

Summary of the
report on the follow-up investigation of the Ombudsman for National and Ethnic
Minority Rights
on public employment, the practices of authorities dealing with minor offenses and the
education situation in Gyöngyöspata (Hungary)

Gyöngyöspata – a phenomenon with wider implications

Gyöngyöspata is an alarming example of “law and order” taken to extreme. The report on the incidents in Gyöngyöspata, issued in April 2011 by the Ombudsman, indicated that the events in the village have a wider meaning and significance. In a village with average crime statistics, an extremist political force took command, citing “Gypsy crime” as the reason, first in the form of groups patrolling the streets and then officially as well. The instigators of the conflict, now having gained local power [the candidate of far-right party Jobbik was elected as mayor in July 2011 in a by-election], operate an authoritarian and fear-inducing system, while seemingly acting within the law.

Domestic and international spotlight on this small village in Heves County is especially warranted in light of the intentions of extremist political forces to make this village a model for “regulating” the Roma. Meanwhile, the government is attempting, by way of several schemes, to get the village “back under state control”, to put local conditions back in order, and to prevent the process from spreading. The penalty-centered solutions of the last six months, namely an increased police presence, constant fines and specific public works programs, have not lead to results. It is questionable how long the local residents can endure the double experiment that is being carried out in the village. The Roma migration that has already started both from the village and from Hungary has met with indifference and even approval instead of social solidarity. Yet in a democracy it is unacceptable for certain groups of society to feel like second-rate citizens in their own village and country.

I. The purpose and circumstances of the follow-up investigation

Following the Ombudsman’s report on the events of March 2011 in Gyöngyöspata, several measures were taken by the lawmakers and the law enforcement authorities. In view of such measures, the length of time that had passed since then and the fresh complaints arriving from the village, it became necessary to conduct a follow-up investigation to establish the effect of the measures introduced since spring 2011 on the general mood in the village and the relationship between its Roma and the non-Roma residents. Another objective of the repeat examination was to provide the media and the public with more trustworthy information, since the news reports on the village have often been contradictory.

Employees of the Ombudsman office conducted an onsite investigation in the village on November 8, 2011 without prior announcement to gain information about the public works program, the practices of the authorities dealing with minor offenses and school segregation.

The follow-up investigation was obstructed in several ways. The municipal clerk cancelled the meeting that was scheduled (on the morning of the investigation) by phone, citing a work-related engagement. The mayor first made the investigators wait for him in the lobby of the

Mayor's Office and then sent a message through one of his employees that "the office is not open to clients at this time". After the employees of the Ombudsman stated that they were not clients and were instead exercising the investigative rights of the Ombudsman in coming to talk to him, the mayor, neglecting to engage in further communication, left the building by the back door. On the instructions of the clerk, employees of the Mayor's Office handed over some of the documents necessary for the investigation. The written request that was submitted later by the Ombudsman went unanswered, which hindered the investigation considerably.

II. Public employment in Gyöngyöspata

1. Main elements of the public employment system and changes to it

From January 1, 2011, the public employment system was transformed by the government, and additional changes were introduced in September 2011. On the basis of those amendments, the following regulations were instituted:

From January 1, 2011, a new form of jobseeker's allowance was introduced for unemployed people of working age. From September 2011, this was replaced by another form of allowance, for which only those persons of working age are eligible who cannot work temporarily even within the public employment scheme.

Eligibility for this form of benefit needs to be reviewed on an annual basis. After December 2011, only those can receive this benefit who have been able to certify at least 30 days of work in a year. Should the person in need not be able to do so, he or she may be excluded from the system for three years, which is a disproportionately long period.

Starting from January 1, 2011, individuals receiving unemployment benefits are obliged to undertake work offered to them, irrespective of their qualification or skills. This amendment can work to the detriment of the small number of rural, unemployed Roma intellectuals and skilled workers with lesser ability to assert their own interests.

A new element of the regulations, valid for all forms of public work, is that jobseekers may be assigned to any part of the country to work, as long as their travel costs are reimbursed and they are provided with board and lodging. Thus the obligation to work can override the right to a private and family life. If we take the provision regulating work far away from home together with the measures regarding exclusion from the unemployment benefit system, then the right to self-determination is also in question.

The new regulation introduced a new wage level for those participating in the public works scheme, which is lower than the compulsory minimum wage. The question of violation of the principle of "equal compensation for equal work" under the former Hungarian Constitution (Article 70/B (2)) arose. However, since the Fundamental Law of Hungary that entered into force on January 1, 2012, does not contain the principle of "equal compensation for equal work", this is now only a hypothetical legal issue. Yet, the message to society and the value system underlying this solution are unmistakable.

