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October 1999

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HUNGARIAN HELSINKI COMMITTEE

THE SITUATION OF MINORITIES

IN HUNGARY*

PART I GENERAL REMARKS

Historical Background

German knights, Italian and French monks were the first "foreigners" to settle in the Carpathian basin after the foundation of Hungarian statehood. István I., the founder of the Hungarian state, invited them into the country so that they would help spread Christianity and Western European social norms. The successors of István also invited French, Dutch, Italian and German settlers to populate the deserted areas of the country. However, the first big change in the ethnic structure of the country came with the Ottoman wars, which began in the fifteenth century. The country's population decreased drastically in the central part of the country during the 150 years of Turkish occupation, while a massive immigration of Romanians and Serbs – pushed by the Turks – began along the Eastern and Southern borders. After the Turks were driven out of the country, the Habsburg rulers of Hungary populated the previously Hungarian-occupied areas primarily with German and Slovakian settlers. As a result of this, the total number of national and ethnic minorities living in Hungary at the end of the eighteenth century was higher than the number of Hungarians. Only 41-48 percent of the population was Hungarian in the middle of the 19th century.

Thus, it is not surprising that in 1868, Hungary's parliament was the first in Europe to pass a National and Ethnic (Minority) Law. In theory, this act was a very progressive and liberal one: it provided the possibility to use minority languages in public life at the level of villages, towns and counties. Petitions to the highest forums of public life (the legislation, the ministries, etc.) could be submitted in minority languages as well and primary education took place in the minority language (Hungarian was not even supposed to be taught as a class). In practice, however, little was realized of the provisions of the law: not even its executive decree was adopted. A decade later – in 1879 – Act XVIII on Education made the teaching of Hungarian language obligatory in all primary schools, and according to a law adopted in 1883 history and literature had to be taught in Hungarian even in the schools of ethnic minorities.

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The Treaty of Trianon of 1920, which concluded World War I, radically altered the political and ethnic map of the Carpathian basin. Hungary lost two thirds of its previous territories, the number of national and ethnic minorities in the 93,000-square kilometer country decreased to a small fraction because of the new national borders, since the territories on which the largest blocks of ethnic groups lived were attached to the newly formed successor states of the Austro-Hungarian Monarchy.

At present there are 13 officially recognized ethnic minorities in Hungary. These are the following:

Roma, Bulgarian, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, Ukrainian (about the process of official acknowledgment see Article 3)

Demographic Characteristics

Hungary's population:

10,709,463 in 1980

10,374,823 in 1990

The following figures were recorded in the 1980 and 1990 censuses according to the "native language" and "nationality" of the national and ethnic minorities in Hungary.

According to native language

Minorities	Number of People		Percentage of the Population in 1990
	1980	1990	
Slovakian	16 054	12 745	0.1228
Romanian	10,141	8,730	0.0841
Croatian	20,484	17,577	0.1694
Serbian	3,426	2,953	0.0285
Slovenian, Wend	3,142	2,627	0.0253
German	31,231	37,511	0.3616
Roma	27,915	48,072	0.4634
Armenian	".."	37	0.0004
Greek	".."	1,640	0.0158
Bulgarian	"::"	1,370	0.0132
Polish	".."	3,788	0.0365
Ukrainian, Ruthenian	".."	674	0.0065
Total	112,393	137,724	1.3275

Source: MAPSTAT Central Statistical Office software, Budapest, 1992

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According to Nationality

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Minorities	Number of people		Percentage of the Population in 1990
	1980	1990	
Slovakian	9,101	10,459	0.1008
Romanian	8,874	10,740	0.1035
Croatian	13,895	13,570	0.1308
Serbian	2,805	2,905	0.0280
Slovenian, Wend	1,731	1,930	0.0186
German	11,310	30,824	0.2971
Roma	6,404	142,683	1.3753
Other minorities	16,369	19,640	0.1893
Total	70,489	232,751	2.2434

Source: MAPSTAT Central Statistical Office software, Budapest, 1992

The 1990 figures based on the estimates of the minority organizations show a significant difference from the official statistics.

Minorities	Estimated Number
Gypsy/Roma	400,000-600,000
German	200,000-220,000
Slovakian	100,000-110,000
Croatian	80,000-90,000
Romanian	25,000
Polish	10,000
Serbian	5,000-10,000
Slovenian	5,000
Bulgarian	3,000-3,500
Greek	4,000-4,500
Armenian	3,500-10,000
Ukrainian	2000
Ruthenian	6000,
Total:	835,000 – 1,083,955

Source: minority organizations

According to the Report Submitted by Hungary Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (henceforth: Government Report), the actual population with minority identity and commitment is somewhere between the census figures and the estimated figures. The difference between the estimated and declared figures can best be explained with the historical, social, and socio-psychological features of minority issues in Central and Eastern Europe.

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PART II DETAILED REPORT

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Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international cooperation.

The status of international law in the Hungarian legal system: The Hungarian legal system may be regarded as "dualistic" from the point of view of the status of international law, i.e. it acknowledges the supremacy of international law but does not allow its rules to be applied directly: they have to be integrated into domestic law through acts of either the Government or the Parliament. The most important instruments of international law appear in the theater of domestic law in the form of acts adopted by the Parliament. The Hungarian Constitution defines the relationship of domestic and international law.¹ The Constitutional Court plays a very important role in this process both before and after the promulgation of international treaties. On the motion of the Parliament, the President or the Government the Court examines whether an international treaty or convention to be ratified is in harmony with the requirements of the Hungarian Constitution. If the treaty is considered to be unconstitutional by the Court it may not be ratified or promulgated until the cause of its unconstitutionality is removed. Once an international treaty has been ratified and promulgated it is the task of the Constitutional Court to decide whether an act of the domestic law is in harmony with it or not. If a normative act that is contrary to the international treaty is placed at a lower or at the same level in the hierarchy of statutes than the one promulgating the treaty the Constitutional Court is entitled to declare it void, if the statute in question ranks higher than the promulgating act the Court calls the legislature make the amendments necessary to resolve the contradiction.

Multilateral international treaties the country is a party to: Hungary, which has been a member of the United Nations since 14 December 1955, has ratified the main UN conventions on human rights, such as the *United Nations International Covenant on Civil and Political Rights* promulgated by Law-Decree 8 of 1976 (Article 27 of which states that the persons of national, religious, and ethnic minorities may not be denied the right to have their own culture with other members of their groups, to practice their own religions, or to use their own languages), the *Convention on the Rights of the Child* promulgated by Act LXIV of 1991 (which declares that the children of minorities may not be deprived of their right to live their own cultural lives, practice their religion, and use their own languages with the other members of their groups) and the *Convention on the Elimination of Racial Discrimination* promulgated by Law-Decree 8 of 1969.

Hungary also ratified the *Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms* signed in Rome on 4 November 1950 and the eight optional protocols pertaining to it on 5 November 1992 and promulgated them with Act XXXI of 1993. Accordingly, individuals have been able to submit applications to the European Commission and Court of Human Rights since 5 November 1992. So far, the

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¹ Article 7 para 1 of the Constitution: The legal system of the Republic of Hungary accepts the generally acknowledged rules of international law and guarantees that domestic law be harmonized with international legal obligations.



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Commission and the Court have communicated to the Government 26 applications for observation. None of the applications were based on discrimination pertaining to national and ethnic minorities. Although in two cases the applicants referred to the fact that they had been ill-treated in the course of police action and criminal detention proceedings because of their ethnic origins, the Commission did not find these complaints sufficiently substantiated to incorporate the part of the complaints pertaining to discrimination in the questions that were communicated to the Government.

According to the Government Report, Hungary considers *Recommendation No. 1201 of the Parliamentary Assembly of the Council of Europe* on acknowledgement of collective rights of minorities, as authoritative. The Parliament of the Republic of Hungary ratified the *European Charter for Regional or Minority Languages* (Parliamentary Resolution 35/1995 (IV. 7.) OGY), and it is in the process of being promulgated, however it is restricted to only six out of the 13 recognized ethnic minorities. Thus, the obligations imposed on the country by the Charter are assumed only in connection with the Croatian, German, Romanian, Serbian, Slovakian and Slovenian minorities but not the Roma, which is the largest ethnic group living in Hungary.

