



**International Convention
on the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Thirteenth periodic reports of States parties due in 1994

Addendum

HUNGARY*

[17 March 1995]

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* The present document contains the eleventh, twelfth and thirteenth periodic reports which were due on 5 January 1990, 1992 and 1994, respectively. For the ninth and tenth periodic reports of Hungary, and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/149/Add.9 (ninth periodic report), CERD/C/172/Add.7 (tenth periodic report) and CERD/C/SR.795 and SR.876.

The information submitted by Hungary in accordance with consolidated guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.11).

I. GENERAL REMARKS

1. Since the consideration of the tenth report submitted by the Government of Hungary as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Hungarian society has undergone a major and fundamental change. The communist one-party regime has been replaced by a pluralist society, functioning democracy and the rule of law.

2. One of the main driving forces of the democratic transformation having taken place - all along within the framework of the law - in Hungary was the quest for the prevalence of human rights and fundamental freedoms. The legislative process, still under way on the basis of political and social changes, results in the fundamental transformation of the legal system. This re-regulation concerning all spheres of life has exerted considerable influence on the enjoyment of the rights enshrined in the International Covenants and other human rights conventions and, from the point of view of the State, on duties, too. In this respect, it is recalled that the third periodic report by the Government of the Republic of Hungary on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/64/Add.7) and the reports summarizing the consideration of the report by the Human Rights Committee as background documents, beyond the scope of this report, provide detailed information about the human rights aspects of the change of system in Hungary.

3. As a result of the change of system, the Hungarian legal system has been brought into harmony with the two Covenants and the other international human rights conventions adopted within the framework of the United Nations to which Hungary is a party. Act XXXI of 1989 amending the Constitution has embodied a new chapter into the Hungarian Constitution under the title "Fundamental rights and duties". Chapter XIII, taking into consideration our international obligations and in the spirit of these, has re-regulated the fundamental rights and duties in a manner and wording similar to that of the International Covenant on Civil and Political Rights. The table below contains the formulation of rights in the light of a comparison between the Constitution and the Covenant.

| <u>Right</u> | <u>Covenant</u> | <u>Hungarian Constitution</u> |
|--|-----------------|-------------------------------|
| Prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation | Article 2 | Article 70/A |
| Equal rights of men and women | Article 3 | Article 66, paragraph (1) |
| Right to life | Article 6 | Article 54, paragraph (1) |
| Prohibition of torture and inhuman treatment | Article 7 | Article 54, paragraph (2) |

| <u>Right</u> | <u>Covenant</u> | <u>Hungarian Constitution</u> |
|--|-----------------|---|
| Prohibition of servitude, slavery and forced labour | Article 8 | (Although no constitutional provision exists in this respect, the prohibition of slavery is guaranteed by international agreements ratified by Hungary and embodied into the laws of the country) |
| Right to liberty and security of person | Article 9 | Article 55 |
| Right to liberty of movement and freedom to choose one's residence | Article 12 | Article 58, paragraph (1) |
| Prohibition of unlawful expulsion of foreign citizens | Article 13 | Article 57, paragraph (2) |
| Right to a fair trial | Article 14 | Article 57, paragraph (1) |
| Prohibition of retroactive force of penal act | Article 15 | Article 57, paragraph (4) |
| Right to legal capacity | Article 16 | Article 56 |
| Protection of privacy (private life, family life, home correspondence) | Article 17 | Article 59 |
| Freedom of thought, conscience and religion | Article 18 | Article 60 |
| Right to freedom of expression | Article 19 | Article 61 |
| Right of peaceful assembly | Article 21 | Article 62 |
| Right to freedom of association | Article 22 | Article 63 |
| Protection of family, right to found a family | Article 23 | Article 67, paragraph (3) |
| Protection of children | Article 24 | Article 67, paragraph (1) |
| Right to take part in the conduct of public affairs | Article 25 | Article 70 |
| Right to equality before the law | Article 26 | Article 57, paragraph (1) |
| Minority rights | Article 27 | Article 68 |

4. The Constitution guarantees human and civil rights for everyone within the territory of the Republic of Hungary without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (70/A section). The Constitution guarantees the prohibition of unlawful expulsion of foreign citizens, stating as follows:

Article 58, paragraph (2) "An alien lawfully residing in the territory of Hungary may be expelled therefrom only in pursuance of a decision taken in accordance with the law."

