



International Covenant on Civil and Political Rights

Distr.: General
16 November 2010

Original: English

Human Rights Committee

100th session

Geneva, 11-29 October 2010

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Hungary

1. The Committee considered the fifth periodic report submitted by Hungary (CCPR/C/HUN/5) at its 2754th and 2755th meetings (CCPR/C/SR.2754 and CCPR/C/SR.2755), held on 18 and 19 October 2010. At its 2768th meeting, held on 27 October 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Hungary and the information presented therein. The Committee notes the submission by the State party of the written replies. It expresses appreciation for the constructive dialogue with the delegation as well as the oral responses provided to the list of issues (CCPR/HUN/Q/5/Add.1). It observes that it would have been helpful if this oral information had been included in the report itself or in the written replies.

B. Positive aspects

3. The Committee welcomes the adoption of Government Decree No. 1021/2004 (III. 18) and the parliamentary resolution on the Decade of Roma Inclusion that defines a programme for the promotion of social integration of the Roma people; and

4. The Committee also welcomes the amendment to the Police Act XXXIV of 1994 by Act XC of 2007 to establish the Independent Law Enforcement Complaints Body, which is mandated to investigate complaints lodged against the Police.

5. The Committee commends the State party for ratifying the following instruments:

- (a) The Convention on the Reduction of Statelessness of 1961;

- (b) The Convention on the Rights of Persons with Disabilities of 2006;
- (c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; and
- (d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

C. Principal matters of concern and recommendations

6. The Committee is concerned at the high level of protection afforded by Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest, which prohibits the collection of disaggregated personal data of any kind. The Committee is concerned that this prohibition impedes it from effectively monitoring the implementation of the provisions of the Covenant. (arts. 2 and 17)

The State party should review the provisions of Act LXIII on the Protection of Personal Data and Public Access to Data of Public Interest to ensure that it is in line with the Covenant, particularly article 17, as expounded by the Committee in its general comment No. 16. The State party should ensure that the protection afforded to personal data should not hinder the legitimate collection of data that would facilitate the monitoring and evaluation of programmes that have a bearing on the implementation of the Covenant.

7. The Committee is concerned that the State party has not yet established a consolidated national institution with broad competence in the field of human rights in accordance with the Paris Principles (General Assembly resolution 48/134). (art. 2)

The State party should consider establishing a national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles (General Assembly resolution 48/134, annex).

8. While welcoming the establishment of the Equal Treatment Authority (ETA) under the Equal Treatment Act No. CXXV of 2003, and the fact that the State party is considering reviewing the legal status of ETA within the framework of the ongoing constitutional review process, the Committee is concerned at the inadequate human and material resource allocation to this body, considering the exponential increase in its workload since its establishment. The Committee is further concerned at the lack of security of tenure of the Office of the President of the Equal Treatment Authority following Government Decree No. 362/2004 (XII.26), which gives power to the Prime Minister to relieve the President of his duties without justification. (art. 2).

The State party should ensure that the financial and human resource allocation to the Equal Treatment Authority is adequate to enable it to effectively discharge its mandate. The State party should take all necessary steps to ensure the security of tenure of the Office of the President of the Equal Treatment Authority in order to guarantee its independence.

9. While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, including the formulation of appropriate legislation to punish such acts, it regrets the unclear definition of certain offences and the lack of data on the implementation of anti-terrorism legislation. (arts. 2)

The State party should ensure that the Penal Code not only defines terrorist crimes in terms of their purpose but also defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly. The

State party must refrain from adopting legislation that imposes undue restrictions on the exercise of rights under the Covenant. In this regard, the State party must compile data on the implementation of anti-terrorism legislation, and how it affects the enjoyment of rights under the Covenant.

10. The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 9) and notes that women continue to be underrepresented in the public and private spheres of life, notably in decision-making positions including in parliament, Government ministries and local government. (art. 3, 25 and 26).

The State party should adopt concrete measures to accelerate the full and equal participation of women at all levels in the public sphere of life, and to vigorously promote the participation of women in the private sector, including at senior management levels.

