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**Human Rights Committee**

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

**Fifth periodic report of States parties**

**Hungary\* \*\***

[15 March 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\* Annexes to the present report can be consulted in the files of the secretariat.

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## General remarks

1. The Government of the Republic of Hungary submits its fifth periodic report to the Human Rights Committee on the basis of Article 40 of the International Covenant on Civil and Political Rights. As State party to the International Covenant on Civil and Political Rights the Republic of Hungary submitted its first report on the implementation of the Covenant in 1977, its supplementary report in 1979, its second report in 1985, its third report in 1991 and its fourth report in 1999.

2. The previous periodic report reflected the efforts Hungary has made since the profound changes of 1989 in the Hungarian society, as well as in political and economic life. The current report aims at describing the basic changes Hungary has undergone due to the admission to the European Union as well as giving a detailed overview on the enhanced democratic achievements the country obtained, taking also into consideration the fields in which we still have some shortcomings.

### Article 1

3. There has been no change since the submission of the previous report.

### Article 2

4. The Constitution of the Republic of Hungary (Act XX of 1949) in its Article 8 (1) declares that Hungary recognizes inviolable and inalienable fundamental human rights. With article 70/A (1) the Constitution also declares that Hungary respects the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever and the law provides for strict punishment of discrimination. Everyone has the right to equal compensation for equal work, without any discrimination.

5. Since the last periodic report submitted by the Republic of Hungary in connection with the International Covenant on Civil and Political Rights, the Parliament adopted Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (hereinafter: Equal Treatment Act) in 2003. The Equal Treatment Act entered into force on 27 January 2004. It contains basically administrative instruments prohibiting any kind of discrimination.

6. The Act fulfils a number of regulatory obligations laid down in EU directives, among others those contained in 2000/43/EC on the implementation of the principle of equal treatment of persons regardless of their ethnic or racial affiliation and 2000/78/EC on the creation of a general framework for equal treatment in employment and labour.

7. The fact that the Equal Treatment Act introduced the requirement of equal treatment instead of prohibiting discrimination, may seem to be a symbolic change. However, this brought a real substantive change as well, since it has specified five different behaviours qualifying as violations of the requirement of equal treatment: direct and indirect discrimination, harassment, segregation and victimisation – which may be committed both by active behaviour and by omission. The Act points to the fact that an instruction to commit an act qualifying as discrimination also qualifies as violation of the requirement of equal treatment. The requirement of equal treatment has outstanding importance because these anti-discriminatory rules have to be used in all branches of the law (labour, civil law etc.). This brought changes in two aspects. On the one hand, this was the first time when

direct discrimination was defined in the Hungarian law. On the other hand, all the new terms have to be used in all branches of the law, in contrast with the concept of indirect discrimination applied beforehand in the Labour Code (Act XXII of 1992).

8. As is widely known, victims of discrimination often fail to take legal action against the person violating their rights because they are afraid of victimisation or revenge. This process is referred to as victimisation and it was not previously prohibited by the Hungarian law in this form. Enforcing one's rights in consequence of discrimination may, however, be effective only if the victim — or any other person capable of supplying information on the case — does not have to fear to be put at a disadvantage in consequence of his action or behaviour. According to the Equal Treatment Act, behaviour aiming at threatening persons raising objections in proceedings against a breach of the requirement of equal treatment with the violation of their rights, qualifies as victimisation. Accordingly, the new regulation is based on condition that effective law enforcement is supported by a regulation that precisely defines and prohibits the most frequently encountered forms of discrimination.

9. Following the Equal Treatment Act exemption means that the obligor is exempted from the legal consequences of the violation of law and so he can apply lawful differentiation. In the cases of exemption the effect of the Equal Treatment Act and the requirement of equal treatment are valid, but owing to certain circumstances the given procedure does not create discrimination. The possible exemptions are aimed at preventing situations that are unlikely to occur in life and conflicts with other basic rights.

10. The Equal Treatment Act established the Equal Treatment Authority. It is an independent body under national jurisdiction, which was set up to receive and deal with individual and public complaints on unequal treatment and to implement the principles of equality and non-discrimination. It is entitled to decide whether the breach of the principle of equal treatment has occurred, and has the right to impose a fine. The Authority works under the direction of the Government and it is supervised by the Minister for Social Affairs and Labour. Accordingly, the Authority cannot be instructed in issues of its competence specified by the Act, it is a budgetary institution. This provision intends to guarantee the Authority's independence from the Government.

11. The Act also specifies the tasks of the Equal Treatment Advisory Board, whose members are nominated by the Prime Minister after an extensive consultation process in the course of which NGOs can nominate candidates. The Authority is directed by the Government and supervised by the minister responsible for issues of equal opportunity. The Board consists of six experts with outstanding experience in asserting the right of equal treatment. The Board and the Authority have co-decision rights on the adoption of proposals for Government decisions and draft legislation relating to equal treatment and on reporting in general.

12. For the effective implementation of the Equal Treatment Act the Hungarian Government adopted Governmental Decree 362/2004 (XII. 26.) on the Equal Treatment Authority and the detailed regulation of its procedures (hereinafter: Decree on the implementation of the Equal Treatment Act) in December 2004, since the regulations of the Equal Treatment Act regarding the Authority were to enter into force on 1 January 2005. The president of the Authority was appointed by the Prime Minister on 26 January 2005, so the Authority started its work on 1 February 2005; while the Advisory Board was set up — after consultation with civil society organizations — in June 2005.

13. The Authority reviews the complaints it receives examining whether the principle of equal treatment has been violated on one of the following grounds: sex, racial origin, color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, motherhood (pregnancy) or fatherhood, sexual orientation, sexual identity, age, social origin, financial status, part-time

nature or definite term of employment or other circumstances related to employment, membership in an organization representing employees' interests, other status, attribute or characteristic (hereinafter collectively: characteristics). The Authority also reviews the complaints it receives examining whether those budgetary organs and legal entities in state majority ownership, employing more than fifty employees and obliged to adopt an equal opportunities plan, have done so.

14. The Authority deals with the following forms of discrimination:

- Direct discrimination — based on the above-mentioned grounds — occurs when one person or a group is treated less favourably than another one is or was or would be treated in a comparable situation
- Indirect discrimination occurs, when provisions that are not considered direct discrimination and so apparently comply with the principle of equal treatment, generate or would generate a considerably larger disadvantage compared with other people or groups in a similar situation for any persons or groups having the characteristics mentioned above
- Harassment is a conduct violating human dignity related to the person's characteristic defined above with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person
- Segregation is a conduct that separates individuals or groups of individuals from others on the basis of their characteristics mentioned above without the explicit permission of a legal act
- Sexual harassment is an offensive verbal or physical conduct of sexual nature, towards a person, with whom there are work or business relations or who is a subordinate
- Victimization is a conduct that causes infringement or aims at infringement, or threatens with infringement against the person making a complaint or initiating procedures because of a breach of the principle of equal treatment, or against a person assisting in such a procedure, in relation to the Equal Treatment Act

15. According to the Act the main areas of discrimination among others – consist of the following fields:

- Employment: employers are prohibited from making a distinction on the ground of protected characteristics as cited in Article 8 of the Act. They are not allowed to distinguish unlawfully in relation to access to work, especially in public job advertisements, hiring, and with regard to the conditions of employment; or a disposition made before the establishment of the employment relationship or other relationship related to work, related to the procedure facilitating the establishment of such a relationship; in establishing and terminating the employment relationship or other relationship related to work; in relation to any training before or during the work; as well as in determining and providing working conditions.
- Social security and health care: the principle of equal treatment shall be enforced in the field of social security and health care, particularly in the course of claiming and ensuring benefits financed by social security systems, and social benefits, financial and in-kind child protection or personal care, in course of participating in preventive programmes and medical check-ups, in preventive medical care, in course of using premises for residence, or in course of satisfying dietary and other needs.
- Housing: the same duties apply to the providers of goods and services as to those selling or letting premises. The Authority establishes the violation of equal treatment, in case a person is inflicted with direct or indirect discrimination in course

of granting housing subsidies, benefits, interest subsidies by the State or a municipality, or this person is put in a disadvantageous position in determining the conditions of sale or leasing of State-owned or municipal housing and plots.

- Education and training: the Act refers only to those institutions that carry out education and training ordered by the State or in accordance with the requirements approved by it, or whose organization is supported through direct flat-rate budgetary subsidy, or indirectly, especially by releasing or clearing taxes or by tax credit. The institutions are enforced to avoid discrimination determining the conditions of joining them and of the assessment of applications, defining the requirements for education, performance evaluation, providing and using services related to education and access to benefits related to education, accommodation and provisions in dormitories, issuing certificates, qualifications and diplomas, providing access to vocational guidance and counsel.
- Sale of goods and use of services: service providers have a duty not to discriminate against people on the ground of protected characteristics. They are not allowed to refuse the provision of a service; provide worse standard of service, or offer a service on worse terms, nor are they allowed to place a notice or display a sign implying that a certain individual or certain individuals are excluded from the provision of services or sale of goods at the premises.

16. The provisions of the law on equal treatment shall not apply to family and private life and relationships directly connected with the religious activities or life of the Churches, relationships between members of legal entities and organizations without a legal entity, relationships related to membership, except for the establishment of membership and shall apply to relationships of parties except for the political or other opinion.

17. The burden of proof is a very important question in cases of discrimination. In the overwhelming majority of the cases those discriminated against could not prove the fact of discrimination, and therefore the Act regulates the burden of proof otherwise as it is common in other legal proceedings. According to the Act:

- The injured party or their representative has to prove the likelihood that the injured person or group has suffered disadvantage or the immediate risk of this exists, and the injured person or group possesses a protected characteristic defined in the Equal Treatment Act
- If the injured party has sufficiently evidenced the above circumstances, the respondent has to prove that the circumstances proved likely by the injured party do not exist, or it has observed or in respect to the relevant relationship was not obliged to observe the principle of equal treatment

18. In 2007 the Equal Treatment Authority received 756 complaints. Discrimination on the grounds of ethnicity remains the largest category of cases, containing also allegations of discrimination in the area of access to employment as well as to goods and services. The Authority has assessed the violation of equal treatment in 29 cases, whereof in 14 cases a fine was imposed on the violating party from the amount of 500,000 HUF (1,948 EUR) to 4.5 million HUF (17,536 EUR). In 2007 the parties reached an agreement with the assistance of the Authority in no more than 3 cases, while in 2006 the number of agreements was 13. In 154 cases no discrimination was established or the Authority dissolved the proceedings, partly because the clients withdrew the complaints, partly because simultaneously with the Authority's procedure the case was at court on the same ground. In the remaining 348 cases the Authority gave written advice to the clients via e-mail or post and 126 other cases are still pending for resolution.

19. The Authority has to examine ex officio the issue of jurisdiction – and in this context the relevant law, and its powers and competencies with respect to all phases of its proceedings. If the authority is lacking jurisdiction and competencies it shall transfer the petition and other documents of the case without delay, not to exceed five days from the date of receipt of the petition, or from the date when the lack of jurisdiction and competencies is declared in a case pending, to the authority vested with jurisdiction and competencies, and shall notify the client accordingly. In 2007, 96 cases were terminated in this way.

20. In 2007 complaints under the Act continue to reflect a high level of allegations of discrimination by private companies – especially in the field of employment; however public sector bodies and local authorities were the focus in 41 per cent of cases. The highest individual area for complaints was the employment sector which accounted for 51 per cent of cases. Allegations in the provision of sale of goods and use of services were also significant in accounting for 27 per cent of case files. High-level cases where the violation of the law has been established on the ground of ethnic origin (34 per cent), disability (27 per cent) and age (20 per cent) as well as on the grounds of sex and motherhood (13 per cent).

21. The overall objective of the 2002/000-315.01.02 PHARE programme was to foster the development of a more inclusive society based on non-discrimination and tolerance. This programme aimed to trigger attitude changes through supporting local anti-discrimination initiatives, implementing extensive media coverage and designing and implementing educational programmes to target children. The programme consists of the two following independent projects:

- “Building an inclusive society” aimed at changing the majority attitudes towards the Roma minority at national level. Its research component is based on different research methods to provide a solid basis for the communication & PR component and to the assessment of all components of the programme. The communication & PR component consisted of a variety of different communications media reports aimed the general public’s view of the Roma. The educational component develops a programme for primary schools in order to educate children aged 6–14 about the Roma and to prevent the development of intolerance towards the Roma minority.
- “Local Tolerance Actions” Grant Scheme enhances action on the local level. This scheme is aimed at supporting local tolerance enhancing actions in the area of media, employment, education, etc. This bottom-up approach allowed NGOs, local communities and a great number of other actors to initiate anti-discrimination actions in their communities. The “Local Tolerance Action” Grant Scheme was managed by a separate technical assistance organization.

22. In order to promote the rights of disabled people the Hungarian Parliament adopted Act XXVI of 1998 on the rights and equal opportunities of persons with disabilities. The Act entered into force on the 1st of January 1999. The legislation stipulates the fundamental rights of people living with disabilities such as:

- Right to an obstacle-free, recognizable and safe man-made environment, which shall apply especially to the arrangements for orientation concerning transport and the man-made environment
- Access to public information, and to information related to the rights of persons with disabilities, and to services offered for them
- Transport systems, public conveyances as well as passenger traffic facilities, including signalling and information installations, must be appropriate for safe use by persons with disabilities

- In public car parks, parking lots of appropriate numbers and size should be provided for persons with disabilities
- Right to integrated employment, or in the absence thereof, to sheltered employment
- Right to rehabilitation

23. Parliament adopted its Resolution 10 of 2006 on the new National Programme on the Disabled. The National Programme is based on the need for increased protection of the most vulnerable individuals and for differentiation among the special measures and tasks necessary to create equal opportunities. A system of services and supports provided for people with disabilities must be guaranteed in order to keep social disadvantages at a minimum level. The Programme promotes social cohesion and is capable of correcting social inequalities, helping the social integration of people with disabilities. People with disabilities have the same rights and responsibilities — being equal members of society and of the local community — as any other citizens. The Programme is built upon the principle of equalizing opportunities, and on the prohibition of discrimination and the responsibility of favourable treatment.

24. The National Programme focuses on actions to be taken to induce a positive change in the attitude of society towards people with disabilities. For a long time they have been invisible citizens in this country, numerous prejudices evolved and mistaken ideas became fixed. The media, the representative organizations of people with disabilities, as well as NGOs providing services to them have the primary role in dispersing such prejudices and in making people familiar with them. The Programme underlines the importance of education and the role of the different institutions at all levels (from nursery schools through elementary and secondary schools, to higher educational institutions and adult education) to disseminate information about disabilities and in changing the attitude of the society towards people with disabilities. Preparation for teaching children and adults with disabilities should be integrated in the general training of teachers. In order to spread the different forms of such integrated education, special curriculum programmes were developed (“signing”, Braille writing, augmentative communication) preparing teachers to overcome behavioural and learning difficulties of children with disabilities.

25. A National Council on Disabilities was appointed by the Hungarian Government. The National Council on Disabilities comprises representatives of Ministries, NGOs and other related civil organizations. It is also important to mention that the Parliamentary Commissioner for Civil Rights also has the duty to monitor and promote the exercise of civil rights in Hungary, including the rights of people with disabilities. However negotiations have been started between the Office of the Parliamentary Commissioner, the Prime Minister’s Office and the Ministry of Social Affairs and Labour to strengthen the role of the Parliamentary Commissioner in the field on the implementation of Article 33 point 2, but there is no final decision as yet.

26. On the 13th of December, 2006 Hungary signed the Convention on the Rights of Persons with Disabilities in New York, which was ratified by the Parliament with Act XCII of 2007 on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. According to the Convention Hungary declares that all persons are equal before and under the law and are entitled without any discrimination to equal protection and equal benefit from the law and prohibits all discrimination on the basis of disability and guarantees to persons with disabilities equal and effective legal protection against discrimination on all grounds.

27. With regard to the discrimination on the basis of race or national or social origins a governmental decree on the special measures of Roma integration was adopted in 1995 for the first time. It was repealed by the second governmental arrangements package, which defined the most urgent tasks for the period of 2002–2003. In March 2004, the Hungarian



Government adopted its Decree No. 1021/2004. (III. 18.) on the Governmental Programme and special measures for the promotion of the social integration of Roma people which defined governmental actions for the period of 2004–2006. In June the Hungarian Parliament adopted its resolution on the Decade of Roma Inclusion Program Strategic Plan. – 68/2007 (VI.28.). In December 2007 the Government approved a governmental action plan for the period of 2008–2009. – 1105/2007 (XII.27.) governmental decree for the implementation of the Parliamentary Resolution.

28. The Decade is an international initiative and its goals are to bring together governments, intergovernmental and non-governmental organizations, as well as Roma civil society to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. Hungary held the Presidency from 1st of July, 2007 till 30th of June, 2008. During the Hungarian presidency an anti-discrimination workshop was organized with the aim of sharing best practices.

29. Having regard to the common framework, the Hungarian National Strategic Plan, as well as the governmental action plan focus on four priority areas, such as education, employment, health, and housing and also assigned horizontal aspects, such as combating poverty, gender equality and discrimination. The Strategic Plan aims to create proper conditions for the social and economic integration of the Roma population, improving their living conditions, bettering the access of Roma people to public services, as well as closing up — and on the long run eliminating — the gap that has been opened between the living conditions of Roma and non-Roma people. The tasks set down in the Strategic Plan are in line with the formulation of a more efficient economic policy, as well as the long-term sustainability of that economic policy (e.g. enhancement of competitiveness, improvement of the employment situation, social transfers, reduction of the number of dependents).

30. The Office of the Parliamentary Commissioner for National and Ethnic Minorities' Rights highlighted that in Hungary the media does not devote particular attention to national and ethnic minorities; in the electronic media (television and radio) the broadcasting system of the individual national minority programmes has been unchanged for years. In 2006 there was a greater need to warn of “negative sensationalism” in the media. This phenomenon primarily needs to be mentioned in connection with the Roma minority, the largest and most disadvantaged minority in Hungary. Certain media representatives treat those stories which paint a negative picture of the Roma, and which reinforce stereotypes of this minority, as an opportunity for sensationalism. The one-sided reporting in the media and excessive reporting of cases inclining towards sensationalism even raises the spectre of a new form of hate speech. The responsibility of the media in this question is immeasurable, since it does not simply mirror reality, because public opinion is influenced by what is represented in the press, in what way and with what weight.

31. The Office received numerous complaints, some of them from the National Roma Self-Government stating that the Hungarian Roma community's dignity had been violated by the false picture conveyed by the media of Roma, which was also capable of inciting hatred. In such cases the office informs the complainant that criminal law restriction on hate speech injuring the whole of any community is only possible in the most extreme cases: if there is a clear and direct threat of violence; that in the absence of an individual who is affected there is no right to file a claim, i.e. civil law does not offer appropriate protection in such cases; that the Media Act has a rule prohibiting incitement to hatred, this rule, however, refers only to television and radio and not to the written press or the internet; that the Press Act does not recognise the concept of the dignity of the community; that the process for notification and removal of internet content has not been appropriately and consistently regulated; that nobody has yet applied the sections of the Equal Treatment Act relating to bringing public-interest actions to hate speech. The Office informs the complainant that in the absence of appropriate legal tools there is only a chance of

eliminating spreading comments prone to incite hatred if the society as a whole stresses tolerance and condemns such content. In addition to providing this information the Office attempts to launch a professional dialogue along two lines. Referring to the Common Ethic Principles of journalistic organizations, it requests that the organizations' Cooperation Board in a general declaration condemns irresponsible superficiality, anti-gypsy speech which is liable to incite discrimination and selective reporting implying collective guilt resting on genetic factors, since these crop up again and again in the press in connection with concrete cases. It also requests that — since the press is also responsible for the increasing tension between Roma and non-Roma — the Cooperation Board emphatically draw the attention of journalists to the fact that even without direct incitement, a few implied snatches of sentences or the artificial connection of facts can be sufficient to “inflammate” hatred, stir up hysteria, to shake confidence in the authorities and thereby to provoke the false self-defence reflex.

32. From the petitions received by the Office it emerged that several complainants in 2006 also suffered humiliations and disadvantages of excessively bureaucratic handling of their affairs. Complainants living in social exclusion are often not even aware of their fundamental rights and in such cases the helpful attitude of the authority or body concerned is extremely important. According to section 34 of Act CXL of 2004 on the General Rules of Public Administration Authority Procedures and Services, requests may be submitted to the authority in writing, but natural persons may also present an oral request. Oral requests must be recorded according to the nature of the case. If an oral request is not recorded, then it will be summarily rejected, thereby also depriving the client of the possibility of claiming legal redress.

33. Educational policy remains a priority field within the Government's programme. The Government regards educational policy as an essential tool for economic development, social cohesion and well-being. Hungary can only be successful in the future if a competitive and highly qualified labour force with modern knowledge and the capability for further improvement is present in the economy. The main priorities are the following: improvement of quality; equal opportunities; economic development. Reforms within the Ministry of Education and Culture concern the socially disadvantaged as defined in Act LXXIX of 1993 on Public Education (hereinafter: PEA) and those with special educational needs. The PEA defines socially disadvantaged children as follows: children who are taken into protection by the notary pursuant to their family conditions or social status and/or children whom the notary declares eligible for regular child protection benefits. Multiple disadvantage results from parents' education level not exceeding eight grades — including unsuccessful further education — and also from placement in long-term State care.

34. In September 2003 PEA was enriched with anti-discriminatory elements which supported schools and municipalities in finding solutions for organizing education that are lawful and serve the harmonized cooperation of all participants involved. Preschool education is available for children aged three until the age they start primary school. Preschools must not refuse to admit of disadvantaged children and from 2005 must not refuse to admit of multiply disadvantaged children — many of whom are Roma — from the age of three. Preschool is compulsory for a minimum of four hours a day from the age of five. Preschool education is free of charge. The expenses of the meals provided are to be covered, but the needy, the ones receiving support on the basis of the child protection system receive free meals. In case there is not enough room for the children the local government is obliged to solve the room problem of multiply disadvantaged children until September 1 2008. The modifications of the law introduced many new actions to make preschooling widely available for children living in poverty and for those who are multiply disadvantaged. According to the amendments of 2007, the PEA obliges municipalities to review their own contribution to the equal opportunity issue. “Equal Opportunity Plans” are part of the executive plans which are drawn up by municipalities and subregional

partnerships overseeing public education institutions. This is a prerequisite for applying for national or international public education projects. The Ministry of Education and Culture provides a template for such plans and offers the help of experts.