An additional international instrument worthy of mention is the *Central European Initiative Minority Protection Document* (adopted in the framework of the Central European Initiative on April 30, 1996), which is a legally non-binding document. Its adoption was a political statement in favour of providing national and ethnic minorities with individual and collective rights necessary for the preservation of their languages, traditions and cultural values.

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

The definition of minorities: The legal definition of national and ethnic minorities set forth in the Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (henceforth: the Minorities Act).² As mentioned earlier there are at present 13 officially acknowledged minorities in Hungary. Their acknowledgment was provided by Article 61 of the Minorities Act, which declares that the following ethnic groups qualify as ethnic groups native of Hungary: *Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian*. Paragraph 2 of the same Article also provides other groups with the possibility of being recognized as ethnic minorities: if a minority other than those listed above wish to prove that they meet the

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² Article 1 of the Minorities Act: "A national or ethnic minority is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history."



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requirements specified in this Act, they may submit a petition related to this subject to the Speaker of the National Assembly if supported by at least 1,000 voters who declare themselves members of this minority. In the course of this procedure the provisions of Act XVII of 1989 on Referenda and Petitions shall apply.

In terms of Article 2 of the Minorities Act, the Minorities Act does not apply to refugees, immigrants, foreign citizens settled in Hungary, or to stateless persons. According to the Government Report, the reason for this distinction is a constitutional one.³

According to the Government Report refugees, immigrants, etc. may not be considered to be a constituent part of the state (thus they are not entitled to the rights provided for ethnic minorities), therefore the government "has different responsibilities and obligations with regard to them." In the long run this might raise problems e.g. in connection with the extensive Chinese colony living in Budapest and it is also hard to decide which point shall be regarded as the beginning of the 100 years presence of a minority group in Hungary.

Individual rights concerning ethnic affiliation: Article 7 of the Minorities Act declares that all persons have the exclusive and inalienable right to choose to belong to a national or ethnic group or a minority and so declare it. No one is obliged to proclaim that they belong to a minority group. Likewise, the right to national or ethnic identity and the choice to belong to a minority do not exclude acknowledgment of two or more affiliations. Article 8 provides the citizens who belong to national or ethnic minorities with the right to confidentially and anonymously acknowledge belonging to a minority in the national census. The law states, moreover, that it is forbidden to discriminate against minorities in any manner (Paragraph 5 of Article 3). In accordance with the Minorities Act, the Republic of Hungary forbids all policies that harass national or ethnic minorities or individuals belonging to minorities because of their affiliation as well as all policies that make the circumstances of their lives more difficult or impede the practice of their rights (Article 4).

As a result of the freedom to choose one's identity and some regulations of the Act on data protection, which declare that ethnic affiliation shall be regarded as 'sensitive' personal data, it has become rather difficult to perform sociological studies and government surveys since 1993, when the Data Protection Act came into effect. On the other hand, it was owing to these provisions of the Minorities Act and the Data Protection Act and a 1997 position taken by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities (henceforth: Ombudsman) that references to the ethnic origin of criminals disappeared from warrants of caption and media reports. Preceding the position articulated

³ Article 68 of the Constitution of Hungary:

(1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State.

(2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.

(3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.

(4) National and ethnic minorities shall have the right to form local and national bodies for self-government.

(5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the rights of national and ethnic minorities

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by the Ombudsman, the indication of ethnic origin had almost been automatic in the case of Roma suspects, which definitely contributed to the anti-Roma sentiments of the population, since it suggests a connection between criminality and ethnic affiliation.

Thus, the Hungarian regulation can be said to meet the international criteria in this field. Interestingly, it was minority organizations that complained about a specific phenomenon related to the freedom to choose to belong to an ethnic or national minority, namely that some people who – in the opinion of the complaining minority organization – did not belong to a minority nominated themselves to certain bodies of the given minority and were elected. About this problem see the comments on Article 15 and the minority self-governments.

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

The problem of indirect discrimination: The phenomenon of indirect discrimination is when the law itself is neutral, however it is intentionally applied by authorities to discriminate against a certain group of society. The principle of equality before the law, equal protection of the law and prohibition on discrimination can be found in several Hungarian legal instruments, such as:

- the Constitution of the Republic of Hungary
- *Article 57 para. (1):* 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, determined in a fair, public trial by an independent and impartial court established by law.
- *Article 70/A., para (1):* 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.
- *para (2):* The law shall provide for strict punishment of discrimination on the basis of Paragraph (1).
- Act LXVI on the Organization and Administration of the Courts
- Law-Decree 11 of 1979 on the Implementation of Punishments and Measures
- Act XXII of 1992 on the Labour Code

Article 5: It is prohibited to discriminate between employees in connection with employment according to their gender, *nationality, race, origin, religion, political conviction, affiliation with employee representative organizations or related activities as well as any other circumstance that is not connected to employment*

- Act LXXIX of 1993 on Public Education

Article 4, Para 7: All forms of discriminations are prohibited in public education on any basis especially the *colour, gender, religion, national or ethnic identity, political or other conviction, national, ethnic or social origin, financial condition, age, birth or other situation of the child or the child's relatives*. At the same time the Ombudsman urges the legislation to amend the statutes regulating education with rules that would sanction discrimination in the educational system. Although the Act on Public Education was modified in 1998 no such provisions were included.

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Thus at the level of legal instruments the requirements set forth in Article 4 of the Framework Convention are met but the practice of authorities is often different from the theory. Most often, members of the Roma minority become victims of such violations. These cases can be divided into two main groups: (i) misuse of police powers (ii) infringements by other authorities such as local governments and state agencies.

Police abuses: Human Rights Watch observed in its 1998 report that the Roma are particularly likely to be the victims of police abuse (ill-treatment in official procedure, interrogation under duress, illegal arrests, etc.). There are numerous cases of Roma clients complaining about police brutality in the practice of most human rights NGOs. Let us quote here the characteristic example of János O.:

"János O. is a 36 year old, 150 cm tall, thin Roma man with hearing impairment. On 6 July 1998 his neighbour called the police on him stating that O. had previously threatened him with an object that looked like a weapon.

The police searched his flat and found the object in question: a red plastic toy gun. Then a policeman lifted him up from the bed and boxed him in the mouth. He was handcuffed and taken to the district police station. He was kept in a cell for ten or fifteen minutes and beaten and kicked in turns on several occasions. It is apparent from the file that a bucket of water was poured over him that he was made to mop up. The beating resulted in injuries in his stomach and chest. Three of his ribs were fractured and he needed to be hospitalised.

Policemen taking measures reported him on the count of disorderly conduct, i.e. for shouting down the building's outside corridor, waiving a weapon-like object. Investigation into the petty offence of disorderly conduct was commenced.

NEKI [Legal Defence Bureau for National and Ethnic Minorities] represented the client in the petty offence procedure that ended in acquittal and the returning to him of the toy gun. The decision contained the fact that his hearing impairment served as the reason for him shouting at his wife.

On report by the client, the prosecutor's special investigation department ordered investigation into ill-treatment.

The department has not yet responded to our query of 7 September 1998."

The high number of cases in which off-duty police officers harass Roma persons also indicates the general anti-Roma attitude of the police force. In 1997-98 György Csepeli, Antal Örkény and Mária Székely sociologists conducted a survey with the participation of 1530 police officers. 54 percent of the interviewed policemen believed that criminality was a key element of Roma identity and 50 percent agreed with the statement that the high crime rates of the Roma minority are connected to some kind of genetic determination. 64 percent said that incest was a characteristic feature of the Roma, while 88 percent thought that the Roma characteristically did not respect private property. It might stand in the background of police brutality that 74 percent of the interviewed officials believed that the population expected the police to be hard on the Roma.

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On 31 July 1998 an off-duty non-Romani police officer from Budapest verbally and physically abused a group of Romani women attending a conference in a holiday resort in Balatonszemes. The officer was verbally and psychologically supported by a group of allegedly drunken non-Romani men. One of the women suffered a concussion, while another one – six month pregnant at the time – suffered other substantial injuries. The men also allegedly offended the ethnic origins of the women. Local police were reluctant to provide assistance to the female victims. They did not take any measures on the scene and



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the failed to write a report about the case. The officers of the Siófok City Police are also said to have reacted only after the women brought the incident to the attention of the national media.

