Identity*—this area included the establishment of a Roma cultural fund, support for community halls, extending international cultural relations.

*Social communication*—this area included efforts to raise the tolerance level of majority society, support for television and radio shows on Roma themes, and underlining the importance of IT skills.

Insofar as these plans have been made public, an integral part of this government program would have been an independent and multisectoral monitoring system, designed to monitor and evaluate the use of funds and the professional realization of the program. In addition, the monitoring system would have made proposals concerning any necessary changes.

The initial momentum, however, was soon lost. Since late 2003 the lack of any real strategy or political will has resulted in stagnation and “walking on the same spot.” Ambitious plans to improve the living conditions of Roma were also formulated by the government program while, in 2002, the Office for Roma Affairs promised fundamental changes in approach. But such illusions were quickly dispelled. For the first time, four Roma representatives were present in Parliament, and it was thought that they would finally draw attention to the difficult and desperate situation of Roma. People even believed that they would dispense with party interests and take a united stand in politics for the sake of Roma. But this is not what happened.

László Teleki was given the opportunity, as a member of the government, to improve the living conditions of Roma. His powers as state secretary were always somewhat uncertain, since his task

was to develop and to define the government's Roma policy by directing and influencing the ministerial commissioners and Roma desk officers in the various ministries. It soon became apparent that in practice this was a difficult assignment. The process of appointments slowed down considerably and when appointments were made, the ministerial commissioners and desk officers were appointed as civil servants within the various ministries. As a result, they were subject to the management of those ministries. The state secretary thus had no right to interfere in supervising their work or in determining their powers. Despite their best intentions, the young Roma appointed to these posts proved mostly incapable of the tasks. They had little experience in public administration and, as beginners, found themselves at the bottom of the apparatus. Without the necessary powers, they became mere passive observers rather than active formulators of Roma programs in the various ministries. An exception was Viktória Bernáthné Mohácsi, who was appointed by the lesser coalition partner as ministerial commissioner at the Ministry of Education. She became the "focus" of Roma policy ideas of the Alliance of Free Democrats. Indeed, Bernáthné Mohácsi received the party's support to implement a program of integrated education. It is too early to speak of the results of what were, without doubt, positive intentions, but there has already been some controversy among analysts and other interested parties concerning the underlying principles and practical implementation of the program.

The intentions that led to the establishment of the Council for Roma Affairs suffered a similar fate. Comprising distinguished Roma and non-Roma experts, the Council was originally intended to be a consultative body. Its members, however, would have dearly liked to take part in the elaboration of Roma policy. Thus the Council gradually became a mere formality, and today it is impossible to know whether it still exists.

The greatest hopes rested on the Office for Roma Affairs.

However, the administration and management of the body, whose original purpose was strategic planning, were placed on shaky foundations. It was a part of the Prime Minister's Office led by Elemér Kiss, but its direct management was the responsibility of Judit Berki in her position as deputy state secretary. And László Teleki was somehow involved, too. There was never any clarification of these relationships. As a result, there were frequent debacles.

A typical example was the redrafting of the medium-term program. Following a political decision mediated by the state secretary, staff and experts of the Office reviewed the issue and concluded that a program based on a completely new approach was needed. As noted above, in the course of strategic planning, a program based on a new approach had been developed whose implementation promised qualitative improvements in the lives of Roma. Nevertheless, during the negotiations between the various ministries, it became clear that the program could not be implemented. In order to fulfill such comprehensive programs, there was a need for a complete concentration of tasks and resources—for which the political will was clearly lacking. Meanwhile, the ministries wished to continue the earlier practice of deciding for themselves which programs to realize for Roma and how much of their budgets to spend on such programs. This simple practice, whose lack of efficiency has been demonstrated for a decade now by researchers and others, continued to receive political support. Nobody had the will to bring about real changes in the living circumstances of Roma by pressing for concerted and targeted measures. Indeed, the increasingly dominant view was that Roma no longer constituted an issue. Such political attitudes, increasingly accepted at the level of government, in effect condemned any institution or program specifically targeting Roma, because such were considered to be a form of segregation. Such programs were replaced by the policy of equal opportunities, which has no special Roma programs, but considers them to be an issue in need of a solution. This political reversal led

to the complete collapse of the Office for Roma Affairs. It was unable to realize its strategic programs, the public administration “made mincemeat of it,” and most of its staff members began spending their time on somewhat irrelevant issues, such as giving opinions on changes in the highway code and on an animal rights bill.