5. It protects equality before the law:

Article 57, paragraph (1) "In the Republic of Hungary, everyone shall be equal before the courts and everyone shall be entitled to a fair and public trial by an independent and impartial tribunal, established by law in the determination of any criminal charge against him or of his rights and obligations in any lawsuit."

6. In protecting minority rights the Constitution states:

Article 68, paragraph (1) "National and ethnic minorities living in the Republic of Hungary shall share in the power of the people: they shall be constituent factors of the State."

Paragraph (2) "The Republic of Hungary shall protect national and ethnic minorities. It shall ensure their collective participation in public life, foster their culture, the use of their mother tongue, school instruction conducted in their language, and the right to use their names in their own language."

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

Paragraph (4) "The national and ethnic minorities shall have the right to establish local and national self-governments."

7. Furthermore, article 65 of the Constitution grants, in accordance with conditions determined by law, the right to asylum to foreign nationals and stateless persons persecuted for racial, religious, national, linguistic or political reasons in their country and place of residence, respectively. No one who has been granted asylum shall be extradited to another State.

8. In order to implement in practice the rights provided for by the Constitution, several Acts contain provisions regulating the detailed safeguarding of these rights. The report gave detailed information on amendments thereto, and other adopted pieces of legislation such as the Act on the rights of minorities.

9. In the course of the legislative and amending process the Penal Code, the Civil Code, the Code on Criminal Procedure, the Code on Civil Procedure, the Rules on the Enforcement of Punishments and the Family Law, among others, have

been amended during the reporting period. New Acts have been adopted on the Labour Code; on the Legal Status of Civil Servants and Public Officials respectively; on the Freedom of Conscience and Religion; on Plebiscite and Popular Initiative; on the Election of Members of Parliament; on the Election of Representatives of Local Self-Governments and Mayors; on Local Self-Governments; on Travel Abroad and Passports; on Emigration and Immigration, on the Entry and Staying in Hungary as well as on Immigration of Foreigners. In addition, the adoption of a new, comprehensive Act on the Rights of National and Ethnic Minorities is considered to be a progressive development.

10. The Hungarian Government considers the promotion of the national and international protection of human rights as a matter of high priority. The condemnation of racism, racial discrimination anti-Semitism and xenophobia, and national and international action against them, forms an integral part of these efforts.

11. It was after the submission of the previous report that Hungary made a declaration on 13 September 1989 concerning article 14 of the Convention, thus indicating its full commitment to observe and guarantee the provisions of the Convention, also by accepting all other forms of international legal remedy on human rights. In this statement, it recognized the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention in the Republic of Hungary.

12. Another significant development of the reporting period is that the Republic of Hungary with its Act LXXX of 1991 passed by the National Assembly at its session of 12 December 1991 and promulgated on 24 December 1991 has withdrawn its previous reservation made in the instrument of ratification of the Convention with respect to article 22.

II. IMPLEMENTATION OF THE PROVISIONS OF THE CONVENTION

Article 2

13. The Hungarian Government has abandoned the homogenizing minority policy of the past decades having resulted in the large-scale loss of the self-identities of minority communities. The basic principles of the new Hungarian minority policy are as follows:

- (a) The active and preventive protection of minorities, the preservation of their self-identity as well as the cultural and linguistic identity of the minorities;
- (b) Special preferential treatment;
- (c) Cultural autonomy in the form of self-governments.

In order to realize in practice these political principles, the Government with its Decree No. 34/1990 (VIII.30) set up the Office for National and Ethnic Minorities as an independent administrative body.

14. During the reporting period the process of organization of the national and ethnic minorities in Hungary started. Within the framework of the democratic institutions in the country, the former monolithic federations of ethnic minorities have been replaced by organizations and associations that genuinely reflect the various political and cultural interests of the relevant ethnic groups. As a result of these changes some hundred gypsy organizations have been formed; the former Southern Slav Union has been replaced by independent Serb, Slovene and Croatian organizations (the latter two have established regional organizations as well). The Slovakian minority in Hungary established its own alternative organizations. The activity of the organizations protecting the interest of numerically smaller ethnic groups (Bulgarians, Armenians, Greeks, Ruthenians, Poles) has also been strengthened.