35. The Government implemented a funding scheme intended to integrate schools, offering a subsidy and other support through the National Network of Educational Integration (OOIH). The OOIH programme aims at establishing a network of educational institutions and cooperating organizations working for the educational integration of socially disadvantaged — in particular Roma — students. The programme aims to significantly decrease the segregation of the target group in schools, promoting their successful further education, suitable for their abilities and interests, by ensuring the quality of their education, and strengthening their status in the labour market.

36. In 2002 Article 39/D of the Ministerial Decree (No. 11/1994) on the Operation of Educational Institutions was amended with the aim of developing competences. Since then State support for competence development can only be obtained for children who are multiply socially disadvantaged. All such support goes to maintainers (such as local governments) on a per capita basis and is then transferred to schools. To prevent disadvantaged and Roma students from segregation, as of September 2003 a programme of integrated education was made available. Schools participating in this programme were required to integrate disadvantaged students with non-disadvantaged students, thereby eliminating segregation. The National Network of Educational Integration (OOIH), through its regional coordinators, assists schools engaging in the programme.

37. The aim of the Arany János Support Program for Talented initiated by the Ministry of Education is to support talented students living in small settlements and to provide educational services and access to these services. The programme continuously provides professional and supplementary activities necessary for the successful realization of development programmes, sufficient pedagogical expertise and institutional framework. A new boarding school programme was launched in 2003, called Arany János Boarding School Program. The eligibility for this programme is based on the child's social background. After compulsory education, many disadvantaged young Hungarians go on to vocational schools. These students, who often struggle with learning difficulties, are the most likely to drop out of the education system. But recently, new initiatives were introduced to lower the dropout rate and offer this vulnerable group more opportunities. One such project is the Arany Janos Vocational School Residential Program for multi-disadvantaged students. This allows vocational schools to apply for supplementary public funding, provided at least 85 per cent of their students obtain a competitive qualification. The grant allows student residences to provide an inclusive pedagogic environment for students compensating them for social and cultural disadvantages. Teachers assist these students on the basis of individual development plans drawn up in cooperation with the student after a preliminary competence assessment. The emphasis is put on innovative learning methods and on cooperation with students' families. Students are encouraged to define longer-term goals (education or employment) with the help of expert staff, who also track students' progress toward the objectives laid down in their training plans.

38. In 2005 the Government launched a new scholarship program called: „for the journey” (Útravaló) through which disadvantaged children and students showing special interest in sciences, technology and mathematics can apply for support. One of the main goals of the programme is to establish the necessary educational requirements for the successful social-economic integration of children coming from poor, less competitive families.

39. The Ministry of Education initiated the “From the last school bench” programme in 2003 with the main purpose of reviewing the skills of the approximately 5,000 second and third grade students with mild mental disabilities and to support their integration. Besides

this initiative the Government offers temporary per capita support to help the integration of children into mainstream classrooms and further support to ensure that they meet the requirements. Furthermore, among its goals, the programme aims to improve the conditions under which expert committees function.

40. In the National Development Plan's Human Resources Development Operational Programme (HRDOP) (under the priority: Fighting social exclusion by promoting access to the labour market) special measures have been developed to promote equal opportunities in education for disadvantaged pupils. The target groups of the special measures are the disadvantaged, especially Roma children and youth; and the children and youth with special educational needs. In this HRDOP 2.1 measure 30,356,701 EUR (22,767,525 EUR from the European Social Fund and 7,589,176 EUR from the Hungarian central budget) was available between 2004 and 2006 for programmes aimed at preventing school failure and dropout of disadvantaged pupils; promoting the educational success and, thereby improving the labour-market prospects and social integration of disadvantaged youth; eliminating segregation in the public education system, and promoting non-discriminatory, inclusive educational practices.

41. Equal opportunities is an integral part of the New Hungarian Development Plan (*Új Magyarország Fejlesztési Terv*), which sets the framework for structural funds assistance and thus for EU resources for education reform: an equal opportunity analysis must be attached to each application. Beyond ensuring the help of experts, the Ministry offers considerable financial support to the best equal opportunity projects. Training for equal opportunity experts started in September 2007, under the joint responsibility of the Ministry and the Education Public Benefit Company. Within the New Hungary Development Plan (2007–2013), considerable Community resources will be directed to the reform of the content and infrastructure of education. The Ministry aims to ensure that none of these resources shall be used without promoting equal opportunities for all.

42. According to section 226 of the Criminal Code, mistreatment in official proceedings is a serious crime. Section 226 provides that any public official who physically abuses another person during his official proceedings is guilty of a felony punishable by imprisonment of up to three years. From the 1st of February 2009, the preparation of this offence is also punishable.

43. Under section 227, the following act is also a criminal offence: any public official who attempts by force or threat of force, or by other similar means, to coerce another person into giving information or making a statement, or into withholding information, is guilty of a felony punishable by imprisonment for up to five years. From the 1st of February 2009, the preparation of this offence will also be punishable.

44. Furthermore, any person who unlawfully prevents another person in the exercise of his right to association or assembly by force or duress is guilty of a felony punishable by imprisonment for up to three years. From the 1st of February 2009, the preparation of this offence will also be punishable under 174/C.

45. With regard to the right to an effective remedy at the end of 2007 Act XXXIV of 1994 on the Police (hereinafter: Act on the Police) was amended by Act XC of 2007 to establish the Independent Law Enforcement Complaints Body (hereinafter: Body). The Body is entitled to deal with the complaints regarding the proceedings and measures of the police which, according to the complainant, offend the fundamental rights of a person, similarly to the analogous independent organs of other members of the European Union, like the Independent Police Complaints Commission in Great Britain for example. Accordingly the Body is not integrated into the official hierarchy of the police and neither may be instructed by any other organs of the Government when it performs its tasks.

46. The Body consists of five members. The Law Enforcement Committee and the Human Rights Committee of the Parliament have the right to make a joint proposal for the members of the Body, and the Parliament elects the members for a six-year term by a majority of two-thirds of the votes of the Members of Parliament present. According to Article 6/A, paragraph (3) of the Act on the Police only those can be elected as a member of the Body, who have a clean criminal record, have the right to vote in parliamentary elections, have a degree in law and have significant experience in the field of protection of human rights. The members of the Body elect its president from among themselves. According to paragraphs 92–93 of the Act on the Police the Body is entitled to consider complaints on certain proceedings or measures of the Police which may have offended the fundamental rights of a person. In this case the complainant has the choice to decide whether he or she turns to the Body or to the appropriate organ of the Police with his or her complaint. If the Body is chosen, its point of view on the complaint has no binding force on the Police, but the Police has to offer a reasonable excuse.

47. As for the timeliness of the criminal proceedings against public officials initiated after the protests held in Budapest in September and October 2006, the following facts can be established in the scope of effective legal remedies relating to the infringements of law committed by public officials: 202 criminal proceedings have been launched against public officials by the Investigative Prosecution Office in Budapest and the Central Investigative Chief Prosecution Office, in the majority of cases due to mistreatment in official proceedings. In 8 cases, the denunciations were rejected; in the other cases investigations were initiated. In 167 cases, the investigations have been terminated by the prosecution service; there were 19 accusations (in 10 per cent of the cases) and 3 cases were transferred. Five investigations are still in progress; further investigations have been initiated following the denunciations submitted to the Investigative Prosecution Service in November 2008.

48. Investigations that have concluded by accusations could just have made slow progress ahead due to difficulties in evidencing. In detail: in 2 cases 4–6 months; in 7 cases 6–8 months; in 6 cases 8–10 months; in 1 case 10–12 months have passed before the accusations. In 3 cases, the period between the launching of investigation and the accusation exceeded one year. In the time past, 7 final judgments have been delivered by courts; 12 criminal proceedings in trial phase are still going on.

49. In the cases that have already been closed by final judgments, the following time has passed between the accusations and the final decisions: in 1 case 9 months, in 2 cases 11 months, in 1 case 1 year, in 2 cases 1 year and 2 months and in a case 1 year and 7 months.

50. Section 16 paragraph 1 of the Act LIX of 1993 on the Ombudsman (Parliamentary Commissioner) for Civil Rights — the law establishing the Parliamentary Commissioner for Civil Rights of the Republic of Hungary — declares that “Anybody may apply to the ombudsman if in his judgement he suffered injury in consequence of the proceedings of any authority (subsection (1) of Section 29) or organ performing public service (hereinafter together ‘authority’), or its decision (measure) taken in the course of the proceedings and/or of the omission of the measure of the authority in connection with his fundamental rights, or if a direct danger thereof exists, provided that he has exhausted the available possibilities of administrative legal remedies or that no legal remedy is ensured for him.”

51. It is a quite relevant condition of the competence of the ombudsperson that the complaint shall only be filed if the complainant has already exhausted the available possibilities of administrative legal remedies, or no legal remedies are ensured for him. If the application concerned is under judicial procedure, a legal procedure is pending or the case is considered as *res judicata*, the Commissioner has to state its lack of competence. According to these provisions the ombudsperson is entitled to investigate only a screened part of complaints received by his office in connection with the prohibition of discrimination. The number of cases received by the Office of the Commissioner also

influenced by the fact that an Equal Treatment Authority was established in Hungary. In 2002, 3 per cent of the reports published by the Parliamentary Commissioner for Civil Rights and the Deputy General, namely 20 reports, dealt with the violation of the prohibition of discrimination. This number changed in the next years as follows: in year 2003 it was 1.8 per cent (10 reports); in year 2004 it was again 3 per cent (21 reports); in year 2005 4.3 per cent (29 reports); in year 2006 3.4 per cent (17 reports) and in year 2007 2.5 per cent (8 reports).

### Article 3

52. The regulation is based on Article 70/A (1) of the Constitution of the Republic of Hungary: “The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.” Pursuant to Article 70/A of the Constitution on 22 December 2003 the Parliament adopted the Equal Treatment Act. (See also comments on article 2.)

53. The Equal Treatment Act is a general anti-discriminatory act prohibiting discrimination against women based on “gender, marital status and maternity (pregnancy)” that prohibits violation of the requirement of equal treatment based on characteristics (including gender) and other situations. Accordingly, the Equal Treatment Act uses the supplemented list of Article 70/A (1) of the Constitution. This concept has been heavily criticised both by non-governmental organizations and in the course of its debate in Parliament. The key argument against it was the expectation of a separate act on various social and other groups – particularly women and the Roma. They argued that a separate act would be a much more suitable solution to address the problems of these groups and to provide personal protection for them.

54. The principle of equal pay for work of equal value is declared by Article 70/B (2) of the Constitution: “Everyone without any discrimination has the right to equal pay for work of equal value.” Accordingly, this provision applies to women as well, and seems to be a welcomed rule, for anyone who wants to base his or her argument on the violation of this principle. Another consequence of this provision is that anybody, on the basis of any feature or situation, may claim equal pay. For this very reason, there is a need for rules on exemption. One important step forward is that the amendment of the Labour Code introduced the concept of equal pay for work of equal value in 2001. The detailed rules on the principle of equal pay for work of equal value are laid out in Article 142/A of the Labour Code, providing detailed and adequate regulation of the terms of equal work and pay.

55. Among the four ombudspersons the competence of the general ombudsperson includes the protection of the rights of women. Following the special features of the functions of the ombudsperson for data protection and those of the ombudsperson for the rights of minorities, they can only deal with discrimination against women in an indirect form in their competencies (to protect rights of minorities or to protect rights relating data protection). According to information provided by the ombudsperson for data protection and the ombudsperson for the rights of minorities, such a case was not encountered during the ten years of the operation of the institution.

56. The first governmental institution — Secretariat for Equal Opportunities within the Ministry of Labour — in charge of the promotion of equality of rights of women and men, was set up in 1995. The organization unit operated from 1998 under the heading of the Secretariat for the Representation of Women, within the Ministry of Social and Family Affairs. In 2002 this was transferred into the Directorate for Equal Opportunities within the

Ministry of Labour and Employment Policy, which was set up to facilitate gender mainstreaming. In May 2003 the Director of the Directorate for Equal Opportunities was appointed to Minister without Portfolio enforcing the requirements of equality of opportunities in governmental activities. In January 2004, the Government Office for Equal Opportunities controlled by the Minister without Portfolio in charge of equal opportunities was set up. One of the fundamental tasks of the Government Office for Equal Opportunities was to facilitate the equality of the rights and opportunities of women and men. Year 2004 saw the establishment of the Ministry of Youth, Family, Social Affairs and Equal Opportunities as a result of the integration of a number of ministries and authorities, including the Government Office for Equal Opportunities. The current status of the organizational unit concerned with equality of women and men was established after the elections in 2006. The Section of Gender Equality is a division operating inside the Department of Equal Opportunity of the State Secretariat for Equal Opportunity within the Ministry of Social Affairs and Labour. Within the organization structure of the Ministry the Gender Equality Department carries out the following tasks:

- Elaboration of the strategic document entitled National Action Programme underlying the policy aimed at ensuring equality between women and men, the relevant policy directions and development concepts, action and technical programmes, monitoring of their implementation
- Coordination of the development and implementation of programmes aimed at equality between women and men involving several sectors and functional areas
- Carrying out of application schemes facilitating gender equality
- Development of the technical contents of the use of international funds facilitating gender equality, participating in the technical/professional monitoring of programmes implemented from the sources of international funds
- Elaboration of reports at regular intervals on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women and its Recommendations, as well as on the accomplishment of the goals set by the Fourth World Conference on Women
- Participation in resolving complaints about Hungary in relation to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women
- Operation of the Council for the Representation of Women
- Participation in the development of a system of statistics related to gender equality

57. In its Resolution 1059/1999 (V. 28) the Government established the Women's Representation Council in order to accelerate legislation and action programmes on equal opportunities for women, and to involve non-governmental organizations representing the interests of women. The Council was a consultative, advisory and proposal-making body, preparing the decisions of the Government, and coordinating the implementation and control of action programmes promoting equal opportunities for women. The Council was revived and its name changed in October 2006. Government Resolution 1089/2006 (IX.25.) established the Council for Gender Equality. At the same time, Government Resolution 1059/1999 (V. 28.) on the establishment of the Women's Representation Council was repealed.

58. A National Strategy Plan for Gender Equality (2009–2020) is presently under preparation by the Ministry of Social Affairs and Labour for the next 12 years. The long-term priorities thereof are based on the Gender Equality Roadmap and consist of the following: equal economic independence for women and men, the reconciliation of private and professional life, equal representation in decision-making, the eradication of all forms

of gender-based violence, the elimination of gender stereotypes, and encouragement of the necessary changes concerning the institutionalization of gender mainstreaming. However, in practice, short-term (for 2 years) action plans are planned to be introduced to specify the necessary activities for achieving these goals. The National Strategy Plan is planned to be adopted in the first half of 2009. A special working group has been established with the specific aim of dealing with this issue namely developing a 2-year-long action plan for the Hungarian Government.

59. The proportion of women in the Hungarian Parliament is low, though since 2002 it has increased. After the elections in 2002 a total of only 35 women MPs (9.1 per cent of all MPs) started working in the Hungarian Parliament. Recently there are 43 women MPs (11.16 per cent of all MPs). Due to the combined election system, the chances of women winning the elections are also influenced by their positions in the party lists of candidates. One of the effects and consequences of the election system is the small percentage of women among MPs. The Speaker of the Parliament has been a woman since 2002. The proportion of women in parliamentary committees is 10.6 per cent, however only 4 out of 18 committees are headed by women.

60. This is the first parliamentary period for Hungary in the European Parliament. The proportion of women among the members of the Hungarian delegation is 37.5 per cent (9 out of 24 persons). It is higher than the average 31 per cent.

61. Data concerning the rate of minority members of the Parliament is not available. Based on the Hungarian Constitution, the minorities' collective participation in public life should be ensured, but the concept on implementing this regulation, namely, ensuring minorities' parliamentary representation has not been adopted. Minority members of the Hungarian and European Parliament are/can be elected as members of parties.

#### **Article 4**

62. There has been no change since the submission of the previous report.

#### **Article 6**

63. With regard to the right to life since the last periodic report submitted by the Hungarian Republic two amendments took place in the law regulating the authority of using firearms by officers.

64. Decision 9/2004. (III. 30.) of the Hungarian Constitutional Court annulled some parts of Article 54. of the Act on the Police on the basis of which officers were authorized to use firearms. The Court stated it as unconstitutional that according to the then operative Paragraph h) of Article 54. the officers were entitled to use firearms to "capture, or prevent the escape of a perpetrator of a crime against the State or a crime against humanity". The Court considered that in these cases the police could have used firearms against a person who was not endangering the life of anyone, and thus the act restricted in an unconstitutional way the right to life. The Court stated as well that to capture, or prevent the escape of those perpetrators who commit crimes against humanity by murdering other persons, the police can use firearms henceforward according to Paragraph (g) of Article 54. ("The police officer shall be entitled use a firearm [...] to capture, or prevent the escape of a perpetrator of a wilful murder.")

65. The Court also annulled the text "or other dangerous device" in Paragraph (i) of Article 54. This Paragraph originally entitled the police officer to use firearms "against a person who does not perform the police order to lay down a weapon or other dangerous



device in his/her possession and whose behaviour indicates an intention to directly use such weapon or dangerous device against another person or persons”. The Court annulled the part in question because its meaning was not clear, taking into consideration that such a legal expression did not exist in the Hungarian law system. Paragraph 1. of Article 33. of the Act on Police modified this Paragraph introducing the part “or a device appropriate to kill somebody”. So the text in effect of this Paragraph is the following: “The police officer shall be entitled to use a firearm [...] against a person who does not perform the police order to lay down a weapon or other device appropriate to kill somebody in his/her possession and whose behaviour indicates an intention to directly use such weapon or device appropriate to kill somebody against another person or persons.”

66. Finally the Court decision annulled Paragraph j) of Article 54. This paragraph entitled the police officer to use firearms “to prevent the forceful freeing of or the flight of a detainee, or to capture an escaping detainee captured, arrested or detained on the basis of a judicial decision unless such detainee is a minor”. The Court considered that in the case of the flight of a detainee the police could have used firearms against a person who was not endangering the life of anyone, and thus the act restricted in an unconstitutional way the right to life. Paragraph 2. of Article 33. of the Act on Police laid down a new text of this paragraph, namely: “The police officer shall be entitled to use a firearm [...]to prevent the forceful freeing of a detainee captured, arrested or detained on the basis of a judicial decision, against the perpetrator who intends the forceful freeing.”

67. Article 12 of Act XC of 2007 modified the Act on Police and entitles Hungarian police officers to use firearms on the territory of another State if an international treaty or a legal norm of the European Union allows it. Non-Hungarian police officers are also allowed to use firearms in Hungary in these cases.

## Article 7

68. Pursuant to Article 7 of the Covenant and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the “Fundamental Rights and Duties” of the Constitution of the Republic of Hungary provides that everyone has the inherent right to life and to human dignity, no one shall be subject to torture or to cruel, inhuman or humiliating treatment or punishment [Sections (1)–(2) of Article 54 of the Constitution]. Fulfilling international requirements and the general provisions of the Constitution, Hungarian laws and other regulations have developed extensive safeguards to prevent torture and inhuman or degrading treatment.

69. The special crimes — abuse of authority [Section 225 of the Criminal Code], mistreatment of official proceedings [Section 226 of the Criminal Code], third degree [Section 227 of the Criminal Code] — in connection with the above-mentioned issue are regulated in Title IV, Chapter XV of the Criminal Code, which contains crimes of corruption in the administrative and law enforcement sectors and other segments of society.

70. In line with article 7 of the Covenant, Act XIX of 1998 on Criminal Proceedings (hereinafter: CCP) — entered into force on 1 July 2003 — contains fundamental requirements for the authorities taking part in criminal proceedings, that is during the proceedings for the human dignity, the personal rights of those involved [Subsection (1) of Section 60 of CCP], this provision is repeated as safeguard while regulating the legality of evidence [Subsection (2) of Section 77 of CCP].

71. The prohibition of torture and other unlawful treatment is regulated in other statutes apart from the Code on Criminal Proceedings. Decree No. 11. of 1979 on the Execution of Punishments and Measures (hereinafter: Bv. tv.) [Subsection (1) of Section 21] contains provisions concerning inmates, furthermore Decree No. 19/1995 (XII. 13.) BM of the

Ministry of Interior on the Order in Detention Facilities contains provisions which prohibit torture and other unlawful treatment of the detainee [Subsection (2) of Section 1].

72. The Act on Police — containing analogue prohibition together with the aforementioned acts — states that a policeman shall take measures against a person conducting prohibited actions to prevent his behaviour regardless of duty roster, rank and individual [Subsection (4) of Section 16].

73. Act CVII of 1995 on the Organization of Penal Institution (hereinafter: Bv. sztv.) [Article IV] — according to the requirements of the rule of law — regulates the means of coercion used by the staff of the penal institution, and also the order of investigation of their lawful use. If the director of the penal institution sets out that the use of means of coercion is unlawful, he shall inform the prosecutor within eight days, if the use of means of coercion causes bodily harm or death he shall inform the prosecutor immediately. Act CVII of 1995 — in accordance with other acts — prescribes that the person against whom the means of coercion were applied (or the legal representative of the person who is involuntarily or preliminarily treated in a mental institution or the representative of the patient) has the right to press charges, to commence action, make a report or to lodge a complaint with the competent authorities or agencies.

74. With regard to the regulation of the minors, since 2001 in penal institutions and detention facilities the prosecutors supervising the administration of punishments have controlled the legality, and the protection of children and young people. To ensure the legality of treatment they make inquiries in institutions of correction at least twice a month. According to the inquiries, the rights of the detainees, the regulations of their contact with their relatives and counsel for defendants are enforced, and the legality of treatment is also ensured.

75. The Bv. tvr. contains provisions concerning the prohibition of torture and other unlawful treatment. Article 21 of the aforementioned Decree Law constitutes that all convicted persons shall be treated with respect for their dignity, may not be subjected to torture, cruel, inhuman or degrading treatment, and may not be subjected to any medical or scientific experimentation without their consent. Prisons shall ensure a level of general discipline suitable for achieving the correctional aims and maintaining the order of the institution. According to Article 42 (1) of the same Decree Law if a convict violates prison rules, in order to achieve correctional aims and maintain the order of the institution, [solitary confinement] may be effected. (4) Solitary confinement may be ordered for thirty days in strict regime prisons, twenty days in medium regime prisons, and ten days in light regime prisons; the convict may be allowed to work during this time. (5) Pregnant women and young mothers may not be subjected to solitary confinement. (9) If the physician recommends solitary confinement be discontinued due to health reasons, solitary confinement shall be interrupted.