In the subsequent period, high-visibility issues having little practical effect on the lives of most Roma began to dominate the government’s Roma policy. Eradicating slums popped up as an issue, although this had been going nowhere ever since the political changes of 1989–90. Committees were formed and then disbanded. As during the previous government’s term, the real successes were made by distributing resources from the intervention fund and other lesser funds and by offering scholarships—always a popular measure.

The situation gradually became even worse, owing to the constant changes and the resulting gridlock. Péter Kiss replaced Elemér Kiss as head of the Prime Minister’s Office. In mid-year, Katalin Lévai was appointed as Minister without Portfolio for Equal Opportunities. Each time people were anxious to find out the strategy of the new boss and to know whether or not the existing programs could be implemented or needed revision. The biggest change followed Lévai’s appointment. Her policies represented the final victory of a strategy that denies the existence of the Roma question. According to the political ideas underlying the strategy, programs for Roma merely add to their isolation and segregation. Social issues are the primary concern—and these issues need to be addressed as part of general social policy. What “remains” can be “managed” by a policy of equal opportunities that targets women, people with disabilities, and Roma. Many people consider such ideas to be fundamentally mistaken. They mould a “community” out of diverse groups of people with different problems requiring different solutions. The policy was doomed to failure. Moreover, its effect was to create divisions among the various groups, who were

already severely disadvantaged. When it came to allocating the budget, they were hostile to each other.

A new concept for the Minorities Act also fared badly. Legislators had been encouraged to accelerate reform by the debacles in the minority elections and in the work of the minority self-governments. However, the minority register and the issue of active and passive voting rights opened a whole series of long debates. New legislation was drafted, but the Parliament failed to adopt it. Even so, the tenth anniversary of the somewhat discredited Minorities Act—the cause of so many debacles—was still celebrated by the various factions.

By the end of 2003 the fate of the Office for Roma Affairs, the focus of so many hopes, had been sealed. After the appointment of Katalin Lévai, people had waited anxiously to hear whether the Office for Roma Affairs would remain a part of the Prime Minister's Office or whether it would be detached from it and merged with other areas already under Lévai's direction—thereby establishing a ministry in all but name. This latter solution was the one eventually chosen. Thus, the Government Office for Equal Opportunities came into being, while Roma affairs were relegated to the level of a directorate within this new body. Subsequent events prove that this action was an error similar in magnitude to the previous government's mistaken decision to place Roma affairs under the supervision of the Ministry of Justice. Still, it did fit in marvelously with the strategy of denying the existence of "a Roma question." In terms of public law, Teleki was left in an even greater vacuum. Meanwhile, Berki, not wishing to assist in the general demise, resigned from her post. Roma affairs, which had begun with such confidence after the change of government, were left without a voice.

In the most recent development, following the departure of Katalin Lévai and a further restructuring of the government, Roma affairs became a department of the newly established Ministry of

Youth, Family and Social Affairs and Equal Opportunities. It is to be feared that as time passes, Roma affairs will become merely an area of social policy. While many Roma do live in difficult financial circumstances, it is nevertheless a mistake to reduce the issue to this one area.

