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CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on extreme poverty and human rights

REFERENCE: UA Housing (2000-9) Poverty (1998-11)
HUN 1/2013

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on extreme poverty and human rights pursuant to Human Rights Council resolutions 15/8 and 17/13.

In this connection, we wish to refer to article 8 of the **Fourth Amendment to Hungary's Fundamental Law, adopted by the Parliament on 11 March 2013, and its potential detrimental impact on the realization of human rights of homeless persons in Hungary.**

From the onset we wish to refer to our previous communication sent to your Excellency's Government on 21 December 2011 following the adoption of several amendments to national laws affecting homeless persons in Hungary. We would like to thank your Excellency's Government for the detailed reply to our communication dated 21 February 2012.

We would also like to indicate our intention of making public our concerns as expressed in the current communication.

According to updated information received:

On 11 March the Parliament of the State of Hungary adopted the Fourth Amendment to Hungary's Fundamental Law. According to the information received, Article 8 of the amendment states:

"The following provision shall replace Article XXII of the Fundamental Law:

"Article XXII

(1) Hungary shall strive to provide the conditions for housing with human dignity and to guarantee access to public services for everyone.

(2) The State and local governments shall contribute to creating the conditions for housing with human dignity by striving to guarantee housing for every homeless person.

(3) An Act of Parliament or local government decree may outlaw the use of certain public spaces for habitation in order to preserve the public order, public safety, public health and cultural values.”

Although we welcome the recognition of the right to adequate housing and access to public services without discrimination (in article XXII(1)) and the constitutional commitment to provide access to housing for every homeless person (in article XXII(2)), we are concerned with the amended article XXII(3), which authorises national and municipal legislation to criminalize sleeping in public spaces.

Concerns have been raised that such legislation will have a disproportionate impact on persons living in poverty in general and on homeless persons in particular. We are concerned that this amendment will facilitate national and municipal legislation which will impede the enjoyment of various human rights of homeless persons, including the right to an adequate standard of living, the right to adequate housing, freedom of movement and the right to liberty and security of person.

Furthermore, this amendment contradicts a recent decision taken by the Hungarian Constitutional Court (decision II/1477/2012), which annulled previous legislation (the subject of our communication sent to your Excellency's Government on 21 December 2011), that criminalized habitual living in public spaces. The legislation was deemed by the Constitutional Court as contradictory to the Fundamental Law requirements for legal certainty and the protection of the right to human dignity and the right to property. We are informed that the previous legislation led to allegedly more than 3 million forint in fines levied by different municipalities on homeless person for “residual habitation in public spaces”.

Recent research brought to our attention indicates that more than 80 per cent of homeless persons in Hungary have reportedly experienced discrimination, with 57 per cent having been treated in a humiliating manner by State officials. We are concerned that a constitutional provision outlawing homelessness will only increase the stigmatization and discrimination that homeless persons face.

In the reply dated 21 February 2012, your Excellency's Government indicates that the Government strives to improve conditions in homeless shelters. However, according to reports received, homeless shelters are often full and cannot meet the

demand, leaving homeless persons with no other alternative but to sleep in public spaces. Allegedly, existing shelters sometimes do not meet the official criteria regarding minimal living space. We are also informed that the shelters which offer long term accommodation (for 1-2 years) require payments from residents, which homeless persons cannot afford.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards and, in particular, the following:

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, to which Hungary is a party, indicates that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. With "due priority to those social groups living in unfavorable conditions," the right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that "the right to housing should be ensured to all persons irrespective of income or access to economic resources".

The Committee also stressed, that among the steps to be taken immediately towards the full realization of the right to adequate housing, regardless of the status of available resources in a given country, is the adoption of a national housing strategy, which "should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives" (para. 12).

We would also like to draw the attention of your Excellency's Government to the provisions of article 2(1) of the International Covenant on Economic, Social and Cultural Rights, which states that States parties must ensure the "progressive realization" of all economic, social and cultural rights. In General Comment 3 (para. 9), the Committee on Economic, Social and Culture Rights stressed the existence of a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of the State's obligation under article 2(1). In adopting retrogressive measures, States must demonstrate that they have been introduced after "the most careful consideration" of all alternatives and that they are "fully justified by reference to the totality of the rights provided for in the Covenant".

Furthermore, article 2(1) obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic shelter and housing, for all members of society (General Comment 3, para. 10).