Furthermore, Roma victims are often unable to obtain adequate remedies for such abuses. The 1997 statistics concerning so called "official crimes" (i.e. crimes committed by public officials) show a depressive picture. 386 reports were made on counts of *forcible interrogation*. In only three cases were policemen taken to court, in a further 38 cases were charges pressed. In 142 cases, investigation into the incidents was denied, and in 202 cases terminated (According to Article 139 of Act I. of 1973 on Criminal Procedure the investigation has to be terminated if (a) the act is not a criminal offence, or it was not committed by the suspect, (b) the committing of a criminal offence or the identity of the offender may not be concluded from the data of the investigation and no result may be expected from the continuation of the procedure, (c) the suspect is not or cease to be punishable, (d) the act has already been decided upon by a court, however, the statistics does not contain data concerning the reason for the termination of investigation, so all we know is the number of terminations). In summary, 89 % of the reports ended without indictment. In the case of *ill-treatment* the figures are the following:

- 843 reports
- 276 denials of investigation
- 448 investigations terminated
- altogether 86% of the cases ended without indictment.

The figures for *unlawful detention* are as follows:

- 174 reports
- 66 denials of investigation
- 86 investigations terminated
- altogether 87% of the cases ended without indictment.

Altogether approximately 3 percent of cases brought against the police led to convictions. Even in the few cases where police officers had been convicted, penalties were usually fines, probation or suspended sentences, and police officers generally remained on the force.

There are police stations in the countryside where some kind of procedure is in progress against more than half of the staff. In Hajdúhadháza (Hajdú-Bihar county) human rights organizations registered the complaints against local police officers. The last case that raised a public outcry was when a policeman beat up a Hungarian boy who spoke in a television Programme in front of the hidden camera of the TV channel. The policeman was dismissed. In March 1999 the local authorities organized a demonstration at which some residents of the town demanded that he would be reinstated on the police force again and the local government brought a decision demanding the same.

The Romani Civil Rights Foundation conducted a survey among the residents of Hajdúhadháza. About half of the 300 interviewees refused to fill in the questionnaire because they were afraid of retaliation. Two-thirds of the 150 interviewees who were willing to answer the questions thought that the policemen in Hajdúhadháza acted brutally and in a humiliating manner. 73 of them claimed that they had been subject to unlawful police brutality. The Ministry of Interior conducted a legal supervision inspection into the events that had taken place in the town. Several irregularities were found and the head of the criminal department was removed (a criminal procedure for unlawful detention had

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been initiated against him earlier). The moral situation and the discipline of the staff at the Hajdúhadháza headquarters is the worst in the county – this was the conclusion of the inspection, which also stated that the officers of the Hajdúhadháza staff had committed unlawful acts – mainly forcible interrogation, unlawful detention and ill-treatment – on several occasions. Half of the police officers of the town were or are under criminal procedure and several have been convicted.

According to the survey conducted in 1996 by the Hungarian Helsinki Committee with respect to the condition of pre-trial detainees in police cells, it is the Roma – in addition juveniles, foreigners and perpetrators caught in the act – who are most often subject to police brutality. 45 percent of the interviewed Romani thought that the police had acted brutally in their case. The survey gives account of cases where the detectives ill-treated the arrested person because of his or her Roma ethnicity.

Cases of discrimination by other agencies: According to the 1998 Report of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, most of the complaints were filed against *local governments*: altogether 409 complaints were submitted to the Ombudsman but only 241 complaints fell into his sphere of competence. Out of the 241 complaints 77 were filed against local governments (as opposed to the 37 complaints against the police), which amounts to almost one-third of the cases with respect to which the Ombudsman was entitled to take action.

Within the framework of a survey conducted in 1998 by the Research Institute for Social Sciences (TÁRKI) sent out a questionnaire containing questions about the municipal clerks' attitude towards foreigners and the Roma, to 3000 local governments. One-third of the settlements filled out the voluntary questionnaires. The results show that 43 percent of the clerks would not like to have Roma people let in their settlement.

The sometimes openly admitted anti-Roma sentiments of the staff of local governments are illustrated by a series of events, which took place in late 1997. In 1997 the Local Government of Székesfehérvár (the administrative centre of Fejér County) brought a decision on the eviction of 13 Roma families who had not paid the rent. The planned measures were met by the fervent protest of human rights and minority organizations. Hence, the local government offered 1,5 million HUF to each family on the condition that they solve their housing problems outside the borders of Székesfehérvár. The news that the Roma families were trying (and some of them had managed) to find accommodation in the villages around the city triggered the residents' protest and in some settlements (e.g. in Pátka) campaigns for signatures were launched. These actions were often organized by the mayor of the given community. In several places, Roma families were prevented from moving into the house they had bought by 'live chains' formed by the residents of the village (Belsőbáránd, Pátka) or barricades (Polgárdi). In other places the gates of the purchased real estates were welded. In December 1997 altogether 43 Fejér County mayors protested against the Székesfehérvár Local Government's decision to 'export' the Roma-problem.

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In September 1999 all the representatives of the local self-government of Felsődobsza (Borsod-Abaúj-Zemplén County) resigned as a protest against the mayor's decision not to prevent a Roma family from moving into the village.



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The most problematic aspect of such cases is that most of them include indirect discrimination that is very difficult to prove. However, in some of the cases discrimination nature is so self-evident that the Ombudsman is able to take the necessary measures. Such was the so-called "Zámoly case": In the village of Zámoly the roof of the building in which the Roma families lived was severely damaged. Seeing a good chance to get rid of the Roma families, a serious burden on the social budget of the Local Government, the mayor offered them temporary housing in the community centre and "ordered" the notary (in charge of building affairs in the Hungarian system) to qualify the Roma building as "unsuitable for housing" and to order the owners to pull down the building. The notary of the Local Government (employed by the mayor) chose to break some procedural rules and brought the decision required by the mayor. The mayor did not even wait until the deadline for submitting an appeal against the notary's decree passed and had the building torn down. In connection with this case the Ombudsman submitted a recommendation for legislation to the Minister of Interior concerning a mechanism providing notaries with more independence from mayors who – trying to ensure their re-election – sometimes play the "ethnic card" to win popularity. The Minister's answer was a negative one.

Judicial bias towards Roma is another problematic area, which – similarly to the case of local governments – is very hard to examine due to evidentiary difficulties regarding finding proofs for such presentiments. The Hungarian Helsinki Committee's Police Cell Monitoring Programme that was conducted in 1996 provided some examples. In Hungary, the conditions of pre-trial detention are subject to strict legal regulation.⁴ However, the findings of the Programme showed that in some cases – concerning primarily Roma suspects – the judges order or prolong pre-trial detention invoking reasons that are not listed in the Code of Criminal Procedure. 'Punished before Sentence' – the book summarizing the experiences of the Monitoring Programme – sets forth two cases: the Court of Pásztó (Nógrád County) prolonged the pre-trial detention of the suspect of a theft of relatively low value arguing that the '*suspect has no legal means to earn his living, so probably he could not provide for himself unless he commits further offences*'. In the other case the Court of Szeged (Csongrád County) supported the pre-trial detention of a juvenile by his '*troubled family circumstances*'.

The situation concerning judicial bias is very problematic since – as a result of the concept of the independence of the judiciary – the Ombudsman is not authorized to examine the activity and decisions of judges, although a significant percentage of the complaints are filed against them (29 out of 270 in 1998). The 1998 Report of the Ombudsman raises the question whether this solution is in harmony with the freedom of opinion, however, the regulation excluding the courts from the Ombudsman's sphere of scrutiny is unlikely to be modified.