### **The Intrigues Surrounding the National Roma Self-Government Epitomize the Many Years of Political Paralysis**

One of the first political events of January 2003 was the electors' assembly of the National Roma Self-Government, which ended in scandal. But it was not a Roma scandal—as many people had hoped—but the result of the explosive situation caused by the legal regulations governing the minority self-governments and the electoral system. The fact that these problems surfaced for the first time since the introduction of the system was due to the existence of a real political contest. The election of the members of the National Roma Self-Government signaled the arrival of a political force capable of replacing the leaders who had been in power for two terms. Quite naturally, those who had been the “rulers” were rather unhappy about this. This would have been of minor significance if the legal provisions had been clear and transparent. For in accordance with the rules, those entitled to vote—more than 4000 people!—were assembled in one place and an attempt was made to keep them there until the conclusion of the elections—almost one whole day. Most of the electors were from outside Budapest and had set out for the meeting at dawn. After a while they became rather tired, and the bandying of words soon fell to the level of the national elections of 2002. And when the ruling coalition realized that victory was impossible, its members left the election hall. A vote was held nevertheless, and the National Election Committee announced the victory of the members of the Democratic Roma

Coalition. The Lungo Drom coalition, headed by Flórián Farkas, submitted an official complaint. There seemed to be little likelihood of its acceptance, given that the procedures employed—based on customary law rather than any legal statute—were the same as those applied during two previous elections. Nevertheless, the Supreme Court sustained the objection and ordered a repeat election. Their main reasoning was that at the time of final vote there had been no quorum, since fewer than 50 per cent of electors were present. However, according to the legal provisions, the 50 per cent attendance rate applies merely to the beginning of the election assembly rather than to the final vote. At least, this had been the previous interpretation of both the National Election Committee and the Supreme Court. The reinterpretation of the regulations—which meant, in effect, that the election of the two previous bodies had also been illegal—necessitated a repeat election at the beginning of March. It seemed that the deficient regulations, coupled with changing legal interpretations, were an extremely strong weapon in the hands of the losing side: by walking out of the assembly, they could invalidate an election. People feared that the formation of the National Roma Self-Government would thus be prevented. The fact that the interested parties approached various fora and requested the delegation of the ministerial commissioner or government commissioner as well as the presence of international observers, serves to demonstrate the perceived lack of legal security. In the end, members of the Democratic Roma Coalition won the repeat election with surprising ease and a large majority. Just two of the “ruling” members of Lungo Drom were re-elected to the national body.

The long series of scandals resulting from the lack of legal security were far from over. The topic remained in the focus of public interest for most of the year, thus relegating other Roma issues into the background. The “clash” continued—this time between members of the elected coalition—from the inaugural ses-

sion of the National Roma Self-Government onwards. Since many of the representatives aspired to the post of chairman, the candidates constantly questioned each other's actions. This is because the Minorities Act fails to clearly define by whom and when the National Roma Self-Government may be convened. At the inaugural session—which was still held despite the events of the previous months—delegates came to blows in front of the cameras. They then elected Aladár Horváth, the radical Roma politician, as chairman of the self-government. One group within the coalition then staged a walkout. The election of Horváth both surprised delegates and caused some consternation, for he had earlier denounced the system of minority self-governments as being detrimental, a form of “institutionalized segregation,” and therefore something that should be abolished. But there was no time to find out whether Horváth really would take things in this direction. After three months in office, during which Horváth seemed to focus on evaluating and consolidating the situation of the National Roma Self-Government, he was defeated in a vote of no confidence initiated by a dissatisfied deputy-chairman and representatives of the organizations that had walked out of the inaugural session. Orbán Kolompár replaced Horváth. Instead of real progress, the following months saw a whole series of legal actions and legal interpretations, followed by Kolompár's efforts at consolidation.

Recent events at the National Roma Self-Government could be summarized as part of a natural process. What happened was simply that the old leadership was defeated, then the new leader Aladár Horváth, supported by Roma and non-Roma intellectuals in Budapest, was forced to give way to the successful businessman from the provinces, Orbán Kolompár, who enjoyed the support of Roma politicians and leaders in rural Hungary. The real loss is that all of this took place as part of a whole series of scandals that were damaging to both Roma policy-making and the prestige of the Roma community in Hungary. Moreover, in our view, the deficien-

cies of Hungary's Minorities Act are the fundamental cause of the problems, a fact that has been evident for some time now. Changes in the minority self-government system and the reintegration of Roma into Hungarian society can only be achieved at the level of "high politics" through the joint effort of Hungary's national political actors. In this respect, the "achievements" of the past 15 years do not bode well for the future.