11. The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 10) and notes with regret the continuing reports of gender-based violence and sexual harassment in the State party. The Committee also regrets the lack of specific legislation proscribing domestic violence and spousal rape. (arts. 3 and 7).

The State party should adopt a comprehensive approach to preventing and addressing gender-based violence in all its forms and manifestations. In this regard, the State party should improve its research and data collection methods in order to establish the magnitude of the problem, its causes and consequences on women. The State party should also consider adopting specific legislation that prohibits domestic violence and spousal rape. The State party should ensure that cases of domestic violence and spousal rape are thoroughly investigated and that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and the victims adequately compensated.

12. The Committee is concerned at the lack of data on trafficking in persons despite reports of persistent trafficking of women and girls for sexual exploitation and domestic servitude. (art. 8).

The State party should investigate the root causes of trafficking and compile statistical data on this phenomenon which should be disaggregated by gender, age, ethnicity and country of origin. The State party should also compile detailed statistical data on the number of prosecutions, convictions and sanctions imposed on perpetrators of trafficking, and the measures taken for the protection of the human rights of victims.

13. The Committee recalls its previous concluding observations (CCPR/CO/74/HUN, para. 8) and expresses concern that “short-terms arrests” of up to 12 hours without charge remain possible, that the legal basis remains unclear and that the length of police detention (up to 72 hours) has not been revised by the State party. The Committee further notes that there are still lapses in the system to guarantee access to legal counsel, and that video recording of interrogations is only available if the suspect undertakes to pay for it, which greatly affects indigent suspects. (arts. 2, 9 and 14)

The Committee reiterates its previous concluding observations and recommends that the State party amend the provisions of the Criminal Procedure Act that permit detention for more than 48 hours. The State party should also review its practice on short-term arrests and legislation on pre-trial detention to ensure that these are in line with article 9 of the Covenant and that the domestic regulations on short-term arrests are sufficiently clear and have a clear legal basis. Furthermore, the State party should ensure access to legal counsel to all persons deprived of their

liberty, and provide free video-recording services so that indigent suspects are not deprived of their rights by virtue of their economic status.

14. While appreciating the establishment of the Independent Law Enforcement Complaints Body mandated to investigate violations committed by the Police, the Committee notes with regret the lack of an independent medical examination body to examine alleged victims of torture and other degrading punishment or treatment. The Committee further regrets the presence of law enforcement personnel during the conduct of medical examinations even when such presence is not requested by the examining medical personnel. The Committee also regrets the lack of investigations into allegations of torture and specific training for law enforcement personnel on the prohibition of torture and ill-treatment. (arts. 7 and 10).

The State party should consider establishing an independent medical examination body mandated to examine alleged victims of torture and guarantee respect for human dignity during the conduct of medical examinations. The State party should also ensure that law enforcement personnel receive training on the prevention of torture and ill-treatment by integrating the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in all training programmes for law enforcement officials. The State party should ensure that allegations of torture and ill-treatment are effectively investigated and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions.

15. The Committee is concerned that asylum seekers and refugees are detained in facilities with poor conditions, and, in this regard, that some of them are detained in prisons including the nine prisons that were closed down for failing to meet the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee regrets that the re-opening of these prison facilities was not preceded by any refurbishment. The Committee is further concerned at reports of unlawful expulsions of Somali and Afghan asylum seekers. (arts. 7, 10 and 13)

The State party should strengthen its efforts to improve the living conditions and treatment of asylum seekers and refugees and ensure that they are treated with human dignity. Asylum seekers and refugees should never be held in penal conditions. The State party should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection receive appropriate and fair treatment at all stages, and that decisions on expulsion, return or extradition are dealt with expeditiously and follow the due process of the law.

16. The Committee, while noting that the State party has adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners as part of its domestic law, regrets the continuing overcrowding in prisons, further exacerbated by the introduction of the “three strikes rule” which introduced mandatory life sentences into the Penal Code. The Committee further regrets that Grade 4 prisoners and prisoners in Special Regime Units serving lengthy sentences (HSR Unit) are subjected to excessive means of restraint. (arts. 7 and 10)

The State party should take concrete steps to improve the treatment of prisoners and conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners. In this regard, the State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences.