76. According to Article 10 (4) of Bv. sztv. prison service staff shall consist of persons with suitable personality traits, health and physical condition, education (vocational training) and psychological fitness — as defined in applicable legislation — to perform their duties among prisoners with humanity.

77. According to Article 20 (1) of Bv. tvr. punishments involving deprivation of liberty shall be carried out by the Prison Service. (3) In the course of performing their duty in accordance with applicable legislation, prison service staff may use force to effect necessary measures. Article 24 declares that punishments involving deprivation of liberty shall be carried out in the regime defined by the verdict — strict, medium or light — at an institution closest to the convict's residence, if possible, as defined by Prison Service Administration. According to Article 11. (3) of Bv. sztv. law enforcement officials may not use torture, inhumane or degrading treatment, and shall disobey any such order. Upon

witnessing such treatment, members of prison service staff shall demand the perpetrator stop such behaviour, shall take countermeasures, or report the event to a person authorized to take action.

78. Article 2 (4) of Bv. tvr. states that “convicts shall have the right to legal remedy during punishment and measures”. Article 6 (4) declares that prisoners shall have the right to file a complaint within fifteen days after a decision has been made, or making of such decision has failed to happen. If the prisoner is in a state that constitutes an obstacle for filing a complaint, the fifteen-day period shall begin on the day such hindrance has ceased to exist. (5) Claims and complaints shall be adjudged within thirty days — if the nature of the case requires, in speedy procedure — which period may be extended by another thirty days, if duly justified. The prisoner shall be notified of the decision on her claim or complaint, as well as of any extension to the deadline. (6) Decisions of the Governor, Director General, and the Minister of Justice and Law Enforcement are final, unless applicable legislation requires otherwise. (7) Claims or complaints filed repeatedly in the same case within a period of three months may be rejected without investigation, if the repeated submission contains no new fact or data. This provision is not applicable to repeated health inspection, child rearing, and child custody claims or complaints. (8) In cases specified by applicable legislation, prisoners shall have the right to appeal to a prison judge (*bv bíró*) or court against a decision that has been taken. According to Article 7 in addition to the legal remedy described in Article 6, prisoners may turn directly to the following officials for legal remedy regarding custody:

(a) The prosecutor responsible for prison service supervision; the prisoner may demand a hearing with the prosecutor;

(b) In the case of any violation of civil rights in custody, to the Parliament’s Civil Rights Commissioner, or the Parliament’s Commissioner for Ethnic and Minority Rights;

(c) With complaints regarding the handling of personal information, or access to publicly available information, to the Commissioner for Data Protection.

Article 8. States that prisoners shall have the right to submit claims or complaints to specific international organizations, as defined in applicable legislation.

79. The statistical analysis on crimes of mistreatment in official proceedings does not specify whether collecting information by coercion did happen by force or by threat. In this way it is impossible to distinguish coercion with force — when a special criminal offence has to be determined — from coercion with threat. Physical abuse in official proceedings (para 226 of CC) and coercion to get information (para 227 of CC) are criminal offences punishable by imprisonment up to three and five years, respectively. These prison terms are in line with prison terms prescribed for crimes committed against officials (para 229 of CC). In principal, these cases are considered as criminal offences with an imprisonment up to three years, but to commit it in a group or being armed is punishable up to five years, and the leader of the group may be punished for a term of two to eight years.

80. A smaller portion of the cases concerning breaches of substantial human rights are also related to failures to respect procedural requirements. In this context we should mention some Hungarian cases (*Kmetty, Balogh, Barta*) filed with the European Court of Human Rights under article 3 (prohibition of torture or inhuman or degrading treatment) on account of ill-treatment by the police. While considering the complaints made under article 3 the Court shall, on the one hand, examine whether the treatment in question amounted to ill-treatment, inhuman or degrading treatment as well as the degree of the suffering caused and, on the other hand, whether the investigations conducted in the case were thorough and effective (this is the procedural aspect of this article). The Court established the occurrence

of ill-treatment in none of the above referred cases, but held that the investigations into them had not been sufficiently thorough and effective.

81. According to the statistical data for 2007, legal action was initiated in 139 cases as a result of accusations that crimes had been committed against detainees (either committed by other detainees or the prison security personnel). Of these, 94 cases were completed and handed over for formal arraignment, which represents 67.6 per cent of all such procedures for that year. Based on the statistical data for the first 11 months of the year following, 137 such actions were completed, of which 87 proceeded to arraignment, 63.5 per cent of all such procedures for 2008.

82. It can therefore be verified that two-thirds of the alleged crimes committed against detainees result in formal indictment. Of all of these procedures, it can be said that effective prosecution for crimes against property is very low, but the figures indicate a high level of effectiveness of the criminal proceedings that are initiated because of violent crimes against persons.

83. With regard to demonstrations in Budapest in September-October 2006 19 cases have been initiated against public officials, but court proceedings have been finished with final judgment in seven cases. The court acquitted five accused persons of the charge. One accused was sentenced to imprisonment and he was deprived of the right of participation in public affairs. Three accused were sentenced to imprisonment, suspended on probation. The court suspended the sentence of probation against three accused persons; the periods of probation were three years each.

84. Article 104 (1) of the Hungarian Criminal Code — similarly to the provisions of Article 102 (1) on preliminary exoneration — provides for the possibility for exoneration to enter into force on the day the sentence became final if the court decided on an executable prison term, but its execution was suspended. If found worthy, the person convicted by the court may be preliminarily exonerated.

85. The court may grant preliminary exoneration if it suspends the sentence of imprisonment and the person in question is found worthy of exoneration. As for the worthiness the judge shall examine several elements: particularly the person's personality, way of life, seriousness of the crime committed, method of committing the crime and its motives, the measures of the punishment. The preliminary exoneration shall be withdrawn if the suspended sentence is ordered to be carried out.

86. General rules of exoneration are provided for in Article 100 of the Criminal Code:

“(1) Due to exoneration the person in question is relieved from the detrimental consequences which are attached by law to any prior conviction.

(2) The person cleared by exoneration shall be deemed to be of clean criminal record, and he cannot be required to give account of any conviction from which he has been exonerated.

(3) In case of the perpetration of a new act of crime, the exoneration shall not extend to those detrimental consequences which are attached by this Law to a previous conviction.”

87. In practice it means that the convicted person gets exonerated from the detrimental consequences prescribed by law. The detrimental consequences are partially enforced in the criminal law, partially outside its scope. Criminal law consequences are attached to the conviction only if the convicted person commits a crime again. Detrimental consequences outside the criminal law are generally connected to the criminal record, which is within it to a conviction, but there are several laws which attach detrimental consequences to a conviction independently of whether the person has a criminal record or has a clean record.

88. Detrimental consequences outside the scope of criminal law may be of constitutional, public law, labour law, family law or civil law nature. There are detrimental consequences in the field of economic activities as well. For instance, para 3 (1)a of Act LXXVII of 1997 on the status and remuneration of judges states that a person may become a judge only with a clean criminal record, while para 23 (1) of Act IV of 2006 on business associations stipulates that a person convicted to an executable prison sentence may not become a position holder in a business association before he is exonerated from the detrimental consequences attached to the criminal record, and para 27 (7) of Act CXXXIX of 2005 on higher education stipulates that a person with criminal record may not become member of an economic council.

89. Having been exonerated the person in question may again enjoy the same rights as any other person with a clean record. Therefore, the person exonerated always becomes clean for the future, not with retroactive effect for the conviction. In accordance with point (2) the person cleared by exoneration shall be deemed to be of a clean criminal record, and he cannot be required to give account of any conviction from which he has been exonerated. In this case the good conduct certificate issued to the person exonerated shall indicate that he has a clean criminal record. Rules of criminal records are set out in Act LXXXV of 1999.

90. A person in detention under the Aliens Policing Procedure will receive information about his/her rights and duties, which must be communicated to the person in either German, English, French or Arabic, in addition to Hungarian. In case the person concerned does not speak any of the above languages, the contents of the document will be translated into his/her native language by an interpreter.

91. Act I of 2007 (hereinafter Szmtv) on the entry and stay of persons having the right of free movement and residence, as well as Act II of 2007 on the entry and residence of third country citizens (hereinafter Harmtv) together determine that the return or expulsion of persons cannot be ordered or executed to the territory of a country which does not qualify as a safe country of origin or a safe third country with respect to the person concerned, especially in case of the person being subject to persecution on account of his/her race, faith or national identity, or belonging to a specific social group or political opinion; furthermore, such a person shall not be delivered to the border of a territory from where, for good reasons a fear exists that the person returned or expelled would be exposed to torture, cruel or humiliating treatment or punishment or the death penalty.

92. Both legal regulations specify that the return or expulsion of a person under an asylum-seeking procedure can be executed only pursuant to a resolution with legal force and executability by the authority dealing with refugee matters rejecting the application.

93. In case there is no safe country to receive the person concerned, the Aliens Policing Authority will determine in a resolution that the person is recognized by the Republic of Hungary as a received person and it will make arrangements in accordance with provisions for issuing a humanitarian residence permit.

94. In 2001, the Head of National Police Headquarters (hereinafter: NPH) issued measures for the implementation of the recommendations of the Committee for the Prevention of Torture (CPT) of the Council of Europe. In 2006 NPH measures were also taken for the implementation of the recommendations following the CPT delegation's report on their investigation.

95. According to the Convention (Article 7, Paragraph 10), proper education must be provided for all provost and medical employees, or anyone dealing with arrested, detained or imprisoned persons. Centrally-organized, three-week-long, specialized courses have long been organized, in order that the above-mentioned employees could properly deal with detainees in a humane, legal and professional way. Participants are given a comprehensive

view about fundamental rights, particularly the legal background of the measures restricting the right to liberty, as well as the general and international prohibition of torture and other cruel, inhuman or degrading treatment.

96. When locked up every detainee receives written coverage about their rights and obligations. The information booklet — including contact information of the civil legal-aid organizations — is at the territorial organs' disposal in nine foreign languages. When discharged from custody, every detainee receives a record about any coercive measures restricting their right to liberty which have been adopted.

97. In the first term of 2006 a circular was published, which regulates the rights and obligations of arrestees and detainees, as well as the rules and safety measures of the detention rooms. An information sheet has also been published — as the annex of the circular — which can be found at every detention room under the authority of the Police. Inspections concluded by penal law supervisory prosecutors further contribute to the entire implementation of the rights of detainees. As it concerns torture and other cruel, inhuman or degrading treatment in detention facilities the number of registered complaints has not changed significantly: 182 cases in 2005, 213 cases in 2006 and 194 cases in 2007.

98. The head of the Budapest Police Headquarters, the county police headquarters, the director of the National Office of Investigation, and the commander of the Emergency Intervention Police Unit prepare yearly reports on the complaints lodged by detainees, as well as on the results of investigations made by those who are responsible for detention.

99. Among many internal standards of NPH, the rules for detention service should be emphasized. These norms underline the prohibition of torture and other cruel, inhuman or degrading treatment, the guarantees of the right to personal liberty under police action, as well as the right to humane treatment of those who are deprived of their personal liberty. The NPH regularly reports to the CPT of the Council of Europe. The last on-the-spot investigation held by the CPT (2006, Hungary) concluded that the Hungarian circumstances and legislation conform to the requirements of the Council of Europe.

100. The Office of the Parliamentary Commissioner for National and Ethnic Minority Rights receives complaints concerning extensive use of force by individuals working in penal institutions. The relatively low number of complaints does not mean that such conduct is rare; it rather implies that individuals who are subject to such treatment do not file a complaint due to their fear of victimization. In the majority of cases, if the victim decides to file a complaint, the proceedings are terminated by reason of the lack of evidence and in addition, the complainant may often face some kind of disadvantage as a result. During the second half of 2007, the number of complaints filed concerning police proceedings has increased.

## **Article 8**

101. The crime of trafficking in human beings was incorporated in the Criminal Code (Act IV of 1978 on the Criminal Code – hereinafter: “Criminal Code”) by Act LXXXVII of 1998, stating that committing such an offence for the purpose of labour is a classified case of this crime. The criminal conducts specified therein (sale; purchase; transfer/receipt, exchange, acquisition as due consideration) were supplemented by Act CXXI of 2001; thus, since 1 April 2002 a person guilty of recruitment, transportation, harbouring, or receipt of another person for the purpose of trafficking may be punished with up to three years of imprisonment, or, in classified cases even with life imprisonment.

102. The new provisions are fully in line with the requirements of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

## Article 9

103. The legal framework for authorities taking part in criminal matters is determined by the Code on Criminal Proceedings. In accordance with Article 55 of the Constitution, the Act on Criminal Proceedings determines the strict order of the use of coercive measures restricting personal liberty.

104. At its session held on 10 March 1998, Parliament passed the new Act on Criminal Proceedings, the provisions of which — with certain exceptions — entered into force on 1 July 2003. The majority of the basic principles and procedural requirements set forth in the Covenant had already been stipulated in the former act as well (Act I of 1973), nevertheless, the new regulation necessitates the harmonization of these stipulations with those of the Covenant.

105. It is a core principle in Act XIX of 1998 on Criminal Proceedings (hereinafter: Act on Criminal Proceedings) that the defendant has the right to defence. It is a principal rule that everyone has the right to defend themselves at liberty, and this right may only be restricted or a person may only be deprived of his/her freedom for reasons laid down in, and in compliance with, the procedure set forth in the Act on Criminal Proceedings. Arbitrary detention or arrest is prohibited by the rules of guaranteed procedure, stipulating the conditions for applying such coercive measures [Subsection (2) of Section 126, and Subs. (2) of Section 129 of the Act on Criminal Proceedings].

106. The rights of the defendant listed in the Act on Criminal Proceedings [Subs. (2) of Section 43] include the right to receive information on the suspicion, the charge and any changes therein. The basic right granted by the Constitution [Subs. (2) of Section 55], that is, any person arrested or detained on a suspected criminal charge shall be released or brought before a judge within the shortest possible time, is supplemented by the following rules in the Act on Criminal Proceedings:

- The defendant may be retained in custody for a maximum period of seventy-two hours. After the lapse of this period, in the absence of an order for his pretrial detention, the defendant shall be released [Subs. (3) of Section 126]
- Pretrial detention may only take place in the cases specified by law, and the duration thereof is also determined by law, depending on the time of issuing the relevant order [Subs. (2) of Section 129, Section 131 and 132]
- Since 1 April 2006, the accused, the defence counsel and the private party has the right to submit an objection to the protracted procedure at the court (Section 262/A)

107. Pursuant to Subs. (1) of Section 133 of the Act on Criminal Proceedings, the defendant and the defence counsel may file a motion for the termination of the pretrial detention, which motion must be examined by the court in its merit. Under Section 580 of the Act on Criminal Proceedings, anyone who has been deprived of his liberty by way of pretrial detention, house arrest or involuntary medical treatment has an enforceable right to legal redress (compensation) by the State.

108. A further guarantee is that unless the conditions have changed, the defendant may not be taken into custody twice for the same criminal offence [Subsection (4) of Section 126 of the Act on Criminal Proceedings].

109. The authorities taking part in the criminal cases shall make all efforts to reduce the term of the pretrial detention as much as possible, if the defendant is held in pretrial detention, a fast track procedure shall be conducted [Subsection (1) of Section 136 of the Act on Criminal Proceedings]. The term of pretrial detention is set out by the Act on Criminal Proceedings: it cannot be longer than three years for adults and two years for juveniles. Pretrial detention shall be spent in a penitentiary institution, and the Act provides

that — based on a court or the prosecutor’s decision — in exceptional cases and for a short period, the person can be held in a police cell [Subsection (1) and (2) of Section 135 of the Act on Criminal Proceedings]. Statistical data regarding pretrial detention can be found in Annex III.

110. The requirement of timely proceeding ensures that up to the time of filing the indictment, the pretrial detention may also be terminated by the prosecutor [Subsection (4) of Section 136 of the Act on Criminal Proceedings], that is if the conditions of the coercive measures are expired there is a possibility to take immediate measures.

111. Provisions involving restriction of free movement (home detention, curfew, house arrest or keeping distance) — that are under the competence of the court guarantee reasons — also represent the legislative need that the deprivation of liberty should only be applied if it is unavoidable [Subsection (2) of Section 130 of the Act on Criminal Proceedings]; in case the preconditions of the law exist, imposition of bail serves the same purpose.

112. One of the main responsibilities and — at the same time — basic rights of the prosecutor is that he shall supervise the lawful execution of coercive measures ordered in the course of the criminal proceedings and entailing the restriction or deprivation of liberty [Subsection (6) of Section 28 of the Act on Criminal Proceedings]. The prosecution service both in the course of its own investigations and exercising his right of supervising investigations of investigating authorities — considering that unlawful detention is punishable under the Criminal Code [Section 228] — pays special attention to respect the mentioned provisions.

113. Further regulations:

Bv. tvr. “Article 3 Punishments and measures are carried out on court order. If the prosecutor orders probation, probation shall be carried out on the prosecutor’s orders. The Court, the Prison Service, the Police, as well as other bodies defined in this Act shall be responsible for carrying out punishments and measures, with the participation of other bodies and organizations.”

Bv. tvr. “Article 5 The length of punishments and measures shall be as defined in the verdict, and in applicable legislation. Every day that begins in custody shall count; the last day of a sentence shall be calculated by calendar days.”

Bv. tvr. “Article 116 (1) Pretrial custody shall take place at a prison service institution, in accordance with the pretrial arrangements made by the prosecutor, and later, the decision of the Court. The Court may decide that a juvenile suspect shall spend pretrial custody in a correctional education facility.”

Interior Minister’s Order 11/1990 (II. 18.) (hereinafter: IM r.)

“Article 10 Admissions to any prison service institution may only take place based on:

- (a) Notice of final verdict;
- (b) Order to appear in Court;
- (c) Arrest warrant;
- (d) Court call for serving a sentence;
- (e) Temporary detention order issued by the prosecutor or judge;
- (f) Notice from the Ministry of Justice and Law Enforcement on the carrying out of an incarceration sentence issued by a foreign court.”



114. According to subsections 3 of section 132 of the CCP the length of pretrial detention shall not exceed three years. An exception is allowed when it was ordered or maintained after the announcement of the court decision on the merits of the case, but there is a pending appeal, or a retrial procedure. An exception is also allowed when the defendant breaches the rules house arrest ordered after the pretrial detention (when it has reached three years), the pretrial detention may be ordered again. In this case the period of the pretrial detention shall be counted from the day his pretrial detention is re-ordered. It is necessary to differentiate between the pretrial detention ordered prior to filing the indictment and the pretrial detention after filing the indictment.

115. According to section 131–132 of Act XIX of 1998 on the Criminal Procedure, pretrial detention ordered prior to filing the indictment may continue up to the decision of the court of first instance during the preparations for the trial, but it shall be ordered for no longer than one month. The pretrial detention may be then extended by the investigating judge each time by three months on request, but the overall period shall still not exceed one year from the order of pretrial detention. Thereafter, pretrial detention may be extended by the county court by two months on each occasion, in compliance with the procedural rules pertaining to investigating judges.

116. Regarding subsections 4 and 5 of section 131 of Act XIX of 1998 on the Criminal Procedure, after filing the indictment, pretrial detention ordered or maintained by the court of first instance may continue up to the decision on the merits of the case made by that court. The pretrial detention ordered or maintained by the court of first instance after the decision on the merits of the case, or ordered by the court of second instance may continue up to the conclusion of the procedure of second instance. Moreover the pretrial detention ordered or maintained by the court of second instance after the decision on the merits of the case, or ordered by the court of third instance may continue up to the conclusion of the procedure of third instance, but no longer than the term of imprisonment imposed by the decision under appeal. It should be emphasized that the decision on the merits of the case of the court of first or second instance may be repealed and the court of first or second instance may be ordered to conduct a new procedure; pretrial detention ordered or maintained by the court of second or third instance may continue up to the decision passed by the court that is ordered to conduct a repeat procedure in the course of this repeat procedure, in its preparations for the trial.

117. If the period of the pretrial detention ordered or maintained after filing the indictment exceeds six months and the court of first instance has not delivered a decision on the merits of the case yet, the order of such pretrial detention shall be reviewed by the court of first instance. If the period of the pretrial detention exceeds one year, the justification of such pretrial detention shall be reviewed by the court of second instance. In that case after the lapse of the time period, the justification of the pretrial detention ordered or maintained after filing the indictment shall be reviewed by the court of second instance, or, if the procedure is held before the court of third instance, by the court of third instance, at least once in every six months.

118. Regarding section 135 of the CCP the pretrial detention shall take place in a correctional institution (i.e. not in the police building). On exceptional grounds, when the conduct of the investigation so requires, the prosecutor may prescribe that the person in pretrial detention be held in a police cell for a period of maximum thirty days based on a prosecutor's decision. Based on the proposal of the prosecutor this period can be extended by the court by another thirty days. According to these stipulations the length of the pretrial detention in a police cell cannot be longer than maximum sixty days. After the lapse of this period the court shall decide on placing the suspect in a police cell for an additional thirty-day period at the motion of the prosecutor. The decision on placing the suspect in a police cell is not subject to legal remedy. It is also important to note that regarding subsection 4 of

section 116 of Law-Decree No. 11 of 1979, pretrial detention can be executed in a police cell during the investigation only, i.e. prior to filing the indictment.

119. According to Section 132 (3) of CCP when the period of pretrial detention reaches three years, it shall terminate, unless it was ordered or maintained after the announcement of the conclusive decision, or unless a third-instance procedure or a repeat procedure is in progress owing to a repeal in the case. Section 132 (4): If the convicted person breaches the rules of the home curfew and the house arrest decision after the termination of the pretrial detention according to (3), the pretrial detention can be ordered again. In this case the period of the pretrial detention shall be calculated from the re-ordering of the pretrial detention.

120. In relation to the juvenile delinquency Section 455 stipulates a different way. (After the lapse of two years after the commencement of the execution of pretrial detention ordered against a juvenile offender, the pretrial detention shall be terminated, unless the pretrial detention was ordered or maintained after the announcement of the conclusive decision, or unless a repeat procedure is in progress in the case due to repeal.) According to Section 454 (2) a pretrial detention ordered against a juvenile offender can be executed in a youth custody centre as well.

121. Three judgments taken in Hungarian cases dealt with the length of pretrial detention. In the *Imre v. Hungary* case the Pest Central District Court (henceforth: PKKB), in 1997, placed the applicant in pretrial detention for trafficking in drugs and prolonged his pretrial detention without reasoning it in sufficient detail. Therefore the Court ruled against Hungary. In the case of *Maglódy* the PKKB placed the applicant in pretrial detention for homicide. Criminal proceedings against him lasted from 2001 to 2004, when he was convicted and sentenced to imprisonment. The Court, however, held that the grounds for the prolongation of the applicant's pretrial detention had not been sufficiently substantiated and therefore the Court ruled against Hungary. In the *Csáky v. Hungary* case criminal proceedings for extortion were instituted in 2002 against the applicant who was placed in pretrial detention. The Court found the grounds for the prolongation of the pretrial detention insufficient and therefore it ruled against Hungary.