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⁴ In terms of Article 92 of Act I of 1973 on Criminal Procedure, pre-trial detention may be ordered in the case of criminal acts which are punishable with imprisonment if *a)* the suspect has escaped, absconded from the authorities, or owing to the severity of the crime or any other reason he or she may be expected to escape or hide; *b)* it can be reasonably supposed that the suspect would hamper, hinder or endanger the criminal procedure if not taken into pre-trial detention; *c)* the suspect commits another criminal act punishable with imprisonment during the procedure or it can be reasonably supposed that – if not taken into pre-trial detention – he or she would carry out the already attempted or prepared criminal offence or would commit another criminal offence.



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2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

We shall start the discussion of this unit by a brief summary of cases indicating the areas of economic, social and cultural life in which general anti-Roma presentiment of the Hungarian society cause the greatest problems:

Discrimination in the *service sector*: On 19 September 1995 Gyula Góman took his wife to the hairdresser's. He decided to wait for her in a nearby pub. He ordered a coffee and a coke, also he asked for change for 100 HUF to spend his time with the gambling machines. The waitress refused to serve them because he was a Roma. He appealed to Mr. B, the owner of the place but the man confirmed what the waitress had said: "no Gypsy is allowed to eat, drink or enjoy himself in my pub." Mr. Góman started a criminal proceeding against the owner. In its judgment of January 1997 the court of second instance decided that Mr. B had committed the misdemeanour of slander and put him on probation for the period of one year. The civil procedure – based on Article 76 of the Civil Code (prohibition of discrimination and offences committed against human dignity) and aiming at a court decision ordering the offender to provide public compensation and non-pecuniary damages – ended on February 3, 1998. The court of second instance approved of the decision of the court of first instance authorizing the plaintiff to publish at the defendant's expense a declaration containing the defendant's apology in the biggest Hungarian daily newspaper and obliging the defendant to pay Gyula Góman damages in the sum of 150,000 HUF. In spite of the favourable decision of the court, there are still several public places in Hungary where Roma guests are not allowed to enter (e.g. in several settlements of Békés County including Békéscsaba, the administrative centre of the county, also Szikszó and Bogács)

The above described "Góman case" raises two major questions: in this case the owner of the pub admitted that he had been led by a racial motive when refusing to serve the Roma man, however, in most of the similar cases discrimination is not so explicit. Restaurant and disco owners usually deny entry saying that a private party is being held or a membership card is needed. Such cases of discrimination are very hard to prove. Some legal experts have raised that the burden of proof should be shifted, i.e. the person charged with discrimination shall prove that the disputed measure was not taken on a discriminatory basis.

The other problem – first raised by NEKI in their "White Booklet 1996" – is that there is no adequate legal sanction for racially motivated petty offences. Article 174/B of the Criminal Code (which came into force in 1996) provides sanctions for severe offences (abuse, duress, harassment, etc.) committed in connection with the victim's national, ethnic, racial or religious identity, however, no proper criminal sanctions exist for discriminatory deeds causing psychological injuries (such as the humiliation in the Góman case).

NEKI suggests that the following steps should be taken:

- an *anti-discrimination* act should be passed by the legislation



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- an adequate *system of sanctions* should be developed which is suitable for the prevention of discriminatory acts and the effective punishment of the offenders
- an effective *institutional system* should be set up to guarantee the implementation of the anti-discrimination act and the above sanctions.

The suggestions of NEKI are still valid: no such measures have been taken yet.

There has been a debate going on for some time about the creation of an independent anti-discrimination legislation. During the preparation of the previous medium-term Programme (see below) the experts argued in favour of such a legislative act, however, the government decree only contains that 'the possibility of such a measure shall be examined' although it called the government to collect all the possible arguments necessary for deciding on the question. The Minister of Justice initiating the medium term development Programme, accepted this year, did not even mention the above-described antecedents. This suggests that the adopting an anti-discrimination act has not been studied and the idea of such a legislative act has been completely left out of the new medium term Programme.

Discrimination in the field of employment: The other problematic area is discrimination connected to employment. Numerous complaints were submitted by Roma clients to the Ombudsman in connection with employment – in several cases when the employers realize that the job-seeker (they found suitable for the job on the basis of a telephone conversation) is a Roma they turn the applicant down saying that the job is already taken. With respect to the difficulties of proving discrimination in such cases we would like to refer to what has been set forth above in connection with discrimination in services, however, the legal background is somewhat different: Article 75 of Government Decree 17/1968 on Petty Offences orders the negative discrimination of employees to be punished. Either the notary of the Local Government or the 'labour inspectorates' implement this regulation. The inspectorates are authorized to impose a public administrative fine (ranging from 50,000 to 1,000,000 HUF) on the employers infringing this Article. Thus, we might say that the legal background seems sufficient to restrict discriminatory phenomena in the field. However, the practice shows a different picture: no procedure for the implementation of Article 75 of the Government Decree was initiated and no fine was imposed on employers in 1998 or in the previous years.

According to the Ombudsman, there are two possible explanations for this phenomenon. Firstly, the great extent of latency, which results from the fact that worrying about spoiling their chance to get employed, the defenceless employees do not wish to clash with their employers and that the group that is almost exclusively concerned by such discrimination (i.e. the Roma minority) has – due to social and educational circumstances – a low level of ability to assert its interests. Secondly, there is basically no flow of information (at least with respect to the area of discrimination) between labour inspectorates and "labour centres". The reason for this might be that the inspectorates are entitled to investigate cases of discrimination only on the basis of the aggrieved person's complaint,⁵ so they are not entitled to act if the labour centres indicate that some form of discrimination has taken place.

The Ombudsman made several suggestions addressed to the Minister of Welfare and Family Affairs, the Minister of Justice and the Minister of Interior in connection with the question. Some of the suggestion have been accepted (e.g. the developing of a leaflet

⁵ Article 3 of Act LXXV of 1996 on Labour Supervision



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informing the employees about their rights in cases of discrimination, the launching of gathering information on discrimination on employment and the modification of Article 3 of the Labour Supervision Act), however the Minister of Interior did not accept the suggestion that authorities and officials perceiving that the petty offence of employment-related discrimination has been committed shall be obliged to initiate a petty offence procedure ex officio.

Another loophole in connection with employment is that no public administrative sanctions exist against those employers who issue discriminatory job advertisements. On 8 July 1998 the largest advertisement paper (Expressz) published a job advertisement with the following wording: "White, non-alcoholic masons are immediately required" Following an article and a complaint by the Roma Press Centre, the Ombudsman submitted a recommendation to the Minister of Justice and asked her to consider the possibility of adopting legal regulations sanctioning employment-related discrimination. She accepted the recommendation and the ministry is about to start preparing the necessary legal instruments.

Another favourable development is that according to the amendment of the Code on Civil Procedure from June 1999, negotiations preceding the conclusion of labour contracts shall be regarded as falling within the scope of labour lawsuits. This is important because before the modifications only events following the conclusion of the contract (or the actual starting of the work) could be brought in front of the court within the framework of labour lawsuits, which meant that in cases when the employer refused to employ somebody when realizing that the applicant was a Roma, the special rules governing labour lawsuits and Article 5 of the Labour Code (prohibition of discrimination) could not be applied.

After having set forth the problems and criticisms we have to mention that the Hungarian government has adopted a series of measures in accordance with Paragraph 2 of Article 4 of the framework Convention, among others the following Government resolutions:

- Government Resolution 1125/1995 (XII. 12.) on the most urgent tasks related to the situation of the Roma minority – This resolution was in force until 4 May 1999 but it was practically outdated on 29 July 1997, since it contained a Programme that was supposed to prepare the ground for Government Resolution 1093/1997 (VII. 29.) on the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority.
- Government Resolution 1120/1995 (XII. 7.) on the establishment of the Coordination Council for Roma Affairs – This resolution established a body functioning beside the Government and consisting of the representatives of seven ministries and national authorities. It was presided by the secretary of state of the Prime Minister's Office in charge of minority affairs. The Council operated until the Spring of 1998. It's activity remained formal throughout the time of its operation.
- Government Resolution 1121/1995 (XII. 7.) on the foundation of the Public Foundation for Hungarian Roma – This is a public foundation the annual budget of which is about 500 million HUF. Funding the foundation provides for legal personalities (minority self-governments, societies) are usually spent on employment and social projects and programmes furthering the launching of enterprises.