Another aspect of unemployment benefits for those of working age is maintenance of one's own living environment, which can be regulated by local government ordinance. According to the relevant statute, it may be made a condition of receiving unemployment benefits that the

recipient of the support fulfills conditions regarding the maintenance of his/her living environment. The person applying for unemployment benefits may be obliged to keep clean the apartment or house that he or she lives in, the yard, the garden, the area bordering the fence and the pavement, ensure the hygiene of the property and conserve the condition of the property for proper use. These expressions are open to multiple interpretations and can thus give rise to subjective opinions and disputes.

These conditions are costly and contradictory, and they are “dangerous” tools to alleviate poverty with. Such tools can serve to “threaten” and penalize the most disadvantaged families, who are often unable to cooperate. This approach can also provide struggling local residents with a convenient scapegoat. The Ombudsman agrees with the legal opinion of the Eötvös Károly Institute that the above requirement regarding living environments violates the right to human dignity under the Constitution (Article 54, Article II of the new Constitution). The requirement regarding the condition of the property and its proper use often cannot be fulfilled because of the difficult financial situation of those concerned. Individuals living in unfit conditions are forced to fulfill conditions that they are incapable of fulfilling precisely because of their poverty. This way they lose not only benefits that are of fundamental importance for their subsistence, but are also stigmatized as unworthy of such benefits, which violates their human dignity. Placing public employment under the Interior Ministry further stigmatizes those who are publicly employed, since it seems to indicate that unemployment is a policing problem.

2. Public works programs in Gyöngyöspata

Five types of public works programs started in Gyöngyöspata over the course of 2011. Only the forestry model public works program was analyzed in detail, in which 36 individuals participated between August 1 and November 30, 2011.

The onsite investigation established that those taking part in the public works scheme all performed hard physical work, irrespective of their gender or age. Some of the workers struggled with serious health issues, and although they wished to continue working within the public works program, it would be important for them to perform tasks that take their condition into account.

Initially, the workers were supposed to clear and enclose a forest area but, due to lack of adequate tools, in the end they performed deforestation at a different location. The work site is at a distance from the village and can only be approached via a dirt road, thus there seems to be no particular public interest in clearing this area. That is further evidenced by the fact that the local government did not have the illegal landfill that can be found nearby eliminated.

The workers initially walked to the work site (roughly 4 kilometers) from the Mayor’s Office, but later a bus was provided. Although the local government tried to comply with the provisions on safe working conditions, the Heves County Government Bureau’s Work Safety Inspectorate found several shortcomings with regard to tools and protective gear. There was no restroom or possibility for washing hands at the work site and sufficient beverages for the health and safety of the workers were not provided.

3. “Official inspections” in Gyöngyöspata

Several complainants mentioned during the onsite investigation that in mid-October, a relatively large group of people visited the Roma families in Gyöngyöspata with the intention of inspecting “the living environment and if the criteria for housing subsidy are met”. According to those concerned, the mayor, the municipal clerk, the mayor’s chief of staff, two social workers, and two policemen visited the families without prior announcement. First they viewed the living environment from the outside and made a video recording, and then they all entered the given home, measured the size of the rooms and made video recordings.

The chief of staff, Gábor Pichler, confirmed the above with the exception that the two policemen did not enter the homes and video recordings were not made within the homes. The chief of staff said that the objective of the proceedings was to evaluate the living environment of the residents concerned, to prepare for the introduction of the so-called ‘Érpatak model’ and to take stock of how many people live habitually in the given homes. He also stated that this measure affected every local resident receiving housing subsidies, rather than only the Roma families.

The Ombudsman did not receive any answers to his two written requests inquiring about the aim of the measures and their legal basis. Nor were documents, audio or video recordings of the procedure sent by the municipal clerk of Gyöngyöspata. Based on the available information, the Ombudsman determined that:

- There is no lawful reason for between four and six officials together to visit poor families, to inspect their interior living environment and to make video recordings.
- It is questionable whether this can be considered an official inspection under the relevant statute and, in that light, data protection concerns may also arise.
- It is not clear why there was a need for police officers to be present in addition to the already large number of officials.
- Such a procedure would be threatening not only to the residents of Gyöngyöspata, but to anyone. However, in Gyöngyöspata, where those in power are the same forces that can be associated with the spring “law enforcement” action, residents may have experienced this form of inspection as heightened intimidation or even as a form of reprisal.