## Notes

1. Article 1(3) of the Charter of the United Nations. Proclaimed in Law-Decree No. 18 of 1974.
2. Law-Decree No. 9 of 1976 on the proclamation of the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966.
3. Cited in Hanna Bokorné Szegő, *Nemzetközi Jog* [International Law] (Budapest, 1997), p. 225.
4. András Sajó, “Néhány jogvédelmi kérdés a cigánység diszkriminációjával kapcsolatban” [Several Issues of Legal Protection Relating to the Discrimination of Roma], in Imre Vajda, ed., *Periférián. Roma szociológiai tanulmányok. Kérdések és válaszok* [At the Periphery. Sociological Studies on the Roma. Questions and Answers] (Budapest, 1997), p. 489.
5. “Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.” Article 7 of the Treaty of Rome establishing the European Economic Community.
6. For instance, Article 48(2) and Article 119.
7. Generis, C-368/96, 3 December 1998, paragraph 61. Cited in Rita Petró and Zsófia Újszászy, “A romák elleni diszkrimináció elleni küzdelem az Európa Tanács és az Európai Unió keretei között” [The Fight against Anti-Roma Discrimination within the Council of Europe and European Union Framework], in *Tanulmányok “A cigánység társadalmi helyzetének javítását célzó hosszú távú stratégia alapkérdéseiről”* [Studies on “The Fundamental Questions of the Long-Distance Strategy to Improvement the Social Status of the Roma]. Material of a conference organized by the Office for National and Ethnic Minorities and the Council of Europe, 11 December 1998, p. 128.
8. Hill, C-243/95, 17 June 1998, paragraph 22.
9. Hill, C-243/95, 17 June 1998, paragraph 24.
10. Article 14 of the European Convention on Human Rights and Fundamental Freedoms.
11. András Grád, *Kézikönyv a strasbourgi emberi jogi ítélezésről* [Manual on Strasbourg’s Human Rights Judgments], (Budapest, 1998), p. 329.
12. The second prerequisite for accession was ratification of the Frame-

- work Convention for the Protection of National Minorities. Hungary fulfilled this condition by means of Parliamentary Resolution No. 81/1995 (VII. 6.) and through the subsequent adoption of Act XXXIV of 1999 (on the Proclamation of the Council of Europe's Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995).
13. Article F(1) of the Treaty of Rome establishing the European Economic Community.
  14. Commission Opinion on Hungary's Application for Membership of the European Union (Agenda 2000), 1997.
  15. This was declared unconstitutional by the Constitutional Court as early as 1991.
  16. European Commission Directorate-General Enlargement: The Situation of the Roma Minority in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia: An Overview. PL D(2001), Brussels, 28 February 2001.
  17. For more details, see Petró and Újzászy, "A romák elleni diszkrimináció elleni küzdelem...", p. 136.
  18. See European Commission against Racism and Intolerance: Second Report on Hungary. CRI (2000) 5, Strasbourg, 21 March 2000.
  19. Constitution of the Republic of Hungary, Act XX of 1949.
  20. *Ibid.*
  21. Sándor Palásti, "A diszkrimináció természete. A kisebbségek jogainak védelme a magyar jogrendszerben" [The Nature of Discrimination. Protection of the Rights of Minorities under Hungarian Law], in *Társadalmi Szemle*, 1998 vol. 5, p. 67. I made use of Sándor Palásti's logical insights in the analysis that follows.
  22. This is once again a problem of the application of rights, as detailed legislation governing the parliamentary representation of minorities is still lacking, and the Constitutional Court has already, on two occasions, established a constitutional violation by default. Since the political parties continue to negotiate on this matter, it increasingly seems that parliamentary representation of the minorities is something to be granted by the majority rather than a fundamental right enshrined in the Constitution.
  23. For further details, see Palásti, "A diszkrimináció természete...", p. 67.
  24. Cf. Ferenc Eiler, *A kisebbségi önkormányzati rendszer és tapasztalatai. Eredmények kérdőjelekkel* [The System and Functioning of the