122. The detention of foreign nationals has to be executed primarily in police detention facilities and only under special circumstances in penal institutions. Foreigners held in detention have to be separated from detainees having committed crimes. Since the amendment of Bv. tvr. in 2001 detention ordered during immigration control procedures cannot be executed in police detention facilities. Detention was executed by the Border Guard — at an assigned place — except for cases where the foreigner had been released after imprisonment for committing an intentional crime. In this case the detention had to be executed in the assigned penal institution. The right to order the detention of foreign nationals or take them into custody before deportation became the competence of the Office of Immigration and Nationality, however, the law allows the Border Guard to detain those foreigners whose deportation can be executed within 30 days after capture or the takeover based on the given re-acceptance agreement in order to ensure the execution of the deportation measure. Regarding the amended legal framework and the integration of the Police and the Border Guard, the order of the National Police Headquarters (NPH) on the rules of the guarded accommodation of the Police is being processed.

123. As legal remedy, a third country citizen in detention may, within seventy-two hours from the time the detention is ordered, claim a breach of law and object to the resolution ordering the detention. Objections without any time limitation can be filed if the Aliens Policing Authority has failed to comply with its obligations pursuant to the execution of detention under articles 60 and 61 of Harmtv. The objection will be assessed by the local court with jurisdiction over the place of detention.

124. Act LXXX of 2007 on refugee law (hereinafter Met) determines that the authority dealing with refugee matters places a foreign citizen requesting recognition as a refugee or a person with protected status in an adoptive station until the resolution closing the preliminary investigation or the order of transfer of the applicant under the Dublin Convention enter into legal force, except if the applicant is subject to a measure or penalty restricting personal freedom. If the authority dealing with refugee matters establishes the acceptability of the application, it will refer the application for substantive hearing. If the applicant is in alien policing detention, the alien policing authority shall terminate the detention at the initiative of the refugee authority.

125. No aliens policing detention can be ordered against a minor citizen of a third country; in their case residence at a designated place may be ordered.

126. The State must compensate the accused person for all damages caused and proven through any measures resulting in the withdrawal of liberties (preliminary arrest, home detention, and temporary forced medical treatment). The indemnification liability shall be maintained if the ordering of the forced measures proves unjustified compared to the result of the criminal proceedings.

127. Such a claim may be enforced by the court by providing legal remedies of two instances within six months from the adopted resolution and forming the basis thereof. In any exceptional cases specified by legal regulations, a close relation may also enforce the indemnification in the case of the accused person's death. The State will be exempt from this legal obligation in exceptional cases listed item by item by law.

128. The police will continue to regard the protection of detainees' human rights as a priority task. To this end, the police force will receive continuing education within the framework of organized courses. The heads of police patrol and local police stewards are also given training in human rights under the special course programme. In recent years the training in human rights of the directorate personnel of the airport police has been given special emphasis.

129. In addition to the general preparations, the following special training courses have taken place: training by the United Nations High Commissioner for Refugees organized in Gyöngyöstarján; the human rights conference organized by the directorate two years ago; Gábor Gyulai, expert to the Helsinki Commission gave a presentation on the Arab and African way of thinking and mindset; Miklós Buzássy, International Organization for Migration Programme Coordinator, advised the personnel on integration and reintegration and the return home programme.

130. The minutes on the full scope and complex handover and takeover of the Border Guard was signed between the Police Department and the Border Guard on 29 December 2007, and this act also implied that the integration in form and content of the two independent units into one organization had been completed. Under a tripartite cooperation agreement concluded in December 2006, regular civic border observation activity is taking place in detention premises as well as the guarded shelters on the border stretches patrolled by the Police. This cooperation is continuous and is considered effective.

131. In the last reporting period of the Parliamentary Commissioner for Civil Rights he stated that the proportion of criminal cases exceeded 10 per cent of all cases. Complaints typically refer to criminal procedures or enforcement of punishments; the concerned organs are the investigatory authorities (police, customs and prosecution), the prosecution as supervisory and accusatory organ, the courts and the penal institutions (prisons and police lockups). The Ombudsman Act defines exactly which organs fall outside the competence of the ombudsman. These are the Parliament, the President of the State, the Constitutional Court, the Court of Auditors, the courts and — through an amendment of the Act, from 20 December 2001 — the prosecution as well. This amendment reduced the jurisdiction of the

ombudsmen and concerned fundamentally the handling of criminal cases, because from that time on complaints against measures or decisions of the prosecution, or cases in which the concerned parties could turn to the prosecution for legal remedy in course of the criminal procedure cannot be investigated.

## Article 10

132. The Standard Minimum Rules for the Treatment of Prisoners have been adopted as part of Hungarian legislation as follows: Minimum Rules (1957), guidelines for their protection (1988), Code of Conduct for Law Enforcement Officials (1978), Principles of Medical Ethics (1982).

133. Compliance is specifically controlled by the European Committee for the Prevention of Torture (CPT), and, as part of its fundamental activities, the Prosecution Service of the Republic of Hungary. According to Article 2 (3) of Bv. sztv. the Prosecution Service shall supervise the carrying out of punishments and measures, in accordance with applicable legislation.

134. In the past two decades there were some considerable changes in the Hungarian criminal law system. The death penalty was abolished in 1990 by the Constitutional Court, and then the real life imprisonment (without probation) was introduced by the Parliament in 1998. The regulations on infliction of punishments in the Criminal Code were revised several times, which influenced the practice of the courts in sentencing. The inmates of penal institutions are: convicts serving their sentences, suspects under preliminary detention, persons serving their penalty of incarceration for committing a petty offence and convicts sentenced to forced medical treatment. After a decrease from 1993 there had been a significant increase in number of persons sentenced to imprisonment or taken into custody pending trial from 1998. The number of detainees rose over 17 800 in 2002, since then it has significantly gone down; at present it is around 14 700.

135. Current regulations:

Bv. tvr. "Article 33 (1) the convict shall, in particular:

(b) Suffer isolation from convicts of the opposite sex and convicts sentenced to different regimes, accept assignment to groups based on age, criminal status, safety status, correctional and health considerations;"

Bv. tvr. "Article 119 (1) During pretrial custody, the following groups shall be separated:

- (a) Prisoners on remand from convicted prisoners;
  - (b) Men from women;
  - (c) Subject to the orders of the investigating authority – persons arrested in the same court proceedings.
- (2) Juvenile pretrial detainees shall be separated from adults.
- (3) Where pretrial detainees are held together, their criminal records and the type of charge raised against them shall be taken into consideration to the greatest extent possible."

Bv. tvr. "Article 118 (1) Pretrial detainees shall:

- (a) Have all the rights granted for persons undergoing criminal proceedings,
- (b) Be allowed to wear their own clothing."

Bv. tvr. “Article 19 The aim of incarceration is to introduce a restriction of rights in accordance with this Law-Decree in order to facilitate the reintegration of the convict into the society after release, and in order to help them avoid re-offending.”

Bv. tvr. “Article 24 Punishments involving deprivation of liberty shall be carried out in the regime defined by the verdict — strict, medium or light –, at an institution closest to the convict’s residence, if possible, as defined by Prison Service Administration. Strict regime (*fegyház*) is more restrictive than medium (*börtön*), and medium regime is more restrictive than light regime (*fogház*).”

Bv. tvr. “Article 25 (2) In the different regimes, there are different levels of:

- (a) Isolation from the outside world;
- (b) Guarding, supervision and control;
- (c) Free movement within the institution;
- (d) Regulation in everyday activities;
- (e) Funds available for personal expenses;
- (f) Rewards and punishments;
- (g) Participation in independent prisoner organizations.”

Bv. tvr. “Article 28/A (1) For medium and light regime convicts, lighter regime rules are applicable if — with special regard to the convict’s personality, criminal record, way of life, family status, criminal contacts, behaviour in prison, crime committed, and length of sentence —, there is a reason to believe that the aim of the punishment will also be achieved under lighter regime rules.”

Bv. tvr. “Article 42 (1) If a convict violates prison rules, in order to achieve correctional aims and maintain the order of the institution, the following punishments may be effected:

- (a) Warning;
- (d) Reducing funds available for personal expenses;
- (f) Solitary confinement.”

IM r. “Article 42 (1) the admissions committee shall assign each convict to a security category based on the risk the person is likely to pose to the order of the institution. Security ratings range from I (low risk) to IV (high risk).”

IM r. “Article 45 (1) In order to prevent or interrupt activities that threaten or violate the order and safety of incarceration, the following security measures may be effected against convicts:

- (a) Separation for security reasons;
- (b) Placement in high-security cells or units;
- (c) Applying equipment to restrict free movement;
- (d) Body searches;
- (e) Security check, security search, security inspection;
- (f) Locked door policy;
- (g) Suspending certain rights in accordance with Bv. tvr.

(2) In duly justified cases, the above security measures may be applied simultaneously.”

Bv. tvr. “Article 36 (1) Convicts shall have the right to:

(a) Be held in a hygienic, healthy environment; receive food that is suitable for their individual nutritional needs, taking health condition and the type of activities they engage in into consideration; receive healthcare;

(b) Correspond with family, and other persons approved by the institution; the frequency and length of correspondence may not be restricted;

(c) Receive visitors at least monthly; if the security of the institution so requires, the convict may be required to talk to the visitor behind bars;

(g) Submit claims, complaints, applications, or legal statements to the prison management, or to independent bodies outside the prison service;

(2) Convicts shall not be restricted in their legal capacity. They shall be able to appear for court trials; from the point of bearing costs, they shall be treated as any citizen.”

136. Criminal Code “Article 23 Any person committing a crime at an age younger than fourteen years shall not be punished.” Criminal Code “Article 107 (1) Any person committing a crime at an age older than fourteen but younger than eighteen years shall be considered a juvenile delinquent.” (See also comments on Article 9.)

137. For juvenile offenders, the Act on Criminal Proceedings provides further guarantees. It states that arrest and pretrial detention of a juvenile offender may only be applied if it is necessary due to the gravity of the criminal offence – in case of hiding, danger of committing another criminal offence or jeopardizing the procedure [Subsection (1) of Section 454 of the Act on Criminal Proceedings].

138. This narrowing provision is adequately applied in legal practice. Each year, 3–4 per cent of juvenile offenders are held in pretrial detention. The number of juveniles arrested or held in pretrial detention was 625 and 328 respectively in 2007. Pretrial detention of juvenile offenders shall be executed in reformatory institution (detention home) or penitentiary institution; furthermore, juvenile offenders in the course of pretrial detention shall be separated from offenders of legal age [Subsection (2) and (6) of Section 454 of the Act on Criminal Proceedings].

139. According to the effective legal regulations, minors cannot be detained and foreign detainees cannot be forced to work other than cooperating in maintaining the cleanliness of the rooms they use. In the alien policing jails (guarded accommodation) private cells have not been created; medical separating rooms provide for the prevention of the spread of infection. The detentions ordered during the immigration control procedure are under judicial control. The detainee can ask for the judicial supervision of the order, and detention longer than 72 hours can only be approved by the court.

140. The mitigated implementing rules of imprisonment were introduced into the Bv. tv. by Act XXXII of 1993 (see sections 7/A. and 28/A. of the Bv. tv.). These rules can be applied if the aim of the punishment imposed (imprisonment) may also be achieved by other means, taking due account, among other factors, of the personality, the conduct, the family conditions, the relationship with criminals, the crime committed, the term of the imprisonment of the convicted or his conduct during the proceedings. Subsection 2 of section 28/A of the Bv. tv. specifies those circumstances, in which the application of mitigated implementing rules of imprisonment is not allowed: the convict has not served half of the term of imprisonment remaining before parole; the convict has not served at least six, or in other cases as defined by law, three months of imprisonment in a

correctional institution; the convict, under the rules of the Criminal Code or as ordered by the court, may not be released on parole.

141. Subsection 4 of section 47 of the Criminal Code provides that the following persons may not be released on parole: any person who has been sentenced to imprisonment for a premeditated offence committed after being previously sentenced for a term of imprisonment, before that term has been served in full; any person who served less than two months of his term of imprisonment; any person sentenced for crimes committed in affiliation with organized crime; another criminal proceeding has started against the convict; the convict is sentenced to another term of imprisonment, under section 46 of the Criminal Code; the court ordered that the remainder of the sentence shall be served in a prison and not in a penitentiary.

142. Under the mitigated implementing rules of imprisonment the convicted person may leave the prison four times per month, for a specified length of time not exceeding 24 — exceptionally 48 — hours; the convicted person may have cash for his/her personal needs, and he/she can spend it outside the prison; the convicted person may meet his/her visitor(s) outside the prison and he/she is allowed to work outside the prison without surveillance.

143. If the convict gravely or repeatedly violates the rules of leaving or the rules of working outside the prison, the head of the command of the penal institution suspends the application of these rules and presents a motion to the judge to enforce the punishment to terminate its application.

144. It is also important to note that regarding section 29 of the Bv. tv. the convicted person may be transferred into an interim group in order to be assisted in returning to normal life. Convicts may be transferred into the interim group, when they have already served at least five years of imprisonment and the remainder is less than two years. The prison rules for convicts transferred into the interim group are not as rigorous as the rules for others. For example they can move inside the prison without surveillance, they can be in contact with their probation officer without surveillance and they can leave the prison within specified hours. Under sections 27 and 28 of the Bv. tv. it is also possible to allow a short-term leave from prison.

145. Under Section 82. of the Criminal Code, a person may be placed under the supervision of a probation officer if it is necessary to facilitate the reason for his release on parole (Section 48) or if sentenced to a term of probation (Section 72, Section 89). A recidivist released on parole or sentenced to a term of probation and any person whose indictment has been postponed shall be placed under supervision by a probation officer. A person sentenced to expulsion may not be placed under the supervision of a probation officer. The court ruling may also contain provisions for placing a person under the supervision of a probation officer if released on parole, and it may also prescribe specific rules of conduct.

146. The duration of supervision by a probation officer as defined above shall be identical to the duration of parole, probation or postponed indictment; however, it shall not exceed five years. Any person who has been placed under the supervision of a probation officer shall abide by the rules of conduct prescribed in legal regulations or by resolution, maintain regular contact with the probation officer and give him the information necessary for control.

147. The ruling of the court, or the prosecutor where indictment has been postponed, may include specific rules of conduct to prescribe obligations and prohibitions with a view to the objectives of probation or parole. The court or the prosecutor may order that the person released on parole:

- (a) Must not maintain any contact with a specific person who took part in the commission of a crime;
  - (b) Must stay away from the victim of the crime, or from his/her residence, place of work or the educational institution he/she may attend;
  - (c) Must refrain from visiting certain specific public places;
  - (d) Must refrain from consuming alcoholic beverages in public;
  - (e) Must report at a specific place and at specific intervals, to a specific organ or person;
  - (f) Must contact the government employment agency, or report to the local authorities for community service work;
  - (g) Must pursue specific studies;
  - (h) Must receive — subject to his/her consent — medical treatment or a therapeutic, curative procedure;
  - (i) Must attend group functions arranged by the probation officer or other programmes organized by the community programme officer of the National Parole Board.
- (6) Apart from the rules of conduct contained in Subsection (5), the court or the prosecutor may prescribe additional ones, with particular regard to the nature of the crime, the extent of damage and the social integration of the perpetrator.

148. The ordering, extension, termination and execution of alien policing detention are all regulated by Harmtv., enacting Government Decree No. 114/2007 (V.24), as well as Decree of the Minister for Justice and Law Enforcement No. 27/2007 (V.31.). Detention takes place in the guarded shelters maintained by the Police. These guarded shelters comply with the provisions defined by Article 10. With respect to the execution of detention ordered by the Alien Policing Authority and the circumstances of detention, it is the police maintaining the guarded shelters who can provide substantive information.

149. The rules of substantive law and procedure law relating to the patronage system have changed to some extent in the period under review in the following way. As of 1 April 2002 the opportunity ceased for the court to subject a condemned person who had served an executable sentence to the patronage system [section (2) of Article 88 of Act CXXI of 2001 on amending Act IV of 1978 on the Penal Code]. As of 1 September 2005, the amendment of penal substantive legal regulations [Article 2 of Act XCI of 2005 on Amending Act IV of 1978 on the Penal Code and other laws]:

- Excluded that the patronage system is applied in addition to the auxiliary penalty of expulsion
- Enabled the court passing the verdict to provide for patronage and special rules of conduct in addition to any subsequent conditional parole
- Provided the rules of conduct with new and more up-to-date contents (e.g. provisions applying to work and changing domicile)
- Set the upper limit for the duration of the patronage system at five years

As of 1 July 2003, an environmental assessment study prepared by the probation officer must be obtained in criminal proceedings against juvenile delinquents [section (1) of Article 453 of Act XIX of 1998 on Criminal proceedings]. Annually more than 13,000 such instruments of evidence are prepared. As of 1 July 2003, the opportunity arose for an opinion by the probation officer to serve as a basis for the decisions by the prosecutor or



judge (Article 114/A of Act XIX of 1998 on Criminal proceedings). The probation officers prepare about 3,000 such expert opinions annually.

150. In 2008 an anti-discrimination project was launched with funding obtained from the Rothschild Foundation and supported by the National Police Headquarters (NPH). In March 2009, 60 staff members will be given anti-discrimination training in three locations in conjunction with the Hungarian Helsinki Commission.

151. Parliamentary Commissioners for Civil Rights conducted several comprehensive investigations in prisons, checking on the human and constitutional rights of persons kept in prison, as well as how these rights are realized by the professional personnel working in penal institutions (especially the right to human dignity and the right to the highest possible level of physical and mental health). Special attention was paid to the human rights situation and working conditions of staff members, since if the representatives of the authorities are themselves vulnerable within the hierarchy, their behaviour towards those whose affairs are handled by them — i.e. persons they are supposed to take care of, or on whom they have to make decisions — would be more likely to be reprehensible.

152. In consequence of the continuous renovation of different institutions and establishing some new ones, as well as measures taken by the Head of Prison Service, the general conditions of detention have improved, but the overcrowding has not greatly decreased. On average, institutions are full up to 130 per cent of their capacity, resulting in significant overcrowding in certain places. By closing the so-called “dungeon” in Veszprém in 2003 and opening a completely new institution, the recommendation of the former ombudsman was realized.

153. The detention facilities are regularly (every two weeks) checked by the assigned public prosecutors. The Chief Prosecutor’s Office compiles a report based on the experience of these checks every 6 months. All checked detention facilities comply with the safekeeping security regulations. The limitation of foreigners’ personal freedom was legal in each case, the prosecutors did not find any circumstances that needed immediate measures. These were confirmed by the control of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the years 2001 and 2005.

154. The Border Guard maintains widespread cooperation with international organizations, Hungarian organizations for human rights and religious organizations which contribute to ameliorating the conditions of detention and living conditions of the detainees, as well as to facilitating the due process for foreigners. These are the Regional Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration, Hungarian Malta Aid, Hungarian Red Cross, Hungarian Helsinki Committee, Cordelia Foundation, Haven – Association for Helping Migrants, Hungarian Prison Fellowship, Mahatma Gandhi Association for Human Rights, Shelter Charity Association, Hungarian Reformed Church, Roman Catholic Church, Hungarian Lutheran Church, Unitarian Church in Hungary, Hungarian Orthodox Church, Romanian Orthodox Church in Hungary, Hungarian Interchurch Aid.

155. According to the 2003 cooperation agreement between the National Border Guard Headquarters and the historical and small churches in Hungary, religious organizations provide help on spiritual questions and on improving conditions for foreigners accommodated in alien policing jails, in case of language problems. In the framework of a programme financed by the European Commission Phare Access 2003 — realized by the Haven Association for Helping Migrants and Border Guards — 136 prison guards were able to learn about the stressful situations caused by conflicts during the fulfilment of detention and their effective handling by the means of role plays. The Regional Office of

UNHCR and the Hungarian Helsinki Committee organize regular national information days and training about refugees for the executive staff every year.

156. During 2004 and 2005 within the framework of PHARE (500 million HUF) an alien policing jail was inaugurated in Nyírbátor. This facility complies with humanitarian and security aspects hence realizing a professional concept on developing a large-capacity detention facility on the external borders of Hungary.

157. In 2008, the number of inmates in penitentiary facilities and institutions (hereinafter penitentiary institute) has continued to decrease over the previous years. The average headcount amounted to 16,300 in 2005, 15,706 in 2006, 14,897 in 2007, and 14,805 in 2008. During the year, the circumstances of confinement have significantly changed. Under a PPP scheme, two new penitentiary institutes (Szombathely National Penitentiary Institute, Tiszalök National Penitentiary Institute) were opened, resulting in an increase of headcount by 1,400 places. As a consequence, the average occupancy rate of the penitentiary institutes decreased to 118 per cent in 2008 (145 per cent in 2005, 138 per cent in 2006 and 132 per cent in 2007).

## **Article 11**

158. There has been no change since the submission of the previous report.

## **Article 12**

159. According to the Hungarian Constitution everyone legally staying or residing in the territory of the Republic of Hungary — with the exception of the cases established by law — has the right to move freely and to choose his/her place of residence, including the right to leave his/her domicile or the country.

160. The new legal framework of migration made significant steps forward regarding the above-mentioned exceptions. For example by decreasing the absolute maximum duration of detention for third-country nationals to six months, and for persons enjoying the community right of free movement to 30 days.

161. The principles regarding the restrictions prescribe the clear and constitutional limitations of the authorities. For example in principle the community right of free movement and residence may be restricted in compliance with the principle of proportionality and based exclusively on the personal conduct of the individual concerned, where such personal conduct represents a genuine, present and sufficiently serious threat affecting public policy, public and national security or public health.

162. Concerning non-discrimination regarding foreigners, the whole legal framework on migration and asylum was renewed during 2006 and 2007, mostly in order to harmonize this field of law with relevant EC legislation. In December 2006, the Hungarian Parliament adopted two new Acts on migration: the Act on the Entry and Stay of Persons Enjoying the Community Right of Free Movement and the Act on the Entry and Stay of Third-Country Nationals. These have replaced the former single Aliens Act as of 1 July 2007. The two acts were followed by the new Act on Asylum. Regarding migration issues the codification technique was to elaborate two separate acts, since with our European Union membership, the category of “foreigners” is no longer an adequate legal term, given the fact that to the citizens of the Union (and to those of other member states of the European Economic Area) a completely different legal regime is applied vis-à-vis the nationals of other countries (the so-called “third countries”).