III. Minor offense procedures of the police and the local government

The Roma community’s collective complaint from Gyöngyöspata: the suspicion that the practice of issuing fines is discriminative

The complaints received by the office of the Ombudsman and human rights watch reports, which raise similar concerns to the former, report a new phenomenon. They voice the suspicion that in Gyöngyöspata the authorities have focused on offenders of Roma origin in recent months when penalizing minor offenses, while non-Roma inhabitants have not had to fear similarly consistent and strict consequences for similar types of offenses.

In the course of the follow-up investigation, the employees of the Ombudsman office reviewed film recordings available online in which local inhabitants recount their complaints regarding the way in which minor offenses have been penalized by the local authorities.

They also requested for review all documents relating to minor offense proceedings between March 1, 2011 and October 31, 2011 from the Mayor's Office. It became clear during the onsite investigation that so many decisions and other documents were issued during that period that just photocopying them would take a considerable amount of time. The summary of the practices of the local authorities when dealing with minor offenses is therefore based on those documents that were mailed by the municipal clerk and colleagues: 35 decisions made by the local government in minor offense cases and 115 documents that were sent to the municipal clerk for enforcement.

In spring and early summer of 2011, the police carried out increased checks in Gyöngyöspata. Members of the county and stand-by police force performed a very large number of ID checks in this time period (150–160 on certain days), and they followed these up with a large number of measures. As the police leaders acknowledged during the Ombudsman's investigation in spring 2011, the police launched a much larger number of minor offense proceedings (typically for traffic offenses) against the residents of Gyöngyöspata than against those groups that were in the village for "patrolling purposes", without any lawful reason. Although the increased police presence was ordered for the entire area of the village, the majority of the reviewed police documents imposed fines on individuals living in the "Roma" streets of the village.

It can be established that the recipients of the fines imposed by the police and not paid on a voluntary basis were mostly Roma individuals from Gyöngyöspata, or people who are considered Roma by those living around them, rather than other, non-Roma residents of the village.

Following the end of the "patrols", the police wished to ensure public order. The onsite investigation found that a police patrol car appeared in the Roma areas of the village every hour. While this intensive presence may be justified by the objective of protecting the families that live there, it must not create the impression that the authorities are acting with an intent to harass the residents or to demonstrate their power.

During the follow-up investigation, the local Roma residents recounted that they felt that the police abused its statutory rights and often failed to penalize offenses committed by non-Roma individuals. The follow-up investigation itself also found that a disproportionate number of Roma residents of Gyöngyöspata were penalized. Even if such discrimination cannot be established in a legal sense, the police still have to make sure that there is no doubt that they are acting in accordance with the principle of equal treatment.

The following conclusions can be reached regarding the fining practice of the local authorities:

Those cases that ended with a fine were usually launched because of acts that could be considered "formal offenses", since they do not pose an actual danger to society (e.g. walking in the road instead of on the sidewalk in a street that is practically devoid of vehicle traffic). Most of those charged with minor offenses live in the "Roma" streets of the village. Half of those charged who live elsewhere have family names that are exclusively or almost exclusively used in the Roma community.

Although it is within the discretionary power of the authority to determine the type of penalty and the amount of the fine imposed, it is striking that in the six-month period under review, the municipal clerk only opted to issue a warning on four occasions, which means that the municipal clerk refrained from imposing a fine in the case of only one in 9–10 offenders. Of the four warnings, only one recipient lived in a Roma neighborhood. The recipient of the smallest fine cannot be identified as Roma either, based on surname and address.

It is indicative of the inconsistency of imposing penalties, that fines of different amounts were issued for the same offenses. In several cases, a higher fine was imposed on those who had committed their first minor offense in two years than on repeat offenders. It should also be taken into consideration that although the fines imposed were in accordance with the statutory median term, they were imposed on offenders who live in very difficult social conditions.

Based on the minor offenses decisions, it can be established that the local Roma residents were considerably overrepresented among the offenders who were charged. The municipal clerk takes a fine-centric approach, and the fine imposed is usually not in accord with the weight of the act committed, or the personal circumstances of the offender.

The examples mentioned in the report indicate that the local law enforcement authorities do not possess a unified set of criteria regarding the pressing of charges and penalization in minor offense cases. The procedural practices of the police and the municipal clerk in these cases raise constitutional concerns regarding the principle of the rule of law and the right to fair procedure. Since it was not possible to review every single decision, the follow-up investigation can only surmise, but not establish, that the right to equal treatment was violated.

IV. On ethnic-based segregation mechanisms at the Nekcsei Demeter Primary School in Gyöngyöspata

The previous report, published on April 19, 2011, discussed education issues relating to Roma students in a separate chapter, and addressed nine proposals to the principal of the primary school in Gyöngyöspata and eight recommendations to the municipal council.