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- Government Resolution 1093/1997 (VII. 29.) on the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority (which contains measures concerning education, employment, social and health care, housing Programmes, regional Programmes and an anti-discrimination Programme) – This was the most important Roma-related measure of the previous government (1994-1998). One of its strong points is that it defines deadlines for the different tasks and it names those who are responsible for their execution. However, several of its provisions concerned researches and the consideration of possibilities (so no pragmatic tasks), and on the other hand no separate sources were appropriated by the government for some of the tasks. What is more, only few of the aims were accomplished on time – owing to their alleged workload and other factors, most of the ministries failed to prepare their reports. The new government declared this resolution void on 4 May 1999 without evaluating its execution.
- Government Resolution 1107/1997 (X. 11.) on Measures Intended to Improve the Situation of the Roma Minority.
- Decree 32/1997 (XI. 5.) of the Ministry of Education on the Directives of the Kindergarten and School Education of National and Ethnic Minorities – this is the most important government measure dealing with the education of minorities. The state guarantees an additional support to those educational institutions maintained by self-governments, denominations or foundations, which provide education in minority languages or teach these languages. A special support is provided for the developmental education of Roma children.
- Government Resolution 1047/1999 (V. 5.) on the Medium-term Action Plan for the Improvement of the Living Conditions and Social Status of the Roma Minority – It replaced Government Resolution 1093/1997 (VII. 29.) on the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority. It more or less follows the track of the previous one but it is even less tangible. It does not determine strict deadlines as the previous one – although most of those deadlines were not kept – instead it uses expressions as ‘execution in progress’. A positive feature of the resolution that it deals separately with health conditions of the Roma minority, which is important because the expected life span at birth is 10–15 years shorter for Roma than for members of other minorities or the majority population.
- Government Resolution 1048/1999. (V. 5.) on the Interministerial Committee on Roma Affairs – This body replaced the Coordination Council for Gypsy Affairs and the Roma Programme Committee, this never actually operating body, which was in theory led by the Prime Minister. The Minister of Justice leads the Interministerial Committee. Its task is to coordinate the actions imposed on the different Ministries by the Medium-term Action Plan but so far it has not seemed to be more active and efficient as its predecessors

The government takes into account the aim of improving the social, educational, housing situation of the Roma minority in other statutes as well, such as Government Decree 49/1999 (III. 26.) on the Support of Public Labour Programmes or Government Decree 1074/1996. (VII. 10.) on Measures Made Necessary by the Developmental Concept of the Financing of the Construction of Apartments.

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Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Several legal instruments guarantee the right set forth in this paragraph. One of the most important such instruments is the Minorities Act (Act LXXVII of 1993), which contains several provisions regarding this field, such as Article 18).

Chapter 6 of the Minorities Act is entitled "*The Cultural and Educational Autonomy of Minorities*". It includes very important provisions providing minorities with the means to preserve their culture, among others Article 49.

Other Acts containing relevant provisions are Act I of 1996 on Radio and Television Broadcasting (henceforth: Media Act), the most important minority-related provisions of which are contained in Articles 23, 25 and 26. For details on the amount of time guaranteed for minority radio and TV Programmes – national and regional – see the Government Report. With regard to this question we have to mention that minority self-governments often complain about transmission times and the conditions of Programme preparation.

The public media in Hungary are managed by share holding companies controlled by three public foundations (one for the radio and two for two different television channels). An important provision in the Media Act is that the national self-governments of the national and ethnic minorities living in Hungary are entitled to delegate one member to the board of trustees of the Hungarian Radio Public Foundation, to the board of trustees of the Hungarian Television Public Foundation and to the board of trustees of Hungarian Television Public Foundation.

It is also worth mentioning that television broadcasters with a national or regional reception area and radio broadcasters with a national reception area may operate as companies limited by shares, or in the form of not-for-profit companies owned solely by local and regional governments, or *the self-governments of national and ethnic minorities*.

The Hungarian Radio and the Hungarian Television provides the larger minorities – including the Roma minority – with a regular weekly broadcasting time. The regional studios broadcast 30-minute long minority Programmes every day. Those competitors who undertake to broadcast minority Programmes are favoured at competitions aiming at the distribution of local radio and television frequencies. However, most of the local radio stations and television channels failed to fulfil the obligations they assumed with respect to minority Programmes in their offers. The Ombudsman requested the National Radio and Television Body to examine the matter. The National Radio and Television Body has not conducted such an investigation, so several local radio stations and television studios which undertook to broadcast minority Programmes are still able to evade this obligation.

The Act CXL of 1997 on the Protection of Cultural Goods, Museum Institutions and the Supply of Public Libraries and Public Education (henceforth: the Act on Culture) should also be mentioned. Article 60 of the Act on Culture enumerates the central services

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furthering the maintenance and the development of the system of library supply. The support of the library supply of national and ethnic minorities is listed here. Article 66 declares that the county libraries (the maintenance of which is one of the compulsory tasks of the local governments of the counties) are obliged to help organize and help the library supply of those residents of the county who belong to national and ethnic minorities.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

The Minorities Act ensures the above (see Article 4 paragraphs 1 and 2 of the Minorities Act).

Article 6

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Act IV of 1978 on the Criminal Code contains provisions aiming at providing such protection. The most important is Article 269 on incitement to hatred.⁶ If such an act is not committed before the general public, Article 180 on defamation may be applied.⁷

Due to the lack of appropriate legal instruments the judiciary was for a long time unable to deal with violence against ethnic, racial and national groups. The offences motivated by racist sentiments could only be categorized as causing damage to property, disorderly conduct or (aggravated) assault. This is why on the motion of the President of the Republic the Parliament adopted an amendment of the Criminal Code (Article 174/B on Violence Against a Member of a National, Ethnic, Racial or Religious Group⁸).

The Criminal Code also punished the crime of apartheid.⁹ However, this provision has basically never been applied.

⁶ Article 269 of the Criminal Code :“Any person who incites hatred or commits another act suitable for the incitement of hatred before the general public against the Hungarian nation or any national, ethnic, racial, religious group or certain groups of the population, shall be punishable for a felony with imprisonment up to three years.”

⁷ Article 180 of the Criminal Code: „Any person who in connection with another person's occupation, public task or activity of public interest, or before great publicity uses an expression or performs an act capable of infringing another person's dignity shall be punishable for a petty crime with imprisonment up to one year, public labour or a fine.”

⁸⁸ Article 174/B of the Criminal Code: „The person who assaults somebody else because he belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him with violence or menace into doing or not doing or into enduring something, commits a felony and shall be punishable with imprisonment up to five years. The punishment shall be imprisonment from two years to eight years, if the act of crime is committed *a*) by force of arms, *b*) in an armed manner, *c*) causing a considerable injury of interest, *d*) with the torment of the injured party, *e*) in groups, *f*) in criminal conspiracy.”

⁹ Article 157 of the Criminal Code: “(1) The person who - with the aim to acquire and maintain of domination by one racial group of people over another racial group of people and/or with the aim of the regular oppression of the other racial group - *a*) kills the members of a racial group or groups, *b*)



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The table below shows the number of criminal offences that became known to the police in three categories: apartheid (Article 157 of the Criminal Code), violence against a member of a national, ethnic, racial or religious group (Article 174/B), and incitement to hatred (Article 269)

Year	Art. 157.	Art. 174/B	Art. 269.
1996	—	—	13
1997	—	13	8
1998	—	5	14
1999. 1 st half	—	1	5

Source: the Chief Public Prosecutor's Office

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

These are rights that are regarded as fundamental human rights by the Hungarian legal system. The Hungarian Constitution contains provisions with regard to these freedoms.¹⁰

These rights are regulated in more detail by fundamental laws, such as Act IV of 1990 on the Freedom of Religion and Conscience and the Status of Churches (henceforth: Church Act), Act III of 1989 on the Right of Assembly and Act II on the Right of Association. All three acts declare among the basic principles that the rights the detailed regulation of which they contain are universal and shall be accessible to everyone without any form of discrimination.

constrains a racial group or groups to such conditions of life by which it strives for the total or partial physical annihilation of the groups commits a felony and shall be punishable with imprisonment from ten to fifteen years or life imprisonment. (2) The person who commits another crime of apartheid, shall be punishable for a felony from five to ten years. (3) The punishment shall be imprisonment from ten to fifteen years or life imprisonment, if the criminal act of apartheid described in subsection (2) has given rise to serious consequences. (4) For the purposes of subsections (2) and (3), the crime of apartheid shall mean the crime of apartheid defined in paragraphs a)/(ii), a)/(iii), c), d), e), and f) of Article II of the International Treaty on the Combat and Punishment of Crimes of Apartheid, adopted on 30 November 1973 by the General Assembly of the United Nations Organisation in New York promulgated by Law-Decree No. 27 of 1976;”

¹⁰ Article 60 of the Constitution: „(1) In the Republic of Hungary everyone shall have the right to *the freedom of thought, conscience and religion*.