17. The Committee is concerned at the excessive delay in the conduct of criminal prosecutions following the protests in Budapest in September and October 2006. The

Committee is also concerned that out of the 202 criminal proceedings that were launched, only 2 have led to a conviction, and only 7 judgements have been handed down. (art. 14).

The State party should expedite the criminal proceedings arising from the Budapest protests by addressing the difficulties related to the procurement of evidence so that all accused persons are afforded a fair trial. The State party should also ensure that victims of the crimes perpetrated during the protests receive full and adequate compensation.

18. The Committee is concerned at the virulent and widespread anti-Roma statements by public figures, the media, and members of the disbanded Magyar Gárda. The Committee is also concerned at the persistent ill-treatment and racial profiling of the Roma by the Police. Furthermore, it is concerned at indications of rising anti-Semitism in the State party. The Committee is concerned at the Constitutional Court's restrictive interpretation of article 269 of the Penal Code on incitement to violence, which may be incompatible with the State party's obligations under article 20. (art. 20).

The State party should adopt specific measures to raise awareness in order to promote tolerance and diversity in society and ensure that judges, magistrates, prosecutors and all law enforcement officials are trained to be able to detect hate and racially motivated crimes. The State party should ensure that members or associates of the current or former Magyar Gárda are investigated, prosecuted, and if convicted, punished with appropriate sanctions. Furthermore, the State party should remove impediments to the adoption and implementation of legislation combating hate speech that complies with the Covenant.

19. The Committee is concerned that the evolution of the so-called "memory laws" in the State party risks criminalizing a wide range of views on the understanding of the post-World War II history of the State party. (arts. 19 and 20)

The State party should review its "memory laws" so as to ensure their compatibility with articles 19 and 20 of the Covenant.

20. While noting the State party's efforts in adopting a Strategy on Roma inclusion, the Committee is still concerned at widespread discrimination and exclusion of the Roma in various fields such as education, housing, health, and political participation. (arts. 2, 26 and 27)

The State party should step up its efforts to eradicate stereotypes and widespread abuse by, inter alia, increasing awareness-raising campaigns that promote tolerance and respect for diversity. The State party should also adopt measures to promote access to opportunities and services in all fields and at all levels through affirmative action in order to address past inequalities. In this regard, the State party should consider re-introducing the allocation of reserved seats to national and ethnic minorities in order to improve their participation in the conduct of public affairs.

21. The Committee is concerned at the administrative shortcomings of the minority election register, and the self-government system, which, inter alia, renders it obligatory for minorities to register their ethnic identity, and therefore deters those who do not wish their ethnic identity to be known, or who have multiple ethnic identities, from registering in particular elections. (arts. 2 and 25).

The State party should adopt measures to address the shortcomings of the minority election register, and the minority self-government system in general, in order to ensure that it does not deter and disenfranchise minorities from participating in minority self-government elections.

22. The Committee is concerned at the legal requirement provided by Act LXXVII of 1993 on the Rights of National and Ethnic Minorities which prescribes that only those groups of people who represent a numerical minority and have lived in the territory of the State party for at least one century will be considered a minority or ethnic group under the terms of this act. (arts. 26 and 27).

The State party should consider repealing the condition that a minority group should be able to demonstrate that it has lived in the territory of the State party for at least a century in order to be recognized as a national or ethnic minority group. The State party should ensure that the conditions for State recognition of minority groups are in line with the Covenant, particularly article 27 as expounded by general comment No. 23 of the Committee, so that nomadic and other groups that do not satisfy the requirement due to their lifestyle are not excluded from the full protection of the law.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the recommendations given in paragraphs 6, 15 and 18 above.

24. The Committee requests the State party, in its next periodic report, due to be submitted by 29 October 2014, to provide information on action taken to implement the remaining recommendations and on its compliance with the Covenant as a whole.