163. In parallel with the new regulation on entry and stay, the legal status of foreigners was scrutinized entirely to ensure the quasi-national status of “privileged foreigners” and equal treatment in relevant issues for “ordinary foreigners”. In addition to this the various non-discrimination provisions in a variety of statutes and legal acts were thoroughly reformed, prior to accession to the European Union, implementing the anti-discrimination acquis. The Equal Treatment Authority was created with wide ranging powers to assist victims in anti-discrimination procedures and is vested with the right to impose fines. (See also comments on Article 13.)

### **Article 13**

164. Article 58, paragraph 2 of the Hungarian Constitution defines that a foreign national residing lawfully in the territory of Hungary may be expelled only in pursuance of a decision made in accordance with law. Appeal against decisions on expulsion was possible until 1 May 2004. Since the accession of Hungary to the European Union only judicial review is allowed against decisions on expulsion. The court in its procedure acts according to the code of civil procedure, in the procedure the expelled foreign citizen is the plaintiff while the Aliens Policing Authority, by whom the decision on expulsion is taken, is the defendant. Upon request, the court may suspend the execution of the expulsion, providing legal possibility for foreign nationals to stay in Hungary until the final decision. In case the court does not suspend the execution of the decision, according to the provisions of the code of civil procedure, representation is possible.

### **Article 14**

165. According to Section (1) Article 57 of the Constitution of Hungary “in the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law”.

166. The independence of the courts and judges is ensured by Article 50 of the Constitution of Hungary, Act LXVI of 1997 on the Organisational and Administrative Structure of Courts, and Act LXVII of 1997 on the Legal Status and Remuneration of Judges.

167. The Act on Criminal Proceedings sets out the division of tasks [Section 1 of the Act on Criminal Proceedings] relating to criminal proceedings (prosecution, defence and sentencing), the principles of the burden of proof [Section 4 of the Act on Criminal Proceedings] and the basis of court proceedings [Section 2 of the Act on Criminal Proceedings]; furthermore, it guarantees the right to court procedure, the right to defence and the right to the use of native language [Section 3, 5 and 9 of the Act on Criminal Proceedings]; it also compulsorily requires the presumption of innocence [Section 7 of the Act on Criminal Proceedings], and determines that no criminal proceedings may be initiated, and criminal proceedings in progress shall be terminated or a verdict of acquittal shall be rendered if a final court verdict has already been delivered on the action of the defendant [Subsection 3 (d) of Section 6 of the Act on Criminal Proceedings].

168. The right to a court procedure is stipulated in Subs. (1) and (2) of Section 3 of the Act on Criminal Proceedings, stating that every person has the right to have the charges filed against him/her adjudicated by a court and it is the exclusive right of the court to ascertain the liability of a person in committing a criminal offence and to impose punishment therefore.

169. If, based on available data, reasonable grounds exist to suspect that a specific person has committed a criminal offence, the prosecutor or the investigating authority (unless the prosecutor provides for otherwise) shall interrogate the suspect. Detained suspects shall be interrogated within twenty-four hours.

170. Defining the legality of the accusation is of special importance. According to that, the court may only ascertain the criminal liability of the person against whom the accusatory instrument was filed and in the course thereof may only contemplate acts contained in such instrument [Subsection 2 of Section 2 of the Act on Criminal Proceedings]. The substitute private accusation [Article 229–233 of the Act on Criminal Proceedings] provides equal access to the courts.

171. The provision for the prosecutor acting as the public accuser is that the prosecutor shall be obliged to consider both the circumstances aggravating and extenuating for the defendant and the circumstances aggravating and mitigating the criminal liability in all phases of the criminal proceedings [Subsection (1) of Section 28 of the Act on Criminal Proceedings].

172. The adjudication of cases in reasonable time is regulated by Section (3) Article 278 of the Act on Criminal Proceedings and Section (1)–(2) Article 3 of the Act on Civil Proceedings. The courts struggle to meet this requirement, but it must be noted that most judgements of the European Court of Human Rights against Hungary were based on this reason.

173. With the exception of the cases detailed in Subs. (3) of Section 237 of the Act on Criminal Proceedings, court hearings are generally public. Nevertheless, the disposition of the decision adopted in the hearing and a part of the justification must be announced publicly even if the general public was excluded from the hearings [Subs. (2) and (3) of Section 239 of the Act on Criminal Proceedings].

174. In addition to the Constitution, the presumption of innocence is also stipulated in Section 7 of the Act on Criminal Proceedings.

175. Point (d) Section (4) Article 6 of the Criminal Procedural Act regulates the principle of *ne bis in idem*.

176. Even though criminal proceedings are conducted in the Hungarian language, in the course of such proceedings every person is entitled to use his/her own mother tongue. Foreign defendants in custody shall also be entitled to communicate with the representatives of the consulate of their native country both in writing and verbally without control [Subs. (1) and (2) of Section 9, Subs. (3) a) of Section 43 of the Act on Criminal Proceedings].

177. According to Section (3) Article 57 of the Constitution of Hungary and to Article 5 of the Criminal Procedural Act, individuals subject to criminal proceedings are entitled to legal defence at all stages of the proceedings. Appointment of a legal counsel is in some cases mandatory (Article 46 of the Criminal Procedural Act) but it is also possible if the defendant asks for it and his/her financial possibilities do not allow hiring a counsel on his/her own. If the defendant is entitled to the exemption of charges, he/she can also turn to a counsel appointed by the court and financed by the State. (Section (2) Article 48 and point a) Section (3) Article 74 of the Criminal Procedural Act).

178. Among the rights of the defendant, Section 43 of the Act on Criminal Proceedings lists the entitlement of such defendants to be granted sufficient time and opportunity for preparing for their defence, or, if they are in custody, to contact their defence counsel and communicate with him/her without control. As a general rule, the defendant must be present at the trial, the rules of procedure in absentia are regulated specially in Chapter XXV of the Act on Criminal Proceedings.

179. If the accused, the defence counsel or the private party believes that the court has made an omission specified in Subs. (2) of Section 262/A of the Act on Criminal Proceedings, they may file a petition requesting that the fact of the omission be established and the court be ordered to perform the omitted procedural action or make a decision.

180. Subs. (2) of Section 43 of the Act on Criminal Proceedings grants the defendant the right to be present during procedural acts, examine documents, present the facts to his defence, and make motions and objections in the course of the proceedings. It is a guaranteed right that the authority proceeding in the case appoints a defence counsel ex officio if defence is statutory and the defendant has not retained a defence; or if defence is not statutory, but the defendant cannot make arrangements for his defence due to his financial standing (cf. Section 48 of the Act on Criminal Proceedings).

181. In the course of hearing a witness, the accused, the defence counsel or the prosecutor may request that the witness first be examined by the prosecutor and the defence counsel by way of asking questions. In the course of such a procedure, pursuant to Subs. (1) b) of Section 295 of the Act on Criminal Proceedings, the accused may also examine the witness.

182. The fee and cost reimbursement of an interpreter classify as costs of the criminal proceedings, to be advanced by the State. The court only orders the accused to bear the costs of criminal proceedings in cases when he is declared guilty [Subs. (1) of Section 338 of the Act on Criminal Proceeding], in other cases (termination of the investigation or the procedure, omission of an indictment) such costs are to be borne by the State.

183. The prohibition of self-incrimination is stipulated in Section 8 of the Act on Criminal Proceedings.

184. There are no specialized courts for juveniles but assigned judges. The Hungarian Criminal Code and the Procedural Act contain special regulations for the procedures against juveniles.

185. The general provisions pertaining to juvenile offenders (Section 447 of the Act on Criminal Proceedings) include the following rule: "The proceedings against a juvenile offender shall be conducted by taking into account the characteristics of his age and in a way that promotes the respect of the juvenile offender for the law."

186. The provision, according to which parallel with criminal proceedings — when necessary, or under the provisions of other relevant legal regulation — protective and precautionary measures should be initiated in the interest of the juvenile offender, as well as actions against the person having neglected to educate, care for or supervise the juvenile offender, is aimed at promoting their resocialization [Subsection (2) of Section 447 of the Act on Criminal Proceedings].

187. Dealing with criminal cases of juvenile offenders requires special qualification from the authorities. For that purpose the Act on Criminal Proceedings provides that the power of the prosecutor/court shall be exercised by the designated prosecutor for juvenile offenders/juvenile court [Section 448 and Subsection (1) of Section 449 of CCP]. At the court of first instance, one of the lay judges of the council shall be a teacher [Subsection (1) of Section 449 of CCP].

188. A further guarantee is that the participation of a defence counsel is mandatory in criminal proceedings against a juvenile offender [Section 450]. Punishment involving deprivation of liberty shall only be imposed upon a juvenile offender if the aim of the punishment cannot be otherwise accomplished.

189. Having regard to the specific purposes of the punishment courts imposed ancillary punishments and sanctions upon 63 per cent of all the accused juvenile offenders,

imprisonment was imposed upon 27 per cent of them and 77 per cent thereof were suspended for a term of probation last year.

190. The right to legal remedy is guaranteed under Subs. (3) of Section 3 of the Act on Criminal Proceedings, while appeals against the judgements of the courts of first and second instance are governed by Section 324 and 386, respectively.

191. The defendant shall be entitled to compensation for imprisonment under a final judgement, e.g. if the convict was later acquitted due to extraordinary legal remedy (Section 581 of the Act on Criminal Proceedings). From among the forms of extraordinary legal remedy, retrial is the method which usually pertains to the facts of the case, and such retrial generally aims to change the adjudication of the facts established during the basic case, based on newly discovered evidence and/or evidence not deliberated during the basic case.

192. The complaint will be rejected, the investigation will be terminated and the procedure will also be terminated by the court, if the underlying criminal offence has already been adjudicated by a final judgement [cf. Subs. (1) f) of Section 174, Subs. (1) h) of Section 190, Subs. (1) d) of Section 267 of the Act on Criminal Proceedings].

193. The full enforcement of the right set out in paragraph 5 has been guaranteed by Chapter 14 of the Code on Criminal Proceedings which contains provisions on the procedure of third instance courts since 1 July 2006. This legal institution became known in 2007 and the cases being reviewed by third instance courts were tripled: in 60 criminal cases 72 defendants were convicted and final judgments were delivered by a third instance court.

194. Decree No. 21 of 2006 initiates the concept of the “European Community jurist”, and orders more details for the minutes of the questioning, if the counsel is obligatory and for the first questioning. It is also important, that according to section 161 of the Act on Criminal Proceedings, it is possible to impose a repeated disciplinary penalty against the counsel, and it is the prosecutor who can decide whether he/she asks for it. The decree initiates some details regarding section 63/A. of the Act on Criminal Proceedings for actions taken to prevent crime and other proceedings, and regarding section 138/A and 138/B. of the Act on Criminal Proceedings for keeping away. The decree is also completed with the rules of supplementation of the complaint, regarding to section 172/A. of the Act on Criminal Proceedings, and it must be also mentioned that the rules of the right to communicate of the defendant became more rigorous.

195. Decree No. 21 of 2006 completes Decree No. 23 of 2003 with some details if the investigating authority believes that the person in pretrial detention be held in a police cell. These details prescribe: beside the regular requirements it is obligatory to mark the request of the investigating authority, the term of the placement, which investigative actions need to be done during the term of the placement, those reasons which justify a person in pretrial detention being held in a police cell because of the investigative actions (detailed above).

196. Subsection 2 of section 339 of the Act on Criminal Proceedings provides that the state shall [also] bear the cost incurred because the accused is deaf, dumb or blind, or does not command the Hungarian language or used his regional or minority language in the course of the proceedings.

## **Article 15**

197. Section (4) of Article 57 of the Constitution and Article 2 of the Criminal Code include the prohibition of retroactive force.

198. Act CLXVIII of 2007 on the amendment of the Constitution of the Republic of Hungary allows the opportunity to set out the criminal responsibility of the perpetrator,

whose actions could not be punished under national law. This amendment has not entered into force yet and its incorporation into the Criminal Code has not yet been made (Article 1. Section (4) of Article 57 will be replaced by the following provision: “(4) No one shall be declared guilty and subjected to punishment for an offense that was not a criminal offense under Hungarian law — and concerning the principle of mutual recognition of the resolutions, in the field determined by the legal acts of the European Union, not affecting the essential matter of the fundamental rights — or in the law of other state, which took part in the formation of the area of freedom, security and justice.” This Act enters into force on the same day as the treaty of the European Union and the treaty of Lisbon modifying the EC treaty.

199. The constitutional, material and procedural regulations fulfil the requirements set out in the Covenant; their enforcement is ensured by the present legal redress system as well.

200. The European Court of Human Rights (ECHR) has not passed any judgements against Hungary based on unfair process of the national courts, although the petitioners often name this in their complaints. As a consequence we can state that rule of law is functioning in the judiciary, the legal regulations and the Hungarian judiciary system provide adequate guarantees for the efficient protection of human rights.

201. The courts cannot meet the requirement of finishing cases in rational time in every case, but they make every effort to do so. The decrease in long-lasting cases proves this intention.

## Article 16

202. There has been no change since the submission of the previous report.

## Article 17

203. Article 17 of the Covenant guarantees the protection of personal data. Under Article 59 (1) of the Constitution of Hungary, in the Republic of Hungary everyone has the right to the protection of personal data. Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest (hereinafter: PPDPA) contains the detailed rules of data protection. The legislative level of protection is quite high compared to other countries' laws in the region. However, there are sectoral laws that diminish the level of protection and as a result undermine the general act which is an effective implementation of the Convention. These derogations originate from the fight against terrorism. The amendments of the Act on Electronic Communication of Information (hereinafter: ECI), obligates service companies to retain a series of personal data related to the communication (for example: data necessary to trace and identify the source of communications or the destination of communications, etc.). The restriction of the right of personal data originates from international obligations. Nonetheless, the Hungarian legislator interprets these obligations in broad sense, and as a result, the Hungarian implementation are often more restrictive than they should be according to our international commitments.

204. Pursuant to the amendment of the Criminal Code which entered into force on 1 April 2002, for the protection of the personal right to privacy, any person who intercepts messages or data transmitted by telecommunications equipment or computer to another person, and records his findings by a technical device may also be charged with unlawful possession of private information.

205. Pursuant to the Criminal Code a person who — with the intent of intimidating or invading the privacy or the everyday life of another person — regularly or permanently

harasses another person, especially by making regular attempts to contact the other person against the will of that person by means of telecommunications or through personal contact exhibits a behaviour described in Section 176/A of the Criminal Code.

206. Current regulations:

Bv. tvr. “Article 2 (2) c) personal rights, especially the right to the protection of reputation, privacy, personal information, and the privacy of the home.”

Bv. tvr. “Article 36 (5) The civil rights of convicts are restricted in the following ways:

(d) Right to correspondence: — except for correspondence with authorities and international organizations — in order to ensure the security of the institution, the Prison Service shall have the right to check correspondence, subject to the obligation to inform the convict of this possibility;

(e) Telephone use is subject to the availability of facilities at the institution; telephone exchanges may be checked, the convict shall be informed of the possibility of checks;”

IM r. “Article 49 (1) Convicts may be searched as a security measure; their personal effects and clothing may be subjected to inspection. Surveillance technology and service dogs may also be used in searches.

(2) Body searches may only be performed by staff members of the same sex.

(3) Body searches and the inspection of clothing may not be performed in an offensive or indecent way. Body cavity searches may only be performed by a physician, and during the inspection only one person may be present as guard or supervisor.

(4) If the convict is not present during the inspection of her belongings, two witnesses shall be present and official minutes shall be taken. The convict shall receive one copy of the minutes.”

Bv. sztv. “Article 28 (1) The institution shall keep an official record of prisoners; Prison Service Headquarters shall keep central records of all prisoners.

(2) The records shall contain:

(a) Personal data required for identification, social security number and photograph;

(b) Address;

(c) For persons not eligible to vote, the personal identification number;

(d) Data and documents necessary for carrying out duties described in the Law-Decree on punishments and measures, and for exercising prisoners’ rights;

(e) Documents issued during criminal and other proceedings — by courts, prosecutor’s office, public notary, State administration —, of which the Prison Service is entitled to receive a copy under applicable legislation.”

Bv. sztv. “Article 28/A In order to maintain order and security in prisons, and identify visitors, the Prison Service shall have the right to record personal information on any person the convict is in contact with, subject to the person’s approval (hereinafter: contacts). Records of contacts shall comprise:

(a) First and last names;



- (b) Address (residence);
- (c) Telephone number;
- (d) Reason for maintaining contact.”

Bv. sztv. “Article 29 (1) Any authority entitled to keep records must disclose any data and documents (hereinafter: data) at its disposal to the following, upon request:

- (a) The Minister;
- (b) The Court;
- (c) The Prosecutor’s office;
- (d) The Police and other investigating authorities;
- (e) National security services;
- (f) The Commissioner for Data Protection.

(2) Public authorities not listed in paragraph (1), international and other organizations, and citizens may receive information on the records — automatically, if required by legislation, or, in other cases, upon request — to the extent it is necessary for them to perform their duties or exercise their rights.

(3) Requests for data provision shall indicate the reasons, legal grounds, and a certificate of interest in receiving the information.”

207. The Hungarian Parliamentary Commissioner for Data Protection, acting as an independent ombudsman and data protection authority is responsible for the protection of the two informational rights, namely for the protection of personal data and the right to access to public information.

208. Directive 95/46/EC of the European Parliament and of the Council “on the protection of individuals with regard to the processing of personal data and on the free movement of such data” stipulates the requirement for all member states to create an equal level of protection of individual rights and freedoms in connection with personal data as an indispensable condition for removing the barriers with regard to the free flow of information.

209. During the past six years the number of investigations carried out by the Office of the Hungarian Data Protection Commissioner has been more than doubled compared to previous years’ average (app. 2,700). The increase in the number of cases affected all three related main fields — data protection, freedom of information, and legislative evaluation — in roughly equal proportions. The structural change, however, is significant: cross-border investigations, international obligations and cooperation have appeared as new forms of its activities. Structural change is most obvious in cases related to data protection: the Government in its capacity of data controller is increasingly losing importance in the course of the work of the Office, while data processing in the private sphere is more and more frequently compelling citizens to write down their grievances. Biometric identifiers, identification chips running on radio signals, advanced camera systems, and data analysis programs all constitute new challenges also in Hungary. This process has even become palpable in the annual reports of the Hungarian Data Protection Commissioner over the past years.

## Article 18

210. Article 60 (1) of the Hungarian Constitution declares that in the Republic of Hungary everyone has the right to freedom of thought, freedom of conscience and freedom of religion. (2) This right shall include the free choice or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group.

211. Only a minor proportion (less than 1 per cent) of complaints received by the Ombudsmen concern the rights granted in Article 18 of the Covenant. The Parliamentary Commissioner for Civil Rights regularly receives complaints (one to two a year), which refer to the operation of various churches. The Commissioner, however, may not investigate the internal functioning of individual churches, and other authorities — which theoretically could be examined by the Ombudsman — can proceed only within very narrow bounds in connection with the operation of the churches, since there is no authority (and according to the law no such authority may be created) which exercises legal control over the churches.

## Article 19

212. Under Article 19 of the Covenant everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. Under Article 61.1 of the Hungarian Constitution, in the Republic of Hungary everyone has the right to freely express his opinion, and furthermore to access and distribute information of public interest. The PPDPA contains the detailed rules of freedom of information. The regulation is very progressive, and there are many other specific norms that help to promote the transparency of the public sector. Act XC of 2005 on the Freedom of Information by Electronic Means (FIEM) obligates most entities performing public tasks to disclose the information specified in the publication schemes. These schemes order the publication of organizational and staffing information, information concerning activities and operation, information on financial management, indicators to describe the performance and capacity of the operation of the entity performing public tasks for the measurement of its efficiency and performance. The Act is aimed at providing electronic access to the range of public information specified in this Act to anyone without identification, as well as data request procedures free of charge.

213. In 2005, the amendment of the PPDPA introduces a new category of data, i.e. “data that is public on the basis of public interest”. This shall mean any data, not falling under the definition of data of public interest, that is public or accessibility of which is provided by the Act on the basis of public interest. The provisions on access to data of public interest of PPDPA shall apply to the access to these data.

214. Nonetheless, there are many difficulties when it comes to enforcing these laws. For instance PPDPA does not contain effective sanctions for failure to fulfil the disclosure of information. Entitlement of the Security Services to withhold information is very broad and the classification activities of State institutions are uncontrolled, so citizens cannot verify whether they act according to the rules of Act LXV of 1995 on State Secret and Service Secret.

215. Act IV of 1959 on Hungarian Civil Code regulates the access to business secrets. In case of private entities having contracts with the State or with one of its institutions and

companies that use any kind of public fund, no reference can be made to business secret as this information constitutes data of public interest.

216. To correlate with freedom of opinion, an Act on electronic trade was adopted, which implements the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce within the internal market. Due to copyright violations and infringement of other laws, the option for removal of internet content — using the “notice and take down” method — was regulated by this law.

217. In 2008, after hearing the case of *Vajnai vs. The Republic of Hungary*, the European Court of Human Rights in Strasbourg stated that the Hungarian State had violated Article 10 of the European Convention on Human Rights. The Court stated that Attila Vajnai’s right to freedom of opinion was violated in 2005, when the Court found him guilty — under Criminal Code Article 269/B — of using totalitarian symbols (red star). The Criminal Code has not been modified since then. It is important to note that decision 14/2000. (V.12.) of the Constitutional Court declared the criminal bearing of using totalitarian symbols to be constitutional.

218. According to the amendment of 2002 of Act I of 1996 on Television and Radio Broadcasting in order to protect minors, certain programmes can only be broadcast within a specified time frame and each programme has to be assigned an audio and a visual sign. This solution is even stricter than the requirements laid down by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

219. In July 2005, the Hungarian Parliament adopted Act XC of 2005 on the freedom of electronic information “to ensure that the range of data of public interest specified [therein] is published electronically for anyone, without personal identification and a procedure of requesting data, on a permanent basis, and free of charge in order to ensure that the public is accurately and quickly informed”.