(2) This right shall include the freedom to choose or adopt a religion or belief and the freedom, either individually or in community with others, in public or private and through religious acts and rites or in any other way, to manifest or not to manifest, to practice and to teach one's religion or belief.

(3) In the Republic of Hungary the church shall be separated from the state.”

Article 62 para (1) of the Constitution: “The Republic of Hungary shall recognize the right of peaceful assembly and shall guarantee its free exercise.”

Article 63 para. (1) of the Constitution: “In the Republic of Hungary, under the right of association, everyone shall have the right to establish organizations for any purpose not prohibited by law, and to join such organizations.”

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With regard to these freedoms we can say that the theory – i.e. the legal regulation – does not differ from the practice, i.e. national and ethnic minorities are able to exercise them without discriminatory restrictions.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Domestic law in this respect is generally known to be liberal. According to the Church Act a church has to be founded

- by at least 100 natural persons who
- accept the bylaws of the church,
- elect the representative and executive organs of the church and
- declare that the organization they have founded meets the requirements set forth in Article 8 of the Church Act¹¹.

Some further criteria are set forth by paragraphs (2) and (3) of Article 9 of the Church Act, namely

- the minimally required contents of the church's statutes (the name, the seat and the institutional structure of the church) and
- the requirement that the church's name shall not be similar to or identical with that of a church incorporated earlier.

If a given organization meets the above criteria it is incorporated by the competent county court – the legal person status is obtained on the day of registration. The liberality of the regulation is shown by the fact that at present there are 85 registered denominations in Hungary. Members of national and ethnic minorities are not prevented from exercising their rights set forth in Article 8 of the Framework Convention.

Article 9

1. The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

Here reference is made to what has been said about the different minorities' access to radio and TV transmissions under Article 5. With respect to the support of the press, it can be stated that the Hungarian state fulfils its obligations through the Public Foundation for Minorities (a public foundation that was established by force of the Minorities Act in 1993. For financial details and the list of minority press products see the Government report.

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¹¹ Article 8 of the Church Act: "A church may be founded by the followers of the same beliefs with the purpose of practicing their religion. A church may be founded for the purpose of performing all activities that do not contradict the Constitution and the laws of the country"



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Article 10

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

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According to Chapter 7 of the Minorities Act on the use of language by the minorities, in the Republic of Hungary everybody may freely use his/her mother tongue wherever and whenever s/he wishes to do so. The conditions of the language use of minorities – in cases provided for by a separate law – must be guaranteed by the state. In the course of the *civil, criminal and administrative procedure* the use of the mother tongue is ensured by the respective procedural acts.¹² In the National Assembly, MPs belonging to minorities may also use their mother tongue. On the board of representatives of the municipal government, a minority representative may also use his/her mother tongue. If the speech is made in the minority language, the Hungarian translation of the speech or its summary will be attached to the minutes of the meeting. The minutes and resolutions of the board of representatives may also be recorded or worded in the mother tongue of the given minority if there is a minority in the community – as well as appearing in Hungarian. In the event of disputes over the interpretation, the Hungarian version is deemed to be authentic. At the request of the minority self-government operating on the territory under its authority, the local government must ensure that the announcement of its regulations and the publication of its announcements are made in the language of the minority – in addition to the Hungarian language; the forms used in the course of administrative procedures are also available in the language of the minority; signs bearing the names of towns and streets, public offices, and companies undertaking public services, or announcements relating to their operations – in addition to the Hungarian wording and lettering, with the same content and form – may also be read in the mother tongue of the minority. In communities where there are minorities, the local authorities will ensure that in the course of filling vacancies in local public services, candidates with knowledge of the mother tongue of the given minority will be employed, provided that these people meet the general professional requirements.

At the same time the number of officials speaking minority languages at different state authorities is very limited. This may lead to severe problems in cases when, for instance the members of the schooling committee do not speak the Romani language. According to the estimations, almost 70 percent of Roma in Hungary speak Hungarian, however, 20 percent of the Roma minority speaks the Romani languages and 10 percent speaks Beash (which is an archaic version of Romanian). Sometimes schooling committees send Roma children into special (corrective) schools or classes (see under Article 12) because they misjudge their mental abilities owing to their poor command of Hungarian. There are counties in Hungary (e.g. Borsod-Abaúj-Zemplén), where 90 percent of the pupils in special classes are of Roma origin.

3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

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¹² Act IV of 1957 on the Administrative Procedure /Article 2/, Act III of 1952 on Civil Procedure /Article 8/, Act I of 1973 on Criminal Procedure /Article 8/



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As mentioned above, Article 8 of the Criminal Procedure Act guarantees the right to use one's mother tongue. The language of the criminal procedure is Hungarian, however, no one shall suffer disadvantages due to the lack of its command. Therefore, everyone is entitled to use his or her mother tongue during the procedure either orally or in writing. Act XIX of 1998 on Criminal Procedure (the new criminal procedure act which will come into force on January 1, 2000) further enhances the rights of non-Hungarian speakers, since it declares that their representation by defence counsel is *compulsory*. Thus ex officio counsels shall be provided by the state in all cases if the non-Hungarian speaking defendant does not have one (i.e. regardless of the severity of the case and the prospective severity of the punishment).

Article 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

Article 12 of the Minorities Act declares that a person belonging to a minority has the right to choose his/her own first name and the first name of his/her child freely, to have the first and last name of his/her child registered under the conventions governing the writing of the mother tongue, and to indicate the names in official documents as long as this complies with applicable provisions. If the names are not registered using Latin characters, it is compulsory to give the phonetic representation of the names with Latin letters. If requested, the registration of births and the compilation of other personal documents – as listed above – may also be bilingual. According to the Government Report, however, few people have taken advantage of this opportunity.

2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

Already in the early 80's, names of towns were indicated on dual-language signs if a minority group lived in the given village or town. After 1993 (the coming into force of the Minorities Act) dual-language inscriptions were placed in public institutions.

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According to Decree 71/1989 of the Council of Ministers on official geographical names, historical traditions and the actual name used by the population of a given settlement has to be taken into consideration when determining a geographical name. This entails that the establishment of geographical names on the minority language is also possible (exclusively or parallel with the Hungarian name).



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The Minorities Act provides minority self-governments with the right to initiate that the different notices (such as street signs) and forms used by the authorities be translated into the minority language. The authorities are obliged to fulfil this request. There have been some cases recently where the minority self-governments misused this power to blackmail the local governments. The translation of the notices and forms would be costly for local governments. On some occasions (in Szolnok and the 15th district of Budapest) in exchange for the increase of their financial support the minority self-governments agreed to withdraw their motion aimed at the translation of notices and forms.

Article 12

- 1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.**
- 2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.**
- 3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.**

The detailed description of the system exceeds the frameworks of this report. Reference is made to what has been said under Article 5 on the state's obligations concerning minority education. The system realizing minorities' right to use their native languages in education and foster the knowledge of their culture, history and religion is rather complicated. There are different types of educational institutions: (i) in native language educational institutions, Hungarian is obligatory but all the subjects are taught in the minority language (ii) Hungarian, where students are provided with the possibility to learn the minority language or (iii) bilingual institutions. Furthermore, there are also special education programmes for the academic improvement of the Roma. The Government Report gives a thorough picture on the legal background (which meet international requirements) and the different educational institutions providing special minority education. Hence, we would focus on the most problematic issue – the segregation of Roma pupils in elementary schools.