15. The most important fields of governmental initiatives and actions were as follows:

(a) Elaboration of a bill on the rights of national and ethnic minorities;

(b) The Government in its Decision No. 1012/1992 (III.11) laid down the guidelines on minority education and culture and identified the tasks of development;

(c) Despite the deteriorating economic conditions, an increased financial arrangement has been realized in enhancing the conditions for:

- (i) The special support for those participating in minority education;
- (ii) The financing for the activity of minority organizations from the budget;
- (iii) The support for cultural and religious initiatives and those promoting civil society of the ethnic groups in Hungary;
- (iv) Maintaining the continuous functioning of national and ethnic minority media.

16. A significant event of the reporting period with respect to this article is that the National Assembly passed an Act on the Rights of National and Ethnic Minorities on 7 July 1993. The adoption of this Act is of paramount importance: the Hungarian legislation - taking the particular Hungarian circumstances into due consideration - undertook and carried through the legal regulation of one of the crucial problems having a serious effect on this region of Europe.

The preparatory process

17. The Hungarian Government submitted the bill to the Parliament in early June 1992. Prior to that, several other drafts had been prepared. Deserving special mention among these drafts are those worked out by the Secretariat for National and Ethnic Minorities, the Ministry of Justice, the Round Table of

National and Ethnic Minorities in Hungary, which acts as a consultative forum of the minority organizations of the country, and also by the Office for National and Ethnic Minorities.

18. From July 1991 on, the Round Table and the Office had made efforts to harmonize their respective drafts which resulted in a joint draft in September 1991. Subsequently, in compliance with the provisions of the Law on the Process of Legislation, the draft bill was submitted to the competent administrative bodies to be examined and harmonized as well as to the Government Codification Committee to be revised from constitutional and other legal aspects.

19. In parallel with all these, political negotiations and discussions of experts were held with the minority organizations and the Round Table. It was with the intention of seeking an agreement with the minority organizations that the Government discussed readings of the drafts prepared with the assistance of the competent ministries and then to submit it as a bill to the National Assembly.

With a view to political consensus

20. The National Assembly started its general debate on the bill in September 1992. Simultaneously, the National Assembly's Committee on Human Rights, Minorities and Religious Affairs organized working groups of experts - composed of representatives of the six parliamentary parties and involving the experts of the Office for National and Ethnic Minorities and also of the Minority Round Table - to carry out preparatory work. The six-party negotiations lasted until December 1992. Following this, representatives of the six parliamentary parties, having received expert opinions and reports totalling some 1,500 pages, held a series of political debates. As a result, they arrived at a political agreement on the disputed provisions of the bill. The six-party agreement thus removed the obstacles in the way of the bill's presentation for adoption.

21. In the meantime, the Council of Europe - which had received the bill in advance for comments in the autumn of 1992 - gave a favourable opinion, remarking that the specific form of self-government as outlined by the law was a rare occurrence, even in Europe. The Council found the following to be highly progressive:

The normative definition of a national or ethnic minority;

The principle of the free choice of a national identity;

The regulation of collective rights of minorities;

Cultural autonomy based on personal principle.

Standard setting

22. Relying on the relevant international experience as well as on historical traditions, the present Act starts from the following premise: "Minorities living in the Republic of Hungary share alike in the power of the people, that

is, they are constituent factors of the State". Considering its significance, this approach forms one of the fundamental principles underlying the present law. It also stipulates that the equality of rights of national and ethnic minorities is in the interest of the whole society.

23. Act LXXVII of 1993 consists of nine chapters; a separate chapter is devoted to the following items: preamble and basic issues, individual minority rights, collective rights of minorities, self-governments of minorities, ombudsman of minorities, cultural and educational autonomy of minorities, use of minority languages, financial support of minorities; economic management and assets of minority self-governments and final provisions.

24. The objective of the Act on minorities is to identify and create conditions under which the assimilation process of national and ethnic minorities can be halted and made reversible. A special common trait of national and ethnic minorities in Hungary is that in most cases they were ethnic groups which immigrated to Hungary centuries ago and have coexisted with Hungarians ever since. In view of such adverse developments as the often forced assimilation which took place at the turn of the century and in the period between the wars, the deprivation of civil rights and the unlawful expulsion and exchange of populations, and the negative effects of the ill-conceived urbanization and educational policies carried out over the past decades, the Government was determined to take appropriate action to reverse the process of assimilation of the minorities. In addition minorities in Hungary live in a scattered settlement pattern, in practically almost every region of the country and, in most cases, mixed with the majority population.