220. The Act obliges public institutions, organizations and agencies in charge of public duties specified by law (e.g. the Office of the President of the Republic of Hungary, the Office of the Parliament, the Office of the Constitutional Court, the Supreme Court, the Competition Council, the Hungarian Academy of Sciences, the National Radio and Television Board) to publish certain data of public interest — listed in the Annex of the Act — on the Internet. Besides these data the electronic publication of draft bills, other legislative acts, the anonymous form of court decisions and the creation of a search system that makes the published data searchable and retrievable are prescribed by the Act as well. In order to provide citizens with the right to participate in the legislative process, the Act also puts an obligation on legislators to create the opportunity on their websites for opinions to be expressed regarding the draft legislation.

221. Two judgments of the European Court of Human Rights taken in Hungarian cases dealt with the issue of freedom of expression. In the *Rekvényi v. Hungary* case the applicant, László Rekvényi, was a police officer and Secretary-General of the Independent Police Trade Union. Section 40/B subsection 4 of the Constitution provides that professional members of the armed forces, the police, and other national security services may not be members of political parties and may not engage in political activities. Relying on Articles 10, 11 and 14 the applicant complained that the contested constitutional ban amounted to unlawful interference with his right to freedom of expression and association and was of discriminatory nature. In its judgement of 20 May 1999 the Court held that Articles 10, 11, and Article 14 (prohibition of discrimination) read in conjunction with

Articles 10 and 11 had not been violated. In the *Vajnai v. Hungary* case the applicant complained that his right to freedom of expression had been violated when he had been convicted by the Hungarian courts for the misdemeanour of the use of totalitarian symbols. Section 269/B of the Hungarian Criminal Code provides that a person who uses in public a swastika, an SS-badge, an arrow-cross, a symbol of the sickle and hammer or a red star, or a symbol depicting any of them, commits a misdemeanour and shall be sentenced to a criminal fine, unless a more serious crime is committed. The Court held that when freedom of expression was exercised as political speech limitations were justified only in so far as there existed a clear, pressing, and specific social need. It also held that the red star could not be understood as representing exclusively Communist totalitarian rule since it also symbolized the international workers' movement, that is, it had multiple meanings. The Hungarian ban was too broad and encompassed activities and ideas which belonged to those protected by Article 10. The Court observed that no instance where an actual or remote danger of disorder triggered by the public display of the red star had arisen therefore the ban could not be seen as a "pressing social need". Consequently the Court established the violation of Article 10 but it did not award any damages for the applicant, only ordered the State to reimburse the applicant's costs.

222. Information regarding hate speech can be found under Article 20.

### **Article 20**

223. The National Assembly passed a law amendment on 8 December 2003 which concerned Article 269 of the Penal Code which covers incitement against the community. Based on an initial constitutional review of norms requested by the President of the Republic concerning the amendment, which was based, inter alia, on the view that as a result of the amendment courts would tend to restrict the freedom of opinion to a greater extent, the Constitutional Court declared the act adopting the amendment unconstitutional in its resolution No. 18/2004 (V. 25.).

224. In resolution 95/2008 (VII. 3.), the Constitutional Court declared an amendment to the law concerning penalties for verbal abuse with a new statement (Penal Code Art. 181/A) passed by the National Assembly in its session on 18 February 2008 unconstitutional. The objective of the amendment was to ensure that legislation would make statements and motions of abuse punishable even if the specific individuals aggrieved could not be established.

225. In order to act against hate speech, the National Assembly passed the law amending Act IV of 1959 on the Civil Code in its session on 29 October 2007. The Constitutional Court declared the Act amending the Civil Code unconstitutional in its resolution 96/2008. (VII. 3.) AB. The Constitutional Court gave guidance relating to civil law in its resolution determining the unconstitutionality concerning the judgement of the relationship between personality rights constituting the fundamental rights to the freedom of speech and human dignity.

226. In accordance with the provisions in the resolution by the Constitutional Court, in order to act against hate speech, the National Assembly in its session on 10 November 2008 passed the bill to ensure the required legal enforcement instruments for the protection against certain acts gravely violating the dignity of humans. According to the accepted regulation, the personal right of a member of a group is violated if somebody acts in public to offend a group determined by its nationality, ethnicity, faith or sexual orientation and adopts humiliating or frightening behaviour in its aim or impact. The President of the Republic did not sign the act but passed it on to the Constitutional Court for a preliminary review of its compliance with legal norms.

## Article 21

227. The right of free assembly as a fundamental right is enshrined in Article 62 paragraph (1) of the Constitution and regulated primarily by Act III of 1989 on the freedom of assembly (hereinafter: Gytv.). During the review period Act III of 1989 was amended in order to provide further guarantees concerning the power of the police to ban a planned assembly and the status of the organizer.

228. Act XXIX of 2004 on Amendments and Repeals of Legal Regulations and other Legislative Changes Related to Hungary's Accession to the European Union amended Act III of 1989 by defining more precisely the grounds on which an assembly may be banned by the police. Before the amendment an assembly could have been banned by the police on two grounds: either the planned assembly might endanger the functioning of the parliament or the courts, or it "might result a disproportionate harm of the traffic". After the amendment the latter provision was replaced by the formula "the traffic cannot be re-routed" that is a more precise language which restricts the power of the police to ban a planned assembly.

229. The provisions defining the person who may be an organizer of an assembly were amended twice during the review period. Before the amendments according to paragraph 5 (1) of Act III of 1989 the following persons had the right to organize an assembly: Hungarian citizens, foreign citizens with permanent resident status in Hungary; or foreign citizens having an authorization to stay in Hungary. Act XXIX of 2004 amended Act III of 1989 by providing the right of being an organizer of an assembly — beyond those defined in the original text — for foreign citizens having immigrant status in the Republic of Hungary.

230. Act I of 2007 on the Admission and Residence of Persons with the Right of Free Movement and Residence amended paragraph 5 (1) of Act III of 1989 in order to include also in the text those for whom the Republic of Hungary ensures the right of free movement and residence, that is to say:

(a) Nationals of any Member State of the European Union and States who are parties to the Agreement on the European Economic Area, and persons enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area with respect to the right of free movement and residence (hereinafter referred to as "EEA nationals");

(b) The family member of an EEA national who does not have Hungarian citizenship, accompanying or joining the EEA national;

(c) The family member of a Hungarian citizen who does not have Hungarian citizenship, accompanying or joining the Hungarian citizen; and

(d) Any persons accompanying or joining an EEA national or a Hungarian citizen, who:

(da) Are dependants or members of the household of a Hungarian citizen for a period of at least one year, or who require the personal care of a Hungarian citizen due to serious health grounds;

(db) Had been dependants or members of the household of an EEA national in the country from which they are arriving, for a period of at least one year, or who require the personal care of an EEA national due to serious health grounds, and whose entry and residence has been authorized by the authority on grounds of family reunification.

231. According to Act XC of 2007 on the amendment of Act XXXIV of 1994 on the Police the use of rubber bullets by the police against an unlawfully assembled or unlawfully behaving crowd is no longer permitted.

232. The Constitutional Court reached an important milestone with respect to the right of assembly when it declared that if a police authority obtains information about an event to be held in a public space in its competency area but not reported previously, then the assessment of the event must be carried out to determine any additional responsibilities for the police. Besides this, a statement was also adopted that any reports lodged by electronic messaging (e-mail) would also be received and registered.

233. Furthermore, the resolution of the Constitutional Court also stipulated that if the participants deviate from the provisions of the report filed about an event subject to such reporting (agenda, route, location, duration, and aim) during the event, such deviation shall not constitute mandatory grounds for the police to disperse the crowd, but at the same time any deviations from the reports may cause legal offence which can lay the grounds for the obligation to disperse the crowd as set out in section 1 of Article 14 of Gytv.

234. The issue of freedom of assembly figured in three judgments taken in Hungarian cases by the European Court of Human Rights.

235. In the case filed by *Dénesné Bukta and Others* the applicants complained that on 1 December 2002 their demonstration held in front of Hotel Kempinski had been disbanded by the police, thus their right to freedom of assembly (Article 11 of the Convention) had been violated. The Court established the violation of the applicants' right to freedom of assembly and declared that the finding of the violation in itself constituted sufficient just satisfaction for any moral damage the applicants may have suffered. In the Court's view, in special circumstances when an immediate response might be justified, in the form of a demonstration, to a political event, to disband an ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounted to a disproportionate restriction on the freedom of peaceful assembly.

236. The events underlying the case of *Molnár v. Hungary* were related to the 4 July 2002 demonstration held at Erzsébet Bridge, when in the afternoon of the same day demonstrators, without any prior notification, assembled at Kossuth Square in order to express their support for the demonstration at the bridge. The applicant joined the demonstration — which was dispersed by the police at 9 p.m. — at 7 p.m. The Court held that in the instant case sufficient guarantees had existed to prevent any unjustified restriction of the applicant's right to freedom of assembly. The Court held that not any demonstrations were susceptible to protection but, for example, spontaneous demonstrations constituting immediate response to a political event. In the Court's view, however, the demonstration in the instant case could not be regarded as immediate response since it had been a reaction to events having taken place two months earlier. Moreover, the assembly had "supported" an unlawful demonstration. The Court also emphasised that one of the aims of the freedom of assembly was to secure a forum for public debate and the open expression of protest, and that the applicant had had two hours at her disposal to express her solidarity. For these reasons the dispersal of the demonstration in which the applicant participated was to be regarded as necessary.

237. In the *Patyi and Others* case the applicants intended to hold a series of demonstrations in front of the Prime Minister's private residence but the authorities prohibited each demonstration by mechanically referring to traffic hazards. In its judgment the Court ruled against Hungary and established the violation of Article 11 of the Convention in respect of István Patyi. The Court found that the authorities had imposed the ban on the applicant's assemblies by referring exclusively to traffic hazards. It reiterated that any demonstration in a public place was likely to cause a certain level of disruption to

ordinary life. It also observed that no evidence had been shown suggesting that the demonstrators would have engaged in acts of violence, and that the State was to show a certain degree of tolerance towards peaceful gatherings. For these reasons the prohibition of the peaceful demonstrations amounted to disproportionate restriction of the right to freedom of assembly. The Court held that prohibitions on peaceful demonstrations with a limited number of demonstrators, mechanically referring to traffic hazards in general, without considering the specific traffic circumstances in the area in question, were contrary to the Convention.

## Article 22

238. Besides the general regulation of the Constitution of the Republic of Hungary Article 63 “(1) On the basis of the right of assembly, everyone in the Republic of Hungary has the right to establish organizations whose goals are not prohibited by law and to join such organizations.” Act II of 1989 on the Right of Association guarantees the legal basis on which the social organizations — such as the employee and employer interest representation organizations — can be established.

239. This Act declares that “3. § (1) A social organization is an organization that is established voluntarily for the activity that is declared in its statute, has self-government and registered members, and organizes the activity of the members for its aim. (2) Non-registered members can also participate in the activity of a multitudinous movement. (3) The members of political parties and trade unions can only be private individuals. (4) To establish a social organization at least ten founding member must declare the establishment, form its statute, and elect the representative and executive bodies.”

240. The Equal Treatment Act contains the prohibition of discrimination in connection with union membership (or belonging to an interest-representation organization). Furthermore Act XXII of 1992 on the Labour Code contains the requirement of equal opportunities. The armed forces and the police also have to operate in accordance with these regulations. Freedom of association is not limited in the armed forces or in the police, employees working in these areas can form trade unions freely following the above mentioned acts and Act XCV of 2001 on the legal status of professional and contractual soldiers of the Hungarian Army, and Act XLIII of 1996 on the legal relation of the professional members of armed forces. There is one limitation in Article 281 of Act XCV of 2001 that declares the condition for the establishment of an interest representation organization for the professional members of the civil national security organizations: one-third of the staff must declare the establishment of the organization as founder members.

## Article 23

241. No obligation is derived from the International Covenant on Civil and Political Rights to provide for the parliamentary representation of minorities. No constitutional omission concerning the parliamentary representation of minorities can be detected based on either the Constitution or the resolutions of the Constitutional Court, given the fact that the Constitutional Court established the omission in the context of representation of ethnic minorities when the act regulating the minority self-governing boards had not then been passed. Subsequently, however, the Constitutional Court did not establish the fact of omission item by item for parliamentary representation; moreover, the constitution in effect does not contain any relevant provisions for this.

242. In accordance with the justification of Harmtv., the term “family member” was adopted pursuant to 2003/86/EC Council Directive on 22 September 2003 on family

unification rights. In case of decisions where discretionary competence is required, the usual evaluation of common-law relationships shall pertain.

243. Article 4 of Met. determines that actions must be taken with consideration of the interests and rights of children superseding any other rights in enforcing the provisions of the law, and bearing in mind the principle of the unity of the family. It also lays great emphasis upon emphasizing the rules of guarantee to ensure the enforcement of personal rights of persons requesting recognition, and bearing in mind the demand for special treatment arising from the specific needs of persons at exposure, especially minors, minors without accompanying adults, the aged, people with disabilities, pregnant women, single parents raising minor children, and persons who have suffered torture, sexual violence or any grave form of other psychic, physical or sexual violence.

244. In order to ensure the unity of the family, and pursuant to the provisions of Met., foreign family members recognised as refugees should also be recognized, at the request of a refugee. If an alien recognized as a refugee has a child born in the territory of the Republic of Hungary, at his request the child must be recognized as a refugee. In order to ensure the unity of the family, pursuant to the provisions of Met., at the request of the protected person foreign family members must also be recognised as protected if a joint application was submitted for recognition, or the family member submitted the application for recognition with the consent of the alien recognized as a protected person, prior to the adoption of the resolution recognizing the same person as protected. If an alien recognized as a protected person has a child born in the territory of the Republic of Hungary, at his request the child must be recognized as a protected child.

245. In order to ensure the unity of the family, pursuant to the provisions of Met., and at the request of the asylum-seeker, the family members of an alien recognized as an asylum-seeker must be recognized as asylum-seekers if temporary protection is accorded by another member state of the European Union, provided that the alien recognized as an asylum-seeker is in agreement with this.

246. The National Assembly enacted Act CLXXXIV of 2007 on registered common-law partnerships (hereinafter: Bét.) in December 2007, which was to enter into force on 1 January 2009. This Act recognized the registered common-law partnership as a legal institution of family law and granted identical property and inheritance rights with that of marriage. It did not allow, however, that persons in registered common-law partnerships to jointly adopt children, nor would have any entitlement ensued for bearing each other's name. Resolution 21/B/2008 AB of the Constitutional Court promulgated on 15 December 2008 established its unconstitutionality and repealed the provisions in Bét. as of the date of its resolution.

## **Article 24**

247. For meeting also international obligations, the duties of child care and child protection of the State, of local governments and the guardianship duties of the State are defined by Act XXXI of 1997 on the protection of children and guardianship administration as modified (hereinafter: Act on the Protection of Children) in accordance with the Convention on the Rights of the Child.

248. The Hungarian child-protection system gives preference to family-based solutions. According to section 6 (1) of the Act on the Protection of Children and Guardianship Administration, children have the right to grow up in a family environment ensuring physical, intellectual, emotional and moral development, and healthy upbringing. The fundamental right of the child, therefore, is to be brought up within its own family. The Office believes that school absenteeism and neglect of compulsory school attendance in



itself does not qualify as a sufficiently severe danger to justify removing the child from the family.

249. The right of the child to grow up in his own family and the safeguarding of his physical, mental, emotional and moral development as well as his growing up and welfare is granted by the Act on the Protection of Children. Other important rights of the child are the right to be heard and the right to the possibility of having his opinion taken into account. If the child has a clear judgement and requests to be heard, his direct hearing may not be disregarded by the public guardianship authority. The guardianship authority may hear the child even in the absence of his legal representative or other persons concerned if it is in the interests of the child.

250. In order to enforce the rights of the child more effectively, the full prohibition of corporal punishment of children is drafted in the Act as a basic element thereof i.e. Hungary, among many other States, supports the principle of “zero tolerance”. This regulation delivers the “message” that corporal punishment is an inappropriate instrument in the course of bringing up children. The prohibition stipulated has three aims: to change the opinion of people on physical punishment; to provide a clear framework on the development of parents’ skills and the direction of support; and to facilitate intervention at the earliest stage possible and in the least aggressive way, if it is required in the interests of the child.

251. While the child stays in his family, the child welfare service continues to undertake family assistance, or other duties required in the interests of the child. If the public guardianship authority, either upon request or ex officio, becomes aware of any circumstance referring to injury or negligence of children, it will consider whether a well-grounded suspicion of a crime can be established or whether it is reasonable to take the child immediately out of his own family. If the parents fail to cooperate with the child welfare service, the public guardianship authority may take the child under protection in order to discontinue the child’s exposure to danger. In that case it is presumed that the appropriate development of the child may be ensured with assistance and it is not necessary to take the child out of the family. A family assistant for the child taken under protection appointed by the public guardianship authority assists the family by means of social work in order to terminate the State endangering the family. Each year 18,000 children are taken under protection. If the child is left without supervision or gets into a seriously endangering situation, the public guardianship authority, the police or the court shall be entitled to provisionally move the child with immediate effect to one of his relatives or to other persons or to foster parents that are capable of bringing him up, or to place him in a child custody centre. About 3,000 children are placed in the above-mentioned centres with immediate effect each year. If as a result of the parents’ endangering behaviour the education of the child cannot be ensured in his own family, the child is given temporary education by the public guardianship authority. The child without parents or relatives or any other suitable person who could be appointed as his guardian, shall be given permanent education by the public guardianship authority. 3,000–4,000 children are given provisional education each year, while 300–400 children are given permanent education annually.

252. In order to protect the rights of the child more effectively, the legal institution of the representative of the rights of the child was introduced by the Act on the Protection of Children. The representative of the rights of the child assists the child in understanding and enforcing his rights. The representative of the rights of the child regularly contacts the persons undertaking child welfare and child protection activities, the heads of organizations, directors of the public education institutions, the person in charge of the protection of children and youth in such institutions, as well as the teacher assisting the operation of students’ self-government. In order to facilitate the enforcement of the rights of children temporarily moved out of their family, and those that are given provisional or

permanent education, the representative of the rights of the child shall inform children about their rights, the way of enforcing them, the contact information of the representative and the assisting organizations. At least once a year he attends the meeting of the children's self-government active in the children's ward or at a forum held with the participation of all children. He organizes consulting hours for children placed in children's ward or with foster parents at the children's ward or in a place which is agreed upon with the operator of the network of foster parents.

253. Pursuant to the Act on the Protection of Children, in Hungary the system of the protection of children consists of more subsystems and has a double function. Aids are granted to children through financial benefits and benefits in kind as well as through child welfare basic services, facilitating their bringing-up in their own families, and preventing or terminating the risks and problems which occurred in the family. For children who cannot be brought up in their own families for any reason, the system provides benefits and gives special service of protection. In course of the protection of children, any kind of discrimination on the basis of sex, national origin, ethnic origin, political or other opinion, religion, property, birth, lack or limitation of legal capacity, or due to the care given by the system of protection of children, is strictly prohibited.

254. Benefits and measures of the system of child protection are available for everyone underlining that the requirement of equal treatment must be met in course of protecting children. From 1 January 2006 every child brought into the world is entitled to a "baby bond", on the basis of which a certain amount of State allowance is granted to each baby, assisting them in starting their independent lives. In the year when the baby is born, an amount of HUF 42,500 is transferred to the baby's account by the Hungarian State, and in case of vulnerable children, two further amounts of HUF 44,600 are given at the ages of 7 and 14. Not only the amount transferred by the State may be included in such "Start accounts" since the Government does not simply introduce a new form of support but provides means of self-care to the parents with the help of which they can also easily support the future of their child. They may also pay any amount not exceeding HUF 120,000 per year into the account, in accordance with their financial possibilities. More aid is granted by the State to vulnerable children, i.e. children of families of lower income, entitled to regular benefit for the protection of children, are due an increased amount of aid upon the savings deposited in their account. An aid amounting to HUF 12,000 per year is transferred by the State to the bank account of children that are given provisional or permanent education. Any amount deposited on the child's account — State aid, parents' savings and the yield thereon — may be withdrawn when the child turns 18, at the earliest.

255. Upon the birth of a child registered without the father's data, the notary calls upon the mother to deliver a statement on affiliation. The statement of affiliation can be presented after or prior to the birth of the child. In case the mother does not wish to designate the father of the child, it is possible to settle the legal status of the child by registering a fictitious father. Presumption of paternity can be contested before the court if the person, who is the father of the child according to the presumption, had no sexual contact with the mother at the time of the conception or under the existing circumstances it is otherwise impossible that the child is his.

256. Pursuant to the Act on the Protection of Children, the provision of child welfare services is the duty of the local government in each settlement; in the territory of Hungary children and their family in grief should get assistance and support or if required protection. Child welfare services promote the physical and mental health of the child as well as his bringing-up in his own family and prevent the endangering of the child. Operation of the so-called "street-child" programmes is compulsory in larger settlements (over 40,000 inhabitants) by ensuring social work in the streets, in housing estates, in hospitals and at

children's wards (neglected or injured children) and at maternity wards (mothers in social crisis and young mothers).

257. The daytime care of children, the daytime custody, education, and feeding of children shall be provided in accordance with the age of the children if their parents cannot provide for their daytime care due to their work, illness or any other reason. Forms of this care are the following: infants' nursery, day-nursery, custody of children at ward or the so-called alternative daytime care.

258. Reduction of the fee for children's food in institutions based upon the vulnerable situation of children has been introduced in more steps by the Government. As from 1 January 2008 children receiving free food in the infants' nurseries, nurseries and in classes 1–5 of the elementary schools became wider, i.e. children attending these institutions or classes and entitled to the regular benefit of children protection are granted free food in order to guarantee equal opportunities.

259. Provisional care of children include the benefits providing for the accommodation and full care of a child which is looked after by a substitute parent or in children's provisional home or provisional home for families where the child can live together with his parents for the time of the parents' health, conduct or other problems preventing them from looking after their children.

260. Following on the Act on the Protection of Children the national system of special care of child protection has been reorganized. The changes aimed at enlarging the network of foster parents and increasing the ratio of children placed with foster parents; and reorganizing the out-of-date network of children's wards or reconstructing them as apartment houses. In order to enforce the rights of the child, the number of children placed in children's wards decreased and their placement in apartment houses in the neighbourhood of their families was also commenced, hence the vast majority of the children live in up-to-date institutions today. Networks of foster parents are operated by all county governments and by a few civil organizations. The number of foster parents and the number of children placed with them also increase year by year, about 53 per cent of the children (9,000 children) living in child protection custody are educated by 5,000 foster parents.