In 1997 the Ombudsman carried out a thorough investigation into the situation of minority education in Hungary. The investigation revealed some problematic areas (for instance, there was a serious delay in the development of the definitive principles of minority education – these documents had been prepared by the date of the publication of the 1998 Report). However, the report concludes that most of the problems originate from the lack of effectiveness and an appropriate level of knowledge on the part of the public administrative system in charge of educational matters and not from discriminatory presentiments of the administrative staff.

There is an area however, where urgent measures have to be taken: this is the *segregation of Roma students* in educational institutions (especially elementary schools). The comprehensive report reveals that Roma students are strongly discriminated against in the Hungarian education system. This discrimination has two basic forms: segregation and the insufficiency of pedagogical methods used in the education of Roma. The most wide spread method of segregation is that Roma students are placed in special schools or classes established for children with slight mental disorders. While their average proportion in the educational system is between 7 and 10 percent, more than 50 percent of pupils in the

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"special" units are Romani, which in most cases does not result from the lack of their mental capacity – rather from discriminatory traditions and pedagogical failures.

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According to a background research conducted last year in order to prepare the Ombudsman's report published this September, in Borsod-Abaúj-Zemplén County, 90 percent of pupils in special schools and classes were Roma. The Minister of Education accepted the Commissioner's recommendation with regard to this question. A professional conference will be held in October 1999, and two important provisions are likely to be accepted. Upon parental and expert request, children will be allowed to remain in kindergarten even though they reach school age and it will be possible for those attending elementary school beyond school age to engage in parallel professional education.

Another – more straightforward – form of segregation is the establishment of purely Roma classes. In 1995 in 132 schools out of the 840 elementary schools providing data for the research had such classes. According to the estimation of the Ombudsman, this number must be over 150 by now. The Ombudsman's report concludes that after one or two years spent in such segregated classes, Roma pupils become unable to integrate into ordinary classes and that this practice widens the gap between the majority and minority children to a tragic extent.

According to the 1992-1993 school statistics of the Ministry of Education (1993 was the last year when such a statistics could be made), 74,241 elementary school pupils were of Roma origin. Four out of ten Roma pupils went to schools where the proportion of Roma children was over 22 percent, while in schools where most of the pupils are non-Roma the average proportion of Roma and non-Roma children is 5 to 305.

Nonetheless, there are some positive signs. On December 2, 1998 the local government of Tiszavasvári was ordered by the court of first instance to pay compensation in the sum of 100,000 HUF per capita to Roma students who brought a civil lawsuit against the elementary school because it had organized a separate graduation ceremony for Roma students and forbid them to use the gymnasium. The court of second instance has upheld the decision, which is thus final and enforceable. This lawsuit set a precedent for similar cases. However, based on the information of human rights organizations, educational discrimination still has not been put to an end in the Tiszavasvári school.

According to experts, a reasons for the poor educational performance of Roma pupils and students is that the teachers are not prepared to perform special educational tasks in connection with the Roma. Hungarian teacher training curriculum does not include courses on Roma folklore nor special methods to be used in the education of Roma children. High quality professional materials are not available to help the work of teachers who deal with large numbers of Roma pupils.

According to data provided by a research conducted by the Hungarian Scientific Academy's Institute of Sociology, the proportion of Roma students attending high schools, colleges and universities was less than 1 percent in 1993-1994.

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Article 13

- 1. Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.**
- 2. The exercise of this right shall not entail any financial obligation for the Parties.**

The Minorities Act provides minority communities with the right to establish and maintain their own schools and other educational, cultural institutions. The Roma minority has a number of such schools maintained by charities (e.g. the *Kalyi Jag Romani Minority School of Budapest* for Roma students who have accomplished their primary school studies, the Józsefváros School in Budapest – maintained by the *Józsefváros School Foundation* – and the *Gandhi High School* in Pécs). Those minority groups (the Polish, the Greek and the Armenian minority) which have not established schools integrated into the public educational system maintain so-called „*Sunday schools*”, which receive financial support from the Ministry of Education.

Article 14

- 1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.**
- 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.**
- 3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.**

See under Article 5 and Article 12.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Local and national minority self-governments are probably the most important institutions guaranteeing that collective minority rights – especially those related to preserving the cultural traditions and achievements of minorities – be implemented properly. The Government report contains a detailed description of the election and structure of these bodies.¹³

Act LXXVII of 1993 on the Rights of National and Ethnic Minorities describes the rights and obligations of local and national minority self-governments. The most important rights of local minority self-governments are the following:

They are entitled to

- request information from
- submit suggestions and initiatives to any public administrative authority in connection with any question having some relevance with respect to national minorities. In such cases

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¹³ See Government Report under Article 15



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the addressed authority is required to react to the request, suggestion or initiative within 30 days.

- They are entitled to establish and maintain institutions with special respect to institutions in connection with
- local education
- local printed and electronic media
- the preserving of traditions

Without the consent of the minority government, local governments cannot adopt decrees concerning the minority population in the following areas:

- local education
- local media
- preserving culture and traditions
- collective use of language
- Without their consent, local governments cannot make decisions concerning the appointment of the leaders of minority institutions.

The sphere of authority of the National Minority Self-governments is however similar on a national level. Their most significant rights are the following:

They are entitled to establish and maintain

- theaters
- minority libraries
- museums
- publishing companies
- institutions of high-school and university education
- scientific institutes

They are entitled to express their opinion in connection with acts, statutes and decrees concerning the minority group they represent.

They are also entitled to

- request information from
- submit suggestions and initiatives to any public administrative authority in connection with any question having some relevance with respect to national minorities. In such cases the addressed authority is required to react to the request, suggestion or initiative within 30 days.
- They participate in the professional supervision of all levels of minority education.

These rights make minority self-governments the most important factors in preserving the cultural traditions and values of the national and ethnic minorities living in Hungary. However, the system by which the members of these self-governments are elected does not always function efficiently thus threatening the appropriate representation of minority groups. Solutions to several problems would require the modification of the regulation presently in force. The most conspicuous inadequacies of the system are summed up below.

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The report of the Council for Cultural Co-operation prepared within the framework of the Council of Europe's Programme for Case Studies Concerning the Inclusion of Minorities as Factors of Cultural Policy and Action deals with the situation of Roma local and



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national minority-self governments in Hungary. Although the report reflects the 1996 situation, most of its findings are still valid.¹⁴

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The first five years of the operation of minority self-governments prove that in those settlements where no locally initiated minority societies existed earlier, the elected self-governments are not capable of efficiently representing the local minority communities and articulating their interests. These self-governments are caught between the minority community and the Local Government and spend most of the time defending themselves and evading attacks. It is especially true for the Roma self-governments, in connection with which the expectations of most Roma communities are exaggerated.

Sometimes the self-governments are not provided with the minimal means (office space, telephone line) necessary for their operation, although under the Minorities Act local governments shall be obliged to guarantee these conditions.

The 'cuckoo' phenomenon and the generality of the elections: The electoral system (regulated by Act LXIV of 1990 on the Election of Mayors and Local Government Representatives) is rather complex. (with different rules concerning settlements with a population of less than 10,000, settlements with a population of 10,000 or more and the capital.) The above-mentioned act sets forth the rules for the election of both local governments and local minority self-governments. The elections are held at the same time