Both the principal and the local government reacted to these proposals only in part, often intentionally misinterpreting the recommendations and proposals and giving uncertain or negative answers, as the document sent by the municipal clerk (five months late) reveals. It is worth mentioning that the principal's answers were often expressly sarcastic in tone. Besides the objectionable answers, the follow-up investigation was also warranted by complaints indicating that the school continued to operate a segregated system.

During an onsite investigation, three employees of the Ombudsman and the principal jointly analyzed the recommendations and the answers given to them. Since all questions were clarified jointly, and the principal openly acknowledged the continuation in unaltered form of the segregation described in the report, no other methods needed to be applied. Below is a summary of the main points:

Following the Ombudsman's primary investigation, no change was made regarding the segregation of Roma students at the school. The principal does not contest the fact of

segregation, but maintains that it is not intentional. In the principal's view, the present situation is the result of assigning students to classes according to the order of enrolment.

The school continues to maintain the system of classes with small pupil numbers, since it continues to use the system of assigning pupils to classes in a way that formally is based on order of enrolment, but in reality leads to ethnic-based segregation. However, it is not permissible to randomly assign pupils to classes since the principal, who is responsible for the lawful operation of the school, has to take into consideration the proportion of disadvantaged and multiply disadvantaged students when creating classes. Even if segregation has come about spontaneously, maintaining such segregation is also unlawful. It is impossible in the present situation for the homogenous Roma classes to have been created by accident. That is also supported by the fact that the principal talks of slower development and catching up with regard to the small Roma classes.

The principal presumed that with the likely future change in the operator of the school, the "elimination of segregation would be compulsory". He emphasized that he did not support ethnic-based segregation, but argued that there are reasons for creating homogenous classes based on ability. The principal calls the elimination of the spatial segregation of Roma and non-Roma students a natural demand, but no decisive steps have been taken in this direction.

The modification of the school's quality management program has not been prepared. The teaching staff voted against the proposal regarding further training promoting innovative pedagogy. The teaching staff's approach to segregation/integration (and its responsibility in this regard) is of extreme significance, since integration in itself is incapable of balancing out socio-cultural disadvantages, and therefore the significance of applied pedagogical methodology is enormous. If the teachers are not willing to teach in a differentiated way (which entails a heavier workload and presents a greater professional challenge), and if they insist on maintaining the present situation (unlawful, ethnic-based segregation), claiming that there is no need for methodological development, then the elimination of segregation will not in itself substantially improve the equal opportunities situation of disadvantaged and/or Roma students.

The approach of the principal and the teaching staff of the primary school in Gyöngyöspata is shared by a significant majority of teachers in Hungary, and as such can be considered "traditional". Yet integration, made possible through differentiated, personality-centric teaching methodology, is a moral question affecting the entire nation. Therefore the assumption of the primary report that the reason for the segregated education of Roma students is non-Roma parents exercising the right to free choice of school is incorrect. Such migration between schools has no substantial effect on the operation of the system of segregation that has arisen (or rather been developed).

It can be presumed with good reason that the school and the local government will only take substantial steps to change the unlawful situation if forced to do so by a higher-ranking authority and through budgetary pressures. Therefore the Ombudsman requests that the County Government Bureau help elimination of the discriminatory practice through disclosure of data.

V. Summary of the primary observations of the follow-up investigation

Although the situation is now apparently under control in Gyöngyöspata, fears, mutual distrust, suspicions, and segregation are still very much present, and indeed have become an established part of everyday life. That is the description given by both the Roma and non-Roma residents, and several other circumstances also point in that direction. The “decoration” (several emblems of the Hungarian Guard are displayed in prominent spots) in the mayor’s room carries a clear message, for instance. It is also indicative of the situation that the employees of the Ombudsman only found Roma workers among those participating in the public works scheme. It is a reflection on the local circumstances that in the past few months, several Roma families have left the village and have even emigrated from the country. The conflict resolution initiated in the previous report has not materialized, which is not surprising, considering that the current leaders of the village are those who initiated or supported the entry of the “uniformed” groups. The mayor himself gained his mandate representing a party (the Jobbik) that tries to gain votes by talking of “eliminating Gypsy crime”.

According to some, this spring Gyöngyöspata came to the brink of ethnic war. Fortunately, that war was averted at the last minute. The Ombudsman, however, fears that emotions smoldering in the village could escalate at any time, leading to unpredictable, violent events.

The Ombudsman, Ernő Kállai closes the report with recommendations and proposals addressed to the Interior Minister, the municipal council of Gyöngyöspata, the head of the Heves County Government Bureau, the national police chief and the chief of the County Prosecutor’s Office with the intention of facilitating legal solutions to the problems in Gyöngyöspata by the state and local government.