25. Under these circumstances, the minorities' own strong intellectual strata could not take shape or develop. Therefore, one of the fundamental principles of the present law is related to the active protection of minorities, that is to help national and ethnic minorities to preserve their identity and to guarantee the free choice of their national identity.

26. The Act contains a solution elaborated jointly with the Minority Round Table: it gives a definition of the national and ethnic minority by using criteria widely known from international law. Thus, according to the legislation, all ethnic groups having been living on the territory of Hungary for at least one century are to be regarded as national and ethnic minorities who constitute a numerical minority within the population of the country, whose members hold Hungarian citizenship and who differ from the rest of the population in terms of their mother tongue, culture and traditions.

27. The Act also includes a list of national and ethnic groups living in Hungary and describes the procedure by which further ethnic groups, not included in the list, may apply to be regarded as minorities coming under the effect of the Act. In terms of the present Act, qualifying as national or ethnic groups living in Hungary are: Armenians, Bulgarians, Croats, Germans, Greeks, Gypsies, Poles, Romanians, Ruthenians, Serbs, Slovaks, Slovenes and Ukrainians.

28. The Act covers only minority individuals with Hungarian citizenship, excluding "new" minorities such as refugees, immigrants, permanent foreign

residents and stateless persons. No differentiation is made by the Act between national and ethnic minorities; they are entitled to exercise the same rights.

29. Under the law, the Gypsies are considered an ethnic minority in Hungary. This is the largest and, at the same time, socially the most disadvantaged minority group.

Minority rights

30. There is a special emphasis in the Act on the right to national or ethnic identity, on the right to preserve and maintain ties and relations with the mother countries or nations, on the right to protection against assimilation as well as on the right to establish local and national self-governments.

31. Of the minority rights, particularly important are those connected with the use of first and family names according to the grammatical rules of the mother country, learning, cultivating, enriching the language, history, culture and traditions of the given minority, participation in education and cultural activities in their mother tongue. To articulate their particular interests, minorities may also organize or establish parties, associations or other organizations in accordance with the provisions of the Constitution.

32. Belonging to minority rights are also those which are connected with creating proper conditions for full or partial instruction in their mother tongue, or with the organization of a minority's own nationwide network of educational, cultural and scientific institutions. The Act also provides for minority rights to establish and maintain wide-ranging and direct international relations.

33. The number of members of Parliament belonging to minorities is more than 20, representing different political parties. One of the most important demands of minority organizations was in the Act: namely, that national and ethnic minorities have the right to be represented in the National Assembly in a manner defined by a separate Act to be submitted to the Parliament in the near future.

Self-government, autonomy

34. In the course of preparatory works for the Act, a variety of possible forms of minority self-organization were proposed, since this is the field which serves to achieve one of the law's most important objectives: safeguarding and ensuring the interests of minorities. The question was whether these forms were to be realized on the basis of the freedom of association or be realized within self-governments. The Act takes a stand for the self-government version.

35. The Constitution refers to the local and national self-governments of minorities. Minority organizations also took a strong stand for the self-government forms. However, the powerful legal functions as demanded by them and as ensured by the Act can only be assigned to self-governments which have been adequately legitimized by elections. This can be achieved only if self-government elections are held at a fixed place and date and under

effective legal control with the participation of all the minorities having the right to vote. This does not exclude the possibility of establishing minority organizations on the basis of the freedom of association.

36. The first election where representatives of minorities were elected took place in the local (self-governments) elections in December 1994.

37. The right of minorities to participate effectively in decisions concerning their own affairs or the region in which they live is fully recognized by the law. The legal institution of minority self-governments created by direct and indirect methods, i.e. direct or indirect elections, is a new element in the Act. The Act makes it possible for every minority to organize its own national self-government by way of electors. These minority self-governments of countrywide competence are to represent and safeguard the interests of the given national or ethnic minority at the national or regional level. It is these self-governments which the Act authorizes to establish various institutions in order to help in establishing cultural autonomy of the given minority.

Rights and guarantees

38. The Act also ensures various other rights such as the right to be consulted on the affairs affecting minorities, freedom of opinion, right to take initiatives and to make proposals, right to request information, right to send delegates, right to represent interests, right to establish and maintain educational institutions (kindergartens, schools) and right to establish public cultural institutions.