¹⁴ "There are serious gaps in the knowledge of those in charge of applying the Minorities Act, consequently, training must be developed for them. Along the same lines, those operating at ground level – officials, police officers, elected representatives in whatever capacity – need to be better informed in order to make better use of their rights and powers; for example a study of 100 appointments of school principals revealed that in 70 of these instances, the minority self-government did not exercise its right of selection or veto; training courses for the members of local governments have been organized once or twice a year, but this remains far short of what is needed. [...] Power demarcation between the various authorities is unclear, giving rise to misunderstandings and sometimes conflict; generally speaking, minority local self-governments' sphere of competence should be both clarified and strengthened; this would also avoid situations wherein the law is applied differently in different localities. [...] Certain rights have no practical application, and it will take time for them to be exercised: for example, while [minority] self-governments have the right of choice when directors of cultural centres for minorities are being appointed, there are as yet no such cultural centres, because there are no resources with which to create them. [...] It is also important to define [the self-governments'] financial sources more precisely, by introducing a regulation indicating annual allocations for minority self-governments' activities; at present each minority self-government receives a fixed annual sum [...] from the Ministry of Interior [...] but this must be supplemented at the discretion of the local authorities. This situation is being exacerbated by the fact that the local authorities too often tend transfer to the Gypsy self-governments those problems for which they were previously responsible, including the field of allocating social welfare, yet without these self-governments being given the means to address them; there is a real risk that the Gypsy population will turn against its own self-governments; moreover, given the subsistence level at which many Gypsy families live, this approach distorts the role of the Gypsy self-governments, casting them more as providers of social services than as political decision-making bodies. In the prevailing situation of scarcity, antagonism may arise out of inter-minority competition for venues and funding; there is no regulation earmarking resources on a pro rate basis in accordance with the numbers a represented minority comprises." (excerpt from Roma Policy: Gypsy National Self-government and Local Self-Governments, Report within the Framework of the Council of Europe's Programme of Case Studies Concerning the Inclusion of Minorities as Factors of Cultural Policy and Action, Published by the Council for Cultural Cooperation, Strasbourg, 1996)

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and most of the rules governing their arrangement are identical. However, in some significant aspects minority nominees are in a more favourable position: fewer citizens need to support for their nomination and less votes are required for their election. This is the basis of the so-called "minority business", i.e. when people misuse their – sometimes only alleged – minority identity for the sake of political or economic ambitions. Exploiting the advantages provided by the law for the representatives of the local minority self-governments, they run in the election without actually being interested in the preservation of the achievements of minority culture.

This is accompanied by the so called 'cuckoo' phenomenon, i.e. when a person not belonging to a given minority runs for membership in the local minority self-government. Act LXXVII of 1993 declares that the right of choosing one's identity is one of the fundamental and inalienable human rights, and thus everyone is entitled to regard him or herself as belonging to one or more ethnic minorities (and consequently to become a representative of the given local minority self-government). This is accompanied by another debatable solution of the electoral system, namely that the majority population is also entitled to vote on the minority self-government representatives. No sufficient amount of information available for the members of the majority population, so their votes are cast on a rather "haphazard" basis. The names of the minority candidates (grouped on the basis of the minority they belong to) are listed in an alphabetical order on the voting sheet. The tendency is that those members of the majority population who at all cast a vote on minority self-government representatives tick the first three or five names without knowing anything about the candidates or the given minority. Therefore, often persons who become minority self-government representatives *are not actually members of the given minority* .

The Ombudsman has formulated several suggestions, which could at least partially solve this problem:

- Acknowledging that such a procedure would to some extent restrict the right of choosing one's identity, the Ombudsman raises the possibility of setting up special groups of experts (consisting of well-known representatives of the given minority) authorized to decide whether a candidate is entitled to run for membership in the local minority self-government).
- Not wishing to restrict the generality of suffrage, the Ombudsman did not propose that the members of the majority population be excluded from the election of the local minority self-governments. (Such a solution would also be unacceptable because it would require some sort of registration on the basis of ethnic identity, which would infringe several fundamental human rights such as the right to the protection of personal data, the right to choose, declare or not to declare one's ethnic identity, etc.). However, he stated that the "cuckoo" effect could be restricted by using certain legal techniques:
 - not holding the Local Government and the local minority self-government elections on the same day
 - providing only those citizens with local minority self-government voting sheets who actually request it, etc.

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The electoral system for the national minority self-governments: The members of the national minority self-governments (and the minority self-governments for Budapest) are elected by electors. The electoral body consists of members of local minority self-governments and electors elected in special procedures (in those settlements where no



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local minority self-government was elected). The main problem with the electoral system is that the quorum for the elections is extremely high. 75 percent of the electors have to be present to enable the electoral body to decide on the members of the given national minority self-government. In such cases a second meeting can be held. However, the same quorum is valid for the repeated voting as well, so the difficulty remains the same. This may be very problematic for minority groups that are spread out in distant parts of the country.

The regulation under which the national minority self-government ceases to exist if the electoral body fails to choose the new members has worsened the situation (i.e. it is not allowed to function with the participation of the same members). Thus, if due to the lack of quorum, both meetings of the electoral body are unsuccessful no national minority self-government will function for the given minority during the next four years. This was the case with the Romanian National Minority Self-government, the Romanian Minority Self-government for Budapest and the Roma Minority Self-government for Budapest in 1998. This led to a severe infringement of the minority groups' right to self-government and participation in public life. The problem was solved by the June 1999 amendment of the relevant regulations –the quorum was decreased from 75 percent to 50 percent + 1 person. The situation in which some self-declared Romanians prevented the establishment of the Romanian National Minority Self-government and the Romanian Minority Self-government for Budapest by not attending the electoral meeting resulted in political difficulties. Although the original regulation did not provide for such a possibility, in order to avoid political complications the government gave the Romanian electors a third chance to establish the national self-government. The quorum was lowered for the third attempt in September 1999 which proved to be successful. No third chance, however, was given to the Roma minority for the election of their Self-government for Budapest.

Parliamentary representation of minorities: Although Article 20 of the Minorities Act declares that recognized ethnic and national minorities are entitled to send representatives into the Hungarian Parliament, the statute does not provide for the procedure through which this provision shall be implemented. It only stipulates that a separate act regulating the parliamentary representation of minorities shall be adopted. However, no such law has been passed despite of the Constitutional Court's call on the legislature to put an end to the unconstitutional situation as early as 1995.

Even the most progressive Hungarian political forces are divided along this issue. Since the Hungarian parliamentary system is based on parties, the election of representatives based on minority affiliation would be an odd and unfitting element in the electoral system, the unity of which would be disrupted by such an institution. In fact, reasons leading to the adoption of the legal provision prescribing the parliamentary representation of minorities are much more related to politics (and the ethnic tensions of the region) than to the logics of the Hungarian constitutional system.

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The government wishes to allow the representatives of the minorities to participate in the sessions of the Parliament without the right to vote. The parliamentary opposition objects to this solution stating that this somewhat hypocritical solution would not solve the problem. Their behaviour may be labelled as also hypocritical because during the current opposition's four-year government term in 1994-1998, they did not – and were not too eager to – find a solution either.



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Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

See Paragraph 1 of Article 5.

Article 17

- 1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.**
- 2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.**

According to Article 17 of the Minorities Act, the minorities and their organizations have the right to establish and maintain international relationships. For detailed data on the international connections of minorities see the Government Report.

Article 18

- 1. The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.**
- 2. Where relevant, the Parties shall take measures to encourage transfrontier co-operation.**

The following are the most important bilateral international documents concerning the rights of minorities:

Treaty between the Republic of Hungary and the Republic of Croatia on amicable relations and cooperation (1992).

- Protocol between the Republic of Hungary and the Republic of Croatia on the principles of the cooperation for the assurance of rights of national minorities (1991).
- Correspondence regarding the ratification by the Republic of Croatia of the Declaration signed on 31 May 1991 by the Republic of Hungary and by the Ukrainian Soviet Socialist Republic on the principles of cooperation for the assurance of rights of national minorities (1991).
- Agreement between the Republic of Hungary and the Republic of Croatia on the protection of the rights of the Croatian minority in the Republic of Hungary and Hungarian minority in the Republic of Croatia (1995).
- Treaty between the Republic of Hungary and Federal Republic of Germany on amicable cooperation and partnership in Europe (1992).
- Joint declaration by the Government of the Republic of Hungary and the Government of the Federal Republic of Germany on assistance for the German minority in Hungary and to the teaching of German as a foreign language (1992).

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- Treaty between the Republic of Hungary and Romania on understanding, cooperation and good neighbourly relations (1996).
- Treaty between the Republic of Hungary and the Republic of Slovakia on good neighbourly relations and amicable cooperation (1995).
- Friendship and cooperation treaty between the Republic of Hungary and the Republic of Slovenia (1992).
- Convention on the assurance of special rights of Slovenian national minorities living in Hungary and of Hungarian national communities living in the Republic of Slovenia (1992).
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