261. A lot of children taken into custody cannot be returned to their own families, so adoption is the most reasonable possibility for them. An adoptive parent can only be a person of full age with full legal capacity who successfully participated in a consultation and a preparatory course prior to adopting, and who is capable of adopting a child following his personality and circumstances, and who is at least 15 years but not more than 45 years older than the child in question. In case of an adoption by a relative or a spouse the difference of age or the participation in the preparatory course may be disregarded. Adoption is authorized by the public guardianship authority. An application and the consent of the child's parents are required for permission. Consent of the spouse of a married adoptive parent is also needed for the adoption. Upon obtaining consent, the person wishing to adopt the child takes care of the child for at least one month. Adoption can be authorized only upon the expiry of such period of care. The adopted child will receive the family name of the adoptive family. The adopted child may request information from the public guardianship authority on the data of his birth parents. The parties must be informed about this fact in course of the adoption procedure. The birth parents must be heard before the information is given to the child. If the adopted child is still under age the adoptive parents or other legal representatives of the child must also be heard. It is not necessary to hear the birth parents or the adoptive parents or other legal representatives if they are incapable, reside in an unknown place or their hearing would be impossible. Even if the conditions determined above are met, the disclosure of any information on the data of birth parents may not be authorized if it is against the interests of the under age adopted child.

262. In connection with the protection of children by the State, as stipulated also in the Covenant, we wish to note the following amendments:

- In respect of abusing illicit pornography, further offences were incorporated into law with effect from 1 April 2002 and 1 June 2007 (acquiring, keeping, retention, offering, making available — for the general public as well — a pornographic picture; soliciting for taking part in a pornographic picture or programme), cf. Section 204 of the Criminal Code
- A person who has sexual intercourse or commits sodomy with a person under eighteen years of age for financial consideration must be punished by a maximum of three years of imprisonment as of 1 July 2007 (Section 202/A of the P Criminal Code)

263. Act LV of 1993 on Hungarian citizenship defines special provisions for children among the titles of acquisition of Hungarian citizenship. It declares that in the absence of genuine acquisition of the Hungarian citizenship (i.e. “The child of a Hungarian citizen shall become a Hungarian citizen by birth.”) the Hungarian citizenship of the child of a non-Hungarian citizen parent arises with retroactive effect to the date of birth if the other parent is a Hungarian citizen on the ground of full acknowledgement of paternity, subsequent marriage or the establishment of fatherhood or motherhood by the court. If the cited two titles would not result in the acquisition of Hungarian citizenship by the child, the Act sets up the presumption of the birth in the territory according to which until the contrary is proved, the followings are regarded as Hungarian citizens: children born in Hungary of stateless parents residing in Hungary; children born of unknown parents and found in Hungary.

## **Article 25**

264. An important amendment of the Constitution has taken place by the entry into force of Act LXI of 2002. Before the amendment the right to vote in parliamentary and local elections and the right to participate in referenda and popular initiatives was provided for a Hungarian citizen of full legal age residing in Hungary only if he/she stayed in the territory of the country on the day of the election or the referendum. Following the amendment this restriction — concerning matters of national importance, i.e. parliamentary elections, elections for the European Parliament and national referenda — was removed from the text of Article 70 paragraph (1) of the Constitution. Consequently Hungarian citizens of full legal age residing in Hungary can exercise their fundamental right to vote while abroad. All the citizen has to do is to have his/her name put on the special list of voters willing to vote abroad by a request submitted to the local election office. Hungarian embassies and consulate-generals are responsible for providing the necessary circumstances and for organizing such events.

## **Article 26**

265. Requirement of protection of the law prevails without problems. Legal regulation — as has been already mentioned — stipulates the right to defence [Section 5 of the Act on Criminal Proceedings]; determining it not only in a general sense, but specifying its content elements as well. Therefore the Act provides compulsorily that the court, the prosecutor and the investigating authority shall ensure that the person against whom criminal proceedings are carried out can defend himself as prescribed in this Act — under entitlements specified by other relevant rules.

266. According to Hungarian criminal procedure, the authority (investigation authority, prosecutor's office or court) which conducts the criminal proceedings shall assign a lawyer for the accused person's legal defence (assigned defence counsel) if defence is mandatory pursuant to legal regulations but the accused person does not have an authorized defence lawyer. In addition to mandatory defence, assignment can take place, by virtue of an application, based on indigency or other reasons if it is considered justified by the authority ordering the assignment.

267. Mandatory defence, however, does not mean that the specific actions of investigation could not be taken in the absence of the assigned defence counsel. In the court phase, however, the presence of the defence lawyer is required at the hearing. A significant proportion of the criticism levelled at the scheme is the consequence of the assigned defence lawyers not taking part in a number of cases in certain procedural steps, or they fail to maintain adequate relations with their clients. It is a government objective to restructure the system by 2011, and the authority acting in a particular case should decide on the necessity of legal representation only, while another organization (the Justice Office) shall provide for the assignment (selecting the defence counsel).

268. Act LXXX of 2003 on legal assistance (Jst.) has transformed the forms of legal assistance (system of court proceedings free of charge) already in operation and provided by the Government based on indigency; on other areas new institutions not in operation were ordered to be implemented (so-called amicable subsidies). The changes have impacted the organizational (competence) and financing framework of the subsidy scheme already in operation, the form and rate of subsidies, and the conditions of disbursement (mostly the extent of indigency).

269. Jst. required that the new scheme be rolled out in two phases. As of 1 April 2004, the legal assistance services in the organization working under the supervision of the Ministry of Justice (currently the Justice Office) were set up, and they will give approval for the disbursement of amicable subsidies based on the assessment of the clients' applications that are already part of public administration procedures. Subsidies can be assumed by the Government (free) or advances paid by the Government (to be reimbursed within a maximum of one year) based on the grades of indigency, in which latter cases are charged at a significantly lower rate than the services of lawyers on a "market basis". The legal services licensed by the offices (legal counselling or wording of deeds) will be carried out by the legal aid entities contracted by the Ministry (mostly lawyers, to a lesser extent notaries public, civic legal protection associations, and legal clinics). In the second phase, the licensing and funding of probationary defence counsel representation approved for civil and criminal proceedings were removed from the jurisdiction of courts to the Justice Office on 1 January 2008.

## Article 27

270. According to Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, (hereinafter: Act on Minorities) "All groups of people who have lived in the territory of the Republic of Hungary for at least one century, who represent a numerical minority in the country's population, whose members are Hungarian citizens, who are distinguished from the rest of the population by their own languages, cultures, and traditions, who demonstrate a sense of belonging together that is aimed at preserving all of these and at expressing and protecting the interests of their historical communities" (Chapter 1, Section 1, Subsection (2)) are national and ethnic minorities recognised as constituent components of the State. This act defines the Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian ethnic groups as national or ethnic minorities native to Hungary.

271. Government Decree No. 363/2006 on the governmental tasks related to national and ethnic minorities and the reorganization of the relevant institutional structure ordered the termination of the Office for National and Ethnic Minorities. The Office was established in 1990 for the purpose of carrying out governmental tasks related to national and ethnic minorities living in Hungary. It was an autonomous organ of the State administration with nationwide competence. The sixteen-year autonomous existence of the Office ended on January 31, 2007. The tasks of the Office were taken over by the newly established Department for National and Ethnic Minorities at the State Secretariat for Minority and Nation Policy of the Prime Minister's Office.

272. The Constitution of the Republic of Hungary states that minorities living in Hungary are constituent components of the State. The Constitution guarantees the minorities the right to collective participation in public life, the nurturing of their own culture, the widespread use of their native languages, education in their native languages, and the right to use their names in their own languages. The Act on Minorities establishes individual and collective minority rights in the areas of self-government, use of language, public education and culture. Among collective rights, the act states that the minorities have the right to establish local, regional and national self-governments.

273. The Act on Minorities states: "It is the individual's exclusive and inalienable right to take on and declare their affiliation to a national or ethnic group or a minority. Nobody is obliged to proclaim that they belong to a minority group." Data of the 2001 census show that compared to the figures of 1990, minority communities have grown in size. This indicates that people belonging to minorities have a stronger identity and are more willing to declare it openly. This is particularly true in case of the Roma minority: the number of Roma declaring openly their identity has significantly increased. In 2001 a total of 314,000 people declared themselves to belong to one of the thirteen listed national and ethnic minorities. Ahead of Germans, Slovaks and Croats, the biggest minority is the Roma community, amounting more than 190,000 people. The only minority whose size has unfortunately decreased is the Romanian community. Researchers and minority organizations estimate that the true number of national and ethnic minorities is greater: individual groups are reckoned to comprise from a few thousand persons up to nearly half a million. According to these estimates, today, the minorities make up some 10 per cent of the population. The difference between the estimated and declared figures can probably be explained by historical, social and psychological reasons related to the history of minorities in Central Eastern Europe. (See also annex II.)

274. Both the Constitution and the Act on Minorities state that minorities have the right to establish their own self-governments. Minority self-governments are elected bodies that represent the interests of the given national or ethnic minority at local, regional or national level. Local minority self-governments, unlike organizations operating in an associative form, represent not only their membership but also the entire minority community of a settlement. The minority self-government system was established with the aim of ensuring cultural autonomy. Consequently, minority self-governments do not have the powers of authorities, and the local self-governments are not allowed to grant any regulatory competencies to minority self-governments. Municipal governments and local minority self-governments created for the enforcement of national and ethnic minority rights are parallel structures in the Hungarian legal system.

275. With regard to the election of national, regional and local minority self-governments, the following must be noted: according to the amendments adopted in 2005 to the acts governing the election of minority self-governments, voters may establish local minority self-governments through direct elections that take place on the same day but not necessarily at the same place as municipal elections. Only those Hungarian citizens are entitled to take part in these elections who have previously registered in the minority

voters' register kept (and destroyed afterwards) by the chief administrator of the mayor's office. All Hungarian citizens with the right to vote (some 8 million voters) get a form by post to be used for this purpose. The registration requires the declaration of the voter on his/her minority affiliation. These declarations remain secret; the only data to be made public is the number of people registered since local minority elections can only be organized if the number of those registered reaches 30. Minority candidates may be fielded exclusively by minority civil organizations whose statutes specify the objective of representing the given national or ethnic minority and that have been working for at least three years. Candidates are obliged to give a declaration on their minority language knowledge, on the knowledge of the minority culture and on whether they have already been earlier members or office-bearers of the self-government of another minority. These declarations of the candidates are public. The aim of the registration of minority voters is to ensure that no one can intentionally misuse the system and minority self-governments shall be elected by, and composed of, people who really belong to national minority communities and feel genuine commitment to this cause.

276. The number of locally elected minority self-governments in 1994 and 1998 was respectively 822 and 1,376. The growing trend continued also in 2002 when elections were held for 1,870 bodies. In 2006, a total of 2,045 local minority self-governments were elected.

277. Regional and national minority self-governments are elected in a system of electoral lists proposed by minority organizations. They are elected by the already elected members of the local minority self-governments ("electors") at a second round of elections, which is held in March of the subsequent year. At regional level, an organization is entitled to propose a list of candidates for the regional elections if at least 10 per cent of the elected members ("electors") of all local self-governments of the given county were fielded by this organization. The same is valid for the right to propose a list for the national elections, with a nationwide 10 per cent threshold of electors fielded by the given organization. At national level, elections are held if there are at least four local minority self-governments of the given minority community throughout the country. This regulation is much less rigorous than the one used for regional elections, which can only be organized if there are at least 10 local minority self-governments in the given county. Legislators wanted to ensure that regional representation be established only in counties with a relatively significant minority population, but at the same time their aim was to ensure the national representation of very small minorities, too.

278. In March 2007, the elections of regional and national minority self-governments ended with the successful election of 13 national minority self-governments, which means that all recognized minority communities were able to set up these bodies. At regional level, 46 new county minority self-governments were established by 9 minority communities in March 2007. Slovenians, Ukrainians, Armenians and Greeks did not reach the threshold required in counties. Eleven minority communities formed minority self-governments in the capital city.

279. Minority self-governments have the right to make autonomous decisions in their own spheres of authority concerning festivities and symbols of minorities, foundations, takeover and administration of institutions, particularly in the areas of education, culture and printed and electronic media. The objective is that minority self-governments become fully responsible for minority educational and cultural institutions and get all conditions necessary for this purpose.

280. In other areas minority self-governments have extensive consultative rights and even blocking powers (veto rights). In the field of local public education, local media, the preservation of cultural heritage, the collective use of mother tongue and the appointment of directors of minority institutions, the municipal government is entitled to adopt local

decrees affecting the minority populations in their capacity as such, only with the consent of the local minority self-government.

281. The national minority self-governments represent the given minority at national level; as partners of legislative and State administrative bodies, they are consulted on issues concerning the minorities they represent. National minority self-governments have consultation rights on draft legislation whenever minorities are concerned. They have the right of veto on legislation concerning the protection and preservation of traditional historical minority settlements and architectural monuments as well as on the process of adopting government decrees concerning the preschool and school education of minority children.

282. The yearly budgetary act specifies the amount of the financial support for local minority self-governments (all bodies get an equal amount of support) and the support to provide to national minority self-governments (different amounts depending greatly on the size of the given community). In 2006 and 2007, support for local minority self-governments amounted respectively to HUF 1.166 billion and HUF 1.337 billion, whilst the support provided to national minority self-governments — including the amount meant for the operation of institutions they administer — was HUF 1.294 billion in both years alike.

283. In conformity with Article 37 of the Act on Minorities the national minority self-government has the right to decide autonomously on the foundation, takeover and operation of different institutions including secondary and tertiary educational institutions with nationwide coverage, minority theatres, museums, public collections with nationwide coverage, minority libraries, artistic and scientific institutes, publishers' offices or institutions providing legal aid. On the basis of the Act on Minorities, at present national minority self-governments run 36 institutions that have been newly founded or taken over from the State. These institutions constitute the most tangible result of cultural autonomy. Since 2003, a specific fund has served to support their work. The fund is now administered by the Department for National and Ethnic Minorities of the Prime Minister's Office. For this purpose, HUF 120 million was allocated in 2008.

284. To illustrate of the widely varied character of the expanding cultural autonomy some of the institutions run by minority communities are listed as follows:

- German Minority Secondary Grammar School, Economical Vocational School and Dormitory
- Pedagogical Institute of the Germans of Hungary
- Library of the Ruthenes of Hungary
- National Polish Language Teaching School
- Research Institute of the Slovaks of Hungary
- Slovak Cultural Centre
- Croatica Non-Profit Company for Culture, Information and Publishing
- Radio Monoster – Slovenian Radio of the town of Szentgotthárd
- Museum and Archives of the Polish population of Hungary
- National Roma Library, Archives and Documentation Centre
- National Roma Public Interest Museum Collection and Gallery
- 12-grade Complementary Greek Language Teaching School
- Christian Collection of the Croats of Hungary



- Vertigo Slovak Theatre

285. In line with Article 59/A of the Act on Minorities, Government Resolution 1116/2006 (XII.05.) orders that the buildings transferred to the thirteen national minority self-governments for free use in 1995, shall be passed into their ownership as a free one-off transfer of assets. In the past twelve years the Government has not only provided financial means for the operation of the national minority self-governments, but it has also enabled them to use the premises of their headquarters free of charge. According to the above-mentioned Government Decree, from the 1st of January 2007 the national minority self-governments exercise propriety rights over real estate which amounts to circa HUF 1 billion.

286. Parallel to the amendment of the Public Education Act in 2003, the provisions of the Act on Minorities regulating the rights of national minority self-governments related to the transfer and the maintaining of institutions were also adjusted. With the purpose of supporting the takeover, founding and operation of minority institutions by the national minority self-governments, the regulations of Act LXII of 2002 on the Budget of the Republic of Hungary presented the so-called budget line for minority institutions, which, since then, is at the disposal of the national minority self-governments with the same amounts yearly. As a result from 1 July 2004 the National Self-Government of Germans in Hungary has taken over the maintenance of two institutions (the Valéria Koch German-Hungarian language Primary School and Secondary School in Pécs, and the German Minority Secondary School and Secondary Technical School in Economics in Pilisvörösvár), and founded one institution (the Valéria Koch Boarding School); the National Slovak Self-Government has taken over one institution (the Slovak Primary School, Kindergarten, and Boarding School in Szarvas), and is planning to take over the maintenance of one further school. The conditions for the operation of the Croatian Primary School, Kindergarten, and Boarding School in Hercegszántó, taken over by the National Croatian Self-Government in 2000, have also improved following the amendment of the law.

287. Government Decree No. 375/2007 (XII.23.) introduces a new system with regard to the allocation of state budget subvention to local and regional minority self-governments. The objective was to differentiate between minority self-governments on the basis of their concrete activities performed in the interests of minority cultural autonomy. From 1 January 2008 the amount of State support allocated to minority self-governments is divided into two parts: (1) Subsidy for general operation, and (2) Task-based subsidy. The subsidy for general operation (in 2008, approximately 2,200 euros) is continuously equally transferred to the local minority self-governments in order to cover their annual operational costs, whereas the transfer of the task-based subsidy is subject to an evaluation of their effective activities by the Department for National and Ethnic Minorities in the Prime Minister's Office. It is important to refer to the fact that the new regulations do not affect the budgetary financing system of national minority self-governments; accordingly the annual budget support provided for the national minority self-governments shall remain different depending on the size of the given community.

288. A fund administered by the Department for National and Ethnic Minorities of the Prime Minister's Office supports new initiatives of minority self-governments to take over or to found educational or cultural institutions. The amount allocated for this purpose has increased from HUF 70 million in 2007 to HUF 120 million (EUR 480,000) in 2008. Another fund administered at the Department aims to provide financial support for local minority self-governments and minority NGOs in need. In 2008 this minority-targeted state support increases to HUF 80 million (EUR 32,000) from HUF 38 million the previous year. The Department granted HUF 100 million (EUR 400,000) for the national minority self-

governments in order to contribute to the creation of practical conditions of their management regulated in detail by the Act on Minorities.

289. Minority education — as a part of the Hungarian public education system — is expected to provide all services that are generally provided by public education as a whole. Moreover, the objective is not simply to offer these services in the native language: it is also necessary to create the conditions for learning the native language and passing on the understanding of the culture and history of the people.

290. An amendment of the Public Education Act has established the National Minorities Committee, the consultation body of the Minister of Education competent in minority educational affairs. All national minority self-governments delegate one expert each to the named body. The National Minorities Committee may express its opinion concerning all bills falling under the competency of the Ministry of Education, and has a right of assent in questions that have a direct effect on minority education. The National Minorities Committee holds a meeting every month, or more frequently, if necessary. In the past three years, it has held 36 meetings and discussed almost 60 bills, amendments, and other questions related to minority education.

291. In 2003–2004, the Ministry of Education — consulting with the national minority self-governments and the National Minorities Committee — reviewed the situation of national, ethnic minority education, its legal, financial, material, personal, and professional conditions, and its special characteristics, by which its situation differs from that of education in general. Building on this, it worked out a medium-term development programme for mother tongue education to become a real alternative for the communities demanding it, promoting the expansion of education in mother tongue and bilingual education within minority educational work. An especially important goal of educational policy, in the spirit of cultural autonomy, was to promote the transfer of public education institutions to minority self-governments, as well as the establishment of mother tongue education for minorities, which previously did not have this. In the spirit of development of the quality of minority education, educational policy intended to create further possibilities for the increase of the share of bilingual and minority language education, through the education and further training of teachers who have a knowledge of the professional language necessary for teaching minority subjects; and through the ensuring of concentrated expenditures to accelerate the implementation of mother tongue textbook development programmes.

292. After the acceptance of the strategy, the difference of the amount of the minority supplementary normative, serving for the financing of minority education, spent between the different types of education increased further to the benefit of bilingual education and education in minority language. Partly as a result of this, from September 2004, two Croatian schools changed from language-teaching minority education — with four hours a week of minority language and literature, and the other subjects instructed in Hungarian — to minority bilingual education, where already 50 per cent of the curriculum is taught in the minority — Croatian — language. In the past decade and a half there was no such shift in Croatian minority education, even though the supply of specialized teachers would perhaps have made this development possible.

293. The other emphasized element of the minority education development strategy is making available the necessary textbooks. The number of copies of minority language textbooks is low and their publishing cannot be arranged on a market basis. Therefore, it is the State which finances them. However, with regard to the continuous reform of public education, and the limited capacities for writing textbooks, we may experience a serious backwardness in the publishing of minority textbooks. In order to help close the gap, in 2003 the Ministry established a separate fund for financing the publishing of minority textbooks, which appears as a separate item in the prevailing Budget Act.

294. The legal framework of preschool education is defined, as well as by the Act on Minorities and by the Public Education Act, also by Government Decree No. 137/1996 (VIII. 28.) on Issuing the National Master Programme for Kindergarten Education, and by Decree No. 32/1997 (XI. 5.) of the Minister of Culture and Public Education on Issuing the “Guidelines on kindergarten education of national and ethnic minorities”. On the basis of the general context defined by the Decree on the issuance of the core programme for kindergarten education, the Guidelines on kindergarten instruction define the types of minority kindergartens and the content of the education provided by them. According to the Guidelines, the purpose of minority kindergarten education is getting to know the language and the culture of the minority in a way which corresponds to the characteristics of the age group and the level of development of the individual, and the transmittal and development of cultural traditions. To this end, the kindergartens ensure a mother tongue environment for the children, foster and develop the traditions and habits belonging to the minority way of life and culture, and prepare the children for studying minority language in school, while also helping to create and to develop their minority identity.

295. Minority preschool education in Hungary takes place in two types of institutions, in the mother tongue (minority language) kindergartens, and in bilingual kindergartens involved in minority education. In mother tongue kindergartens the language of kindergarten education, and generally of kindergarten life, is the minority language. In bilingual kindergartens involved in minority education both minority language and Hungarian are used, with the accent laid on the development of the minority language.

296. Taking into account the different linguistic and cultural characteristics of the national and ethnic minorities living in Hungary, as well as the diversity of the minorities, minority education may be organized in the following forms: (a) education in the mother tongue; (b) bilingual minority education; (c) language-teaching minority education. The vast majority of the minority educational institutions in Hungary provide language-teaching minority education, in which the language of instruction is Hungarian, and the language and literature of the minority is taught for four hours weekly, in the case of German minority education for five hours weekly, with the subject of ethnography being taught for one hour weekly. From the point of view of the transmittal of the language and culture of the minorities, a much more efficient form is bilingual minority education, where 50 per cent of the curriculum is taught in the minority language; and education in the mother tongue where, besides the subject of Hungarian language and literature, the pupils acquire all knowledge in their mother tongue.