We note that while human rights law permits States to limit some rights, on the basis of certain justifiable limitations, such limitations must comply with numerous safeguards. In this context we would like to refer your Excellency's Government to article 4 of the International Covenant on Economic, Social and Cultural rights, which states that State may only impose limitations which are determined by law and "only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".

We would also like to refer your Excellency's Government to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex) and to the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17, annex), both of which state that limitations of human rights may only be imposed if they are "determined by law", "compatible with the nature of these rights", "solely for the purposes of promoting general welfare" and "necessary in a democratic society". Permissible limitations must also comply with general principles of human rights law, and must thus be non-discriminatory, reasonable and proportionate. States must not impose more restrictive measures than are required for the achievement of the purpose of the limitation.

We would also like to draw the attention of your Excellency's Government to the principles of equality and non-discrimination, which are core elements of the international human rights normative framework and enshrined, inter alia, in article 2 of the Universal Declaration of Human Rights and articles 2 of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights.

In its General Comment 20 (para. 34 and 35), the Committee on Economic, Social and Cultural Rights noted that "place of residence" and "economic and social status" are prohibited grounds for discrimination, implied in the phrase "other status" in article 2 of the International Covenant on Economic, Social and Cultural Rights. Thus, measures which discriminate against individuals because they live in a situation of poverty may amount to a contravention of the principle of non-discrimination.

The Committee also stressed that a discriminatory intent is not a necessary element of discrimination. Therefore, any measure with the purpose or effect of nullifying or impairing the equal enjoyment of human rights constitutes a violation of States' human rights obligations (para. 10 and 12).

We would also like to draw the attention of your Excellency's Government to the existence of the Guiding Principles on Extreme Poverty and Human Rights (contained in

document A/HRC/21/39), adopted by the Human Rights Council by consensus at its 21st session (resolution 21/11). Your Excellency's government may find para. 51-55 of the Guiding Principles (outlining that States should ensure that public policies accord due priority to persons living in extreme poverty), and paras. 79-80 (dealing with the right to adequate housing, security of tenure and prohibition of forced eviction), particularly relevant in this case.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Did public consultations take place (including with potentially affected persons) prior to the adoption of article 8 of the Fourth Amendment to Hungary's Fundamental Law? If yes, please give the details, dates and outcomes of these consultations. Was the Act on civil participation CXXI/2010 implemented in this case?
2. The letter of response from your Excellency's Government of 21 February 2012 indicates the any draft legislation is to be submitted to Parliament with a "general impact assessment", which evaluates, inter alia, the compatibility of the legislation with the international legal obligations of Hungary. Was such an assessment prepared with regard to the Fourth Amendment to Hungary's Fundamental Law and particularly with regard to article 8 of the amendment? If so, please provide us with a copy of this assessment.
3. Was any assessment conducted with regard to the impact of previous national and municipal legislation which outlawed sleeping in public spaces (the subject of our previous communication dated 21 December 2011) and was struck down by the Constitutional Court in its decision II/1477/2012? How many people were arrested and/or detained based on this legislation? How many people were fined? Did this policy have any impact on the extent of homelessness and rough sleeping in Budapest and other municipalities?

As much as possible, please provide information disaggregated according to the various municipalities.

4. Please provide specific details on the measures that are currently being implemented in order to improve homeless shelter conditions in the country.
5. In the reply dated 21 February 2012, your Excellency's Government indicates several short and mid-term objectives related to housing which are summarized in the National Social Inclusion Strategy (NSIS) and Governmental Action Plan, such as the improvement of social services and housing conditions in segregated areas and the transformation of the social housing system in Hungary.

Please provide details on the implementation stages of the objectives related to housing included in the NSIS and the respective budget allocated towards the implementation of these objectives.

Did public consultations take place during the formulation of the NSIS? If so, please provide details, dates and outcomes of these consultations.

6. In the reply dated 21 February 2012, your Excellency's Government refers to the House Protection Action Plan that aims to address the situation of households which have been affected by the recent mortgage crisis.

Please indicate whether your Excellency's Government has also developed an Action Plan to address the specific housing needs of the homeless community and for low-income households.

What long term solutions are envisaged as a means of addressing the housing needs of homeless persons in order to comply with the newly adopted article XXII(2) of the Fundamental Law?

Please provide an impact assessment of the "More humane conditions instead of using public space" programme, mentioned in your Excellency's Government reply dated 21 February 2012, currently implemented in Budapest. Does this programme include a "residency" criteria?

Are there similar programmes implemented in other municipalities? If, so please provide information on these programmes and their impact.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

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