297. Similarly to the provisions on organizing minority kindergarten education and primary school education, on the basis of the Minorities Act and the Public Education Act, the organization of secondary education has also to be initiated by the parents of eight pupils. As a result of the regionally scattered distribution of minorities in Hungary, in the previous decades, in the majority of secondary schools with regional or national enrolment, secondary schools consisting of four classes, and ensuring general secondary knowledge, were formed. Through the years, the changes in education progressed, the requirements for teaching language and literature, as well as ethnography in minority secondary schools appeared, just as later on the minority secondary school general curricula. The amendment of these has also taken place, similarly to the provisions related to primary schools, and parallel with the new reform in public education.

298. The latest amendment, in 2004, of Government Decree No. 100/1997 (VI.13.) on the issuing of the regulations for the final examinations, presents in a separate title the regulations on final examinations in national, ethnic minority languages. Most of these regulations concern questions of organization and evaluation; according to their most important content element, the person taking his final examination “besides taking an examination in the mother tongue (minority language) and literature, shall take a final

examination in his national, ethnic minority language in at least two subjects from among the subject he has learned in the language of his national, ethnic minority”. The regulation strengthens considerably the position of minority languages in secondary schools, as also according to it, if the person taking his examination “in a national, ethnic minority language has taken a successful, at least medium-level examination in at least two other subjects, (his certificate of final examination) qualifies as a document equivalent of a high level, ‘C’ type State examination in the language concerned”.

299. Hungarian higher education can ensure basically the training of minority kindergarten teachers, and primary school and secondary school teachers specialized in minority mother tongues and literature, in the existing minority teacher training places. The Minorities Act entitles the minority communities to initiate the creation of the necessary conditions for the provision of higher education in/of the native language of the minority concerned, though neither this act nor Law LXXX of 1993 on Higher Education contains any specific provisions on the subject of this right or on the measures to follow the initiation.

300. In March 2005 Parliament adopted an amendment to the Higher Education Act, which includes — and after its entry into force will provide for — the rights of the national minority self-governments as representatives of the minority communities, the obligations of the State concerning higher education for the minorities, and the rights of minority students attending institutions of higher education.

301. In Hungary today there is no independent minority university or college. The reason is not primarily the lack of a specific legal background, but rather the number and scattered location of the minority populations. Although the Andrassy Gyula German Language University came into being in 2002 in Budapest with students from the German minority, this institution cannot be considered a minority institution or one which has been established with the specific aim to provide higher education for the German minority population.

302. The present-day higher educational system offers training in the existing minority teacher training departments for minority nursery school teachers, primary school teachers, and elementary and secondary school teachers teaching language and literature in the mother tongue. These are independent departments or departmental groups functioning in some universities and colleges. Due to the low number of any given minority, the number of students attending minority teacher training colleges is — except for the German-speaking students — generally so small that the specific costs are well above average. This has prompted the Ministry of Education to place minority subjects into a higher category of financing to help the fulfilment of educational tasks, and to introduce a minority supplementary normative support.

303. In 2003 the Ministry of Education put out for tender a HUF 150 million project, where the terms of reference included the consolidation of the operating conditions of the national minority departments and departmental groups as well as the preparation and launching of postgraduate courses on special terminology. Support amounting to HUF 110 million was granted to 21 departments providing national minority teacher training and romological training in ten higher educational institutions. The support is available every year and can be utilized for the improvement both of the personnel and facilities of these institutions, the preparation and implementation of programmes for basic and refreshment training in special terminology, and for the development of romological training.

304. A new regulation on the higher education admittance procedure, allows the for minority students to take the entrance exam in their mother tongue.

305. However, parallel with the reform of minority education, increased demand arose for teachers teaching subjects of public knowledge in minority languages, in bilingual or

mother tongue education, for almost all minorities. Therefore, in 2003 the Ministry of Education invited applications for the consolidation of the operating conditions of minority departments and department groups, and for the elaboration and launching of specialized programmes in minority languages. The competition was open not only to minority teacher training places, but also to national minority self-governments organizing training in specialized subjects in minority languages. As a result of this, courses in specialized subjects were started in several minority teacher training places for future teachers participating in basic training, and further professional training courses were launched for teachers already practising. Another invitation for applications issued by the Ministry of Education also supports the further training of practising teachers in professional languages, but involves cooperation between the given minority teacher training institution and an institution with a similar profile in the mother country, at sites in Hungary as well as in the mother country.

306. In the past three years, several provisions concerning public education have been amended, which affect the content and the organization of minority education. In 2003, the National Core Curriculum was amended and, following this, the regulation on the introduction and the application of the general curriculum was modified, in the spirit of decreasing the burden on pupils. After these two amendments, and on the basis of these, the modification of the guidelines for minority education, and the amendment of the general curriculum for teaching minority language and literature, and minority ethnography were also affected.

307. In 2005 the Hungarian Government had taken up the elaboration of the National Strategy of the “Decade of Roma Inclusion” Programme with the involvement of some 700 Roma NGOs. The Decade of Roma Inclusion Programme is to be carried out by participatory States on the basis of two-year packages of measures. The first package of measures was formulated in Government Decree 1105/2007 and adopted in December 2007 with the aim of identifying the tasks for 2008–2009. It is important to draw attention to the fact, that the Decree is a continuation of the earlier governmental medium-term package of measures aimed at improving the quality of life of the Roma.

308. The Decree tackles the issue of cultural autonomy separately from issues related to social inclusion and accordingly it dedicates distinguished attention to the extension of Roma cultural autonomy. It orders for instances the establishment of a national Roma cultural centre to host a variety of Roma cultural events from concerts to theatre performances. The Decree also focuses on the improvement of basic and further teacher training for the Romany and Beás languages and it promotes the training of official translators and interpreters into or from Romany and Beás. Furthermore, it orders the creation of the necessary conditions in order to apply Part III of the European Charter for Regional or Minority Languages to Romany and Beás.

309. Other than cultural issues, the objectives of the Government Decree centre on establishing the conditions of social and economic integration of the Roma population; improving their living conditions and their access to public services; a more effective economic policy, including the increase of the employment rate of the Roma; the extension of integrated education and the elimination of school segregation. The Decree also identifies objectives and tasks in relation to the promotion of equal opportunities, media, and sports.

310. According to a decision of the Government, a new body named the Council of Roma Integration led by the Minister for Social Affairs and Labour, has replaced two earlier existing bodies, namely the inter-ministerial committee on Roma issues, as well as the Roma Council. The mandate of the Council of Roma Integration includes expressing opinions on current issues, consultation rights, and the preparation of decision-making. The Council is composed of delegates from the Government, the President of the Roma

National Self-government and seven representatives of the Roma community. The members of the Council are appointed by the Minister for Social Affairs and Labour. The minorities ombudsman and the Head of the Authority of Equal Opportunities will be invited to all sessions of the Council. The reorganization was welcomed by the President of the Roma National Self-government.

311. The Constitution of the Republic of Hungary guarantees everyone's right to freedom of thought, freedom of conscience, and freedom of religion. These rights includes the free choice or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group. In order to preserve and develop the culture of minorities and to reduce its possible disadvantages, the Government relies also on the assistance of the churches in the performance of related tasks appearing in this field.

312. The income of priests of small settlements is supplemented by the State as agreed upon with the churches. The Government entered into such agreements with the Serbian Orthodox Diocese of Buda, the Romanian Orthodox Church in Hungary, the Orthodox Exarchatus of Constantinopolitan Patriarchate in Hungary and the Hungarian Diocese of the Russian Orthodox Church. This form of budgetary support directly affects the minority communities through their minority priests serving in small settlements.

313. All of the large churches put a special emphasis on the support of minority pastorates in the performance of liturgic and spiritual activities in accordance with minority language, nationality and minority needs. These issues regularly arise in foreign policy relations maintained with the neighbouring countries and the parties continuously consult with each other. The churches with the largest congregations may provide services also in the minority languages. Based on the believers' demands the churches provide services in minority languages: e.g. the Hungarian Catholic Church holds masses in Croatian, Polish, German, Slovak, and Slovenian, the Greek Catholic Diocese evangelizes in Ruthenian and Romanian, the Evangelic Church provides pastorates in German and Slovak, the Baptist Church provides services in Romanian.

314. The Roma mission activity of the Hungarian Catholic Church, which is attended by Roma priests and secular colleagues, should be primarily highlighted. Several ecclesiastic institutes for the Roma mission operate nationwide, well-founded also at scientific level, fostering equal opportunities in the society and integration of communities, and finding the correct solutions in the challenges of daily life. The Greek Catholic Diocese, which organized a world meeting on Roma pastoration in July 2003, has reached prominent success in this field. The churches also maintain public educational institutions where teaching is carried out in the minority language.

315. The last few years saw much progress in minorities organizing their own affairs and in developing self-awareness. The numerous minority civil organizations, associations, clubs and ensembles are proof of the high level of the right of association and assembly. Cultural institutions in settlements that also have a minority population are obliged to ensure that the cultural demands of these minorities are met. Besides this, as mentioned above, the independent minority cultural institutional system has greatly strengthened over the last decade. The national or regional network of minority museums and libraries, the nationality theatres, the numerous cultural associations, cultural centres, community houses, clubs and art societies all help in preserving the cultural traditions of the minorities. Regularly organized specific events such as the festival of books or the festival of minority theatres help spread information on the culture of minorities. From the early 1990s minorities began to establish minority research institutes to study their own traditions, history and present-day situation. The organizational framework of these research institutes

is very varied: some operate on the basis of a civil initiative, others have contacts with a national self-government or some university.

316. According to Article 55, paragraph (3) of the Act on Minorities, the Government shall establish a public foundation to promote activities aimed at the preservation of the identity, nurturing and transmitting of the traditions, fostering and development of the mother tongue, guarding of the intellectual values and relics, and attenuating the cultural and political disadvantages emanating from the minority status of the minorities. The Public Foundation invites applications annually for the promotion of the mother tongue culture of the minorities, including minority cultural events, publication of works in the minority mother tongues, research in the minority languages, and theatre performances produced in these languages.

317. Another important sponsor beside the Public Foundation is the Ministry of National Cultural Heritage, which supports minority theaters, the publication of literary works and papers on the results of ethnographical research, as well as major cultural events through applications invited annually. The Minority Cultural Council was set up as an advisory body to the Minister of Culture to facilitate activities related to minority cultures.

318. The National Cultural Core Programme appeared as a new sponsor of events and publication in the minority languages. Its Interim National and Ethnic Minority College is responsible for the distribution of minority funds. Last year the college allotted altogether HUF 100 million through competitive applications.

319. Film makers belonging to minorities may also apply for financial support at the Hungarian Motion Picture Public Foundation and the Hungarian Historical Film Foundation. According to information received, support for a documentary film in each of the past three years was awarded to a Slovak minority applicant.

320. As part of the efforts to develop cultural autonomy, the national minority self-governments are entitled to establish and operate such minority institutions as, for instance, theatres, museums, exhibition halls, public collections involving collectors from all parts of the country, libraries, publishing houses, and national cultural, artistic and scientific institutes. A separate fund to support institutions established or taken over and maintained by the national minority self-governments was earmarked in the central budget for the first time in 2003. This support is a financial basis for the promotion of cultural autonomy. The applicant national self-governments spent a substantial part of the funds, earmarked yearly, for the maintenance and the renovation of the public educational institutions operated by them. The support granted to these public educational institutions totalled HUF 216 million in 2003 and HUF 266 million in 2004.

321. Principal organizers of the minority cultural events are mainly the minority non-governmental organizations or local minority self-governments. Local, regional or national events usually feature cultural associations, choirs, orchestras, dance groups, and amateur and professional theatre companies active in the locality.

322. Publications in the minority languages are forwarded to the institutions of minority library supplies, to the National Foreign Language Library and the county library centres coordinating minority library supplies, as well as directly to settlement and school libraries, by the publishers, the national minority self-governments, non-governmental organizations, local minority self-governments and associations. Interested persons can have access to all the publications issued in the minority languages in Hungary through this State-financed library network.

323. The Hungarian State supports minority access to the means of mass communication. Programmes for the 13 minorities are regularly broadcast both on Hungarian Radio and Hungarian Television and are also available via the Internet. The native language television

programmes for the minorities are complemented by regular Hungarian-language magazine programmes about the minorities that also serve to inform the wider general public. The national self-governments of the national and ethnic minorities independently decide on the principles for the use of the available airtime at their disposal for public service broadcasting. Minorities may delegate — on a rotational basis — one member for one year to the Boards of Trustees of Hungarian Radio and Hungarian Television.

324. At least one nationally distributed newspaper per minority receives State support for publication purposes. In 2008, this meant financial support of HUF 217 million being provided to 19 nationally distributed newspapers for the 13 minorities. Besides minority national papers other press organs give news about the minorities, thus for example minority supplements carried by the national press and native language supplements in local newspapers.

325. As for the training of journalists, each year the Ministry of Education and Culture distributes scholarships to train minority youngsters in their mother countries. Journalists working for the minority media are mainly recruited from among those who graduated in the mother country as journalists.

326. With State support, the National Foreign Language Library gets newspapers and periodicals from the mother countries of the minorities. All minority self-governments maintain contacts with the press of their mother countries and have access to their materials either directly or through the relevant embassies.

327. The minorities have the right to submit complain to the Ombudsman for National and Ethnical Minorities' Rights. According to the Annual Report prepared for the Parliament in 2006 (J/2099) the implementation of minorities' special rights can be evaluated. In 2006 the Ombudsman received almost 100 fewer complaints. In the previous annual report the Ombudsman suggested that the establishment of the Equal Treatment Authority at the start of 2005 was likely to influence the number of clients. The need to harmonize the legal practice of the two institutions will become increasingly apparent. Although by law, the Equal Treatment Authority, as a public administration body, falls under the scope of the Ombudsman Act, it would make more sense to harmonize legal practice in a cooperative way.

328. Investigations were carried out into the impact of the amendment to minority legislation in 2005 with regard to the election process. The unsuitability of the chosen solution meant that the original aim of eliminating earlier severe abuses of the election system was far from met. One positive development, however, was that in the parliamentary and particularly committee debates on the Ombudsman's annual report of 2005 the need for a reconsideration of the election legislation without delay was uniformly expressed.

329. It was not clear whether the amendments of the Act on Minorities regarding the minority self-governments could also be applied to minority self-governments already in operation. As is apparent from the complaints the Ombudsman received, in some settlements this question was subject to regular debate.

330. By amending the Act on Minorities, the Parliament authorized the Government to regulate by decree the financial management of minority self-governments and the system of conditions for central budgetary support proportional to tasks performed and rules for accounting. According to the Legislation Act, these executive decrees should have been brought into force in parallel with the amendment to the Act on Minorities.

331. The discontinuation of minority self-government can raise several problems of property management. The legal successor of the discontinued minority self-government is the newly elected and formed minority self-government. Until the legal succession takes



place, the entire movable and immovable property and other property rights of the discontinued local or regional minority self-government comes under the temporary management of the local government. The local government, therefore, is obliged to manage the property, without acquiring ownership rights, whilst there is no guarantee at all that a new minority self-government will be formed to which the property must then be transferred. Nor is it clear for what purposes the local government may use the property of the terminated minority self-government.

332. It is the constitutional right of national and ethnic minorities in Hungary to establish minority self-governments in settlements (including the Budapest districts). In order to ensure the exercise of this fundamental right, the new legislation gives only members of minority communities the right to elect minority self-governments. The minority electoral register defines those persons who have the right to vote. There is a similar register for the local government elections, with the fundamental difference that its establishment and continual management is compulsory independently of the wishes of electors, whilst inclusion in the minority register takes place on a voluntary basis based on request, and the information is recorded temporarily until the final result of the election has been established. Another significant difference is that the local government register of names has to be public to voters, whereas the information included in the minority electoral register is not open. The inconsistency of the legislation can be blamed for the fact that whilst in theory only members of the given minority community could request inclusion in the minority electoral register, in practice anybody could acquire the right to participate in the elections by making a formal declaration. The election bodies were unable to investigate the truth of the declaration, so the notaries could not reject the requests, even if it was clear that the given person had no tie to the given minority community. Numerous minority self-governments and civil organizations indicated that large numbers of electors had been included in the register even in settlements where in reality there is no minority community. The rules for compilation of the register also need to be changed because the willingness to register minority electors was significantly reduced by the fact that they had to assume their identity not in front of a committee consisting of members of the community, but in writing to the notary. The failings experienced made it clear that in its current form the minority electoral register cannot guarantee that only members of the community represented are able to participate in the minority self-government elections. However, we cannot conclude from the above that introduction of the register was a mistake on the part of the legislators. We are convinced that it is the only means which, following an amendment to the procedural election rules could combat abuses.

333. In the 2002 local minority self-government elections around 65 per cent of nominees ran as independent candidates. However as a result of the 2005 amendment only the nominees of minority organizations could run in the elections. The Ombudsman received numerous complaints concerning the ban on independent candidates. The legislator, in addition to banning independent candidates (albeit temporarily) also excluded the possibility of being able to influence the elections through creating false minority organizations. Only those civil organizations were entitled to put forward a candidate, which had registered the representation of the given majority in their statute at least three years prior to the elections. As a result of tightening the rules for standing as a candidate, minority organizations in some cases were able to prevent minority self-governments being established in settlements, where members of the community allegedly represented do not actually live. However, the National Ukrainian Self-Government reported that due to the participation of several false minority nominating organizations, even now several minority self-governments were formed with no real community legitimacy. These cases draw the attention to the need to rethink the criteria of nominating organizations, and to tighten the conditions for the registration of nominees, as well as to ensure that these can be examined.

334. Candidates running in the earlier minority self-government elections did not have to be affiliated to the given nationality, it was sufficient if they “undertook” to represent the minority. The new legislation, by contrast, has made it a requirement that the candidate be included in the minority electoral register and that they register themselves as a member of the community to be represented. The declaration of the candidate was designed to ensure that only those persons may be minority representatives who possess objective criteria of belonging to the community. The Election Act, however, only prescribed the completion of the declaration and did not oblige the election bodies to check its contents. As a result anybody could become a candidate who had been included in the minority electoral register and who declared that they would undertake to represent the minority. The majority of the candidates assumed stricter criteria than the election bodies actually demanded. For that reason, many “concealed” the fact that they had earlier represented another minority, or with no basis claimed that they knew the language and culture of the given minority. One of the fundamental tasks of minority representatives is to ensure the transmission of the minority culture and language. It is evident that it is impossible to fulfil this task properly without actually being in possession of this knowledge. At the time of establishing the minority self-government system, it may have been reasonable to point to the fact that the assimilation policy of the past decades meant that the use of the native tongue within the communities was not widespread. The Ombudsman deems it justifiable and realistic that only those persons be elected as minority representatives who possess the language skills necessary to carry out their public office. The Ombudsman also regards it as a fundamental requirement that in future only those persons be able to run as minority self-government candidates who have not earlier been the representative of another minority.

335. Numerous minority organizations objected that their delegates were not allowed to be involved in the work of the vote-counting committees. In some settlements this contributed to the fact that they questioned the credibility of the election results. The protection of the personal data of the minority voters is an important requirement during the elections. However, the exercise of this right should not be used as a pretext for restricting checks on the organization of minority self-government elections. The Ombudsman therefore deems it necessary that in future minority nominating organizations shall be allowed to delegate one member each to the vote-counting committees, as is the case for the local government elections.

336. In the 2006 local minority self-government elections 63.81 per cent of those entitled to vote participated. This is higher than the participation rate of 53.12 per cent in the local government elections, yet it was still lower than prior expectations. This is indicated by the fact that in some settlements the participation rate was extraordinarily low. There was even an instance of there being fewer voters than elected representatives. According to the current legislation, there is no validity threshold in the minority self-government elections, although the election was only valid if each of the five representatives received at least one vote. However, this vote could be made by the same voter – and even the candidate themselves. Given the election figures, the question arises of whether a minority self-government elected by just four or five voters can have the necessary community legitimacy. The Ombudsman thinks there is a need for legislation, which would make the formation of minority self-governments possible only in settlements where both the number of registered voters and the number of votes confirm that the given community asserts the right to be represented.

337. Minority education is the key element for safeguarding individual and community minority self-identity, and ensuring the survival, fostering and transmission of minority identity. Providing high-standard minority education under the appropriate organizational, financial and staff conditions is the most important public issue concerning minorities. There was no breakthrough in this field in 2006. The maintenance of schools offering minority teaching is typically done by local governments. It is important to note that the

Ruthenian, Armenian, Romanian, Slovenian and Roma self-governments do not maintain a single school.

338. Nor has there been significant improvement in the field of national minority teacher training. The Ombudsman wishes to draw attention to the fact that teacher training extending to the whole of public education only exists for the German, Slovakian and Croatian languages: only these three minorities have nursery, lower elementary, upper elementary and secondary level teacher training in Hungary. There is no secondary level teacher training in Hungary for the Romanian nationality. The Serbian nationality lacks nursery level and upper elementary teacher training in Hungary, and the Ukrainian and Slovenian nationalities lack nursery level and lower elementary teacher training. The Bulgarian, Polish and Greek nationalities only have secondary level teacher training; and there is no teacher training at any level for the Armenian, Ruthenian and Roma language areas.

339. In 2003 the Office surveyed the public service media in the framework of a comprehensive investigation – including primarily the national minority reporting tasks of the television and radio organs (the report became known after its approval by parliament in 2004, and can be accessed among the documents of Parliament, as well as the documents available on the website of the Office of the Parliamentary Commissioners). Each year the Office devotes time to inquiring in the form of an investigation whether national and ethnic minorities have the possibility to appear in the public service media within separate programmes and whether they can access native language information about the life of the minority community. In terms of public service television we are not aware of major changes, i.e. the national minority programmes of public television could be accessed according to the same system. However, in terms of public service radio, as early as 2003 both the management of Magyar Rádió Zrt. and the National Radio and Television Board indicated that for reasons of frequency management and modernization, we should expect changes also influencing national minority programmes. These changes were made at the end of 2006 and beginning of 2007 when the new Magyar Rádió channel titled MR4 was established. With the launch of MR4, Magyar Rádió Zrt. is actually continuing an old radio tradition: following World War II, Magyar Rádió broadcast its first national minority programmes — in Serbian and Croatian — on 12 January, 1953 from the Pécs Regional Studio. Until 1966 Magyar Rádió produced Croatian, German, Serbian, Romanian, Slovakian and Slovenian language programmes in its Szeged, Pécs and Győr studios. These programmes were broadcast for one or two hours a day, partly with national and partly with regional coverage. In January 1998, Magyar Rádió broadcast Ruthenian, Bulgarian, Greek, Ukrainian, Armenian, Polish and Hungarian language Roma programmes, and the Hungarian language national minority magazine, aimed at majority society, was launched. Magyar Rádió gives its readers a taster of the literature of national minorities living in Hungary twice a week.