39. The Act lists the languages currently used by minorities in Hungary as follows: Armenian, Bulgarian, Croatian, German, Gypsy, Greek, Polish, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian.

40. Deserving special mention among the detailed provisions of the Act is that children belonging to a minority may be fully or partly instructed in their mother tongue through various forms of school education. Minority education may take place in minority kindergartens, schools, classes or study groups, exceptionally in additional courses. The Act pays special attention to the necessity of minimizing the educational disadvantages of the Gypsy population and therefore stipulates obligations to create special educational conditions for upgrading the education of Gypsy children. It is also guaranteed by the Act that the teaching of the history and cultural traditions of the given minority is ensured within the existing educational institutions. To guarantee all these, concrete State responsibilities are identified: training of teachers, employment of visiting instructors, providing for the education and training of persons belonging to minorities in educational institutions abroad where the language of instruction is their mother tongue. Following the principle of cultural autonomy, the law also manifests a commitment and responsibility for the State to provide financial support to preserving and fostering the culture of minorities. The Act also provides for proper financial means to the extent of the related provisions of the current Act on Finances.

41. In the public educational field, the law empowers the national minority self-governments to encourage and conduct public educational activities especially by establishing minority libraries, publishing house, exhibition facilities, museums, cultural, art and scientific institutes. For such purposes, budgetary support may also be requested.

42. The Act declares that anyone, anywhere and at any time may freely use one's mother tongue. The law stipulates that in compliance with the requests of the minority local government working within its jurisdiction, the given settlement's local government is obliged to ensure that local regulations, announcements and other actions are made public and that plates indicating place and street names and sign-boards of public offices or bodies are used in the minority language as well.

43. Special emphasis is laid by the Act on the financial means necessary to realize its provisions. Financial resources necessary to implement the cultural autonomy of minorities and to maintain the functioning of minority local and other self-governments are defined in terms of a multi-channel funding system. This means that the necessary funding comes partly as budgetary appropriations defined by the current Act on Finances, and partly from the National and Ethnic Minority Fund proposed to be authorized by the National Assembly to support the minorities and their activities. In addition, it is also proposed that other foundations be also established for this purpose. Thus, the necessary funding of proper management of the minority self-governments is ensured by the Act through the current State budget to give normative complementary support to the full or partial education of minorities in their mother tongue and also to the minority self-governments themselves.

44. Finally, as an amendment to the Act on the Election of Representatives of Local Governments and Mayors, the law formulates special electoral rules for minorities in order to promote their representation.

45. The Government of the Republic of Hungary, on the occasion of the parliamentary adoption of the Act on the rights of national and ethnic minorities, released the following statement:

"The Government of the Republic of Hungary welcomes and considers an outstanding event the fact that the Parliament adopted with 96 per cent of the votes in favour, the law on the rights of national and ethnic minorities on 7 July 1993.

"The Government of the Republic of Hungary in its previous statement released during the preparatory process supported the codification of the rights of national and ethnic minorities, based on European norms and standards, and enumerated those comprehensive principles which can ensure the free development of the national and ethnic minorities to the greatest possible extent.

"The Government believes that it has significantly contributed to the success of the legislation that the minorities, as constituent factors of the State, took part through their representatives as equal partners in the preparatory process of the legislation. The agreement of

the political forces led to the adoption of a comprehensive piece of legislation, based on broad consent, which provides new opportunities, legal frameworks and rights to citizens and their communities belonging to the national minorities in this country.

"The self-government, the cultural autonomy, the recognition of the minority rights as group rights, and the provision of free choice of identity are pivotal elements of the law, which are unprecedented and forward-looking in international practice as well.

"The Government of the Republic of Hungary supports the improvement of the status of national and ethnic minorities by further measures. It intends to make early steps to ensure their own representation in Parliament, to establish the institution of ombudsman of national and ethnic minority rights and further develop the conditions of minority education and culture. The minority self-government structure to be introduced will contribute to an increased support and a more effective representation of particular interests both at local and national level. The cultural and educational self-government creates conditions for minorities to establish their own institutions.

"The law cannot substitute the activity of minorities though it is suitable for compensating the disadvantages stemming from being in minority, it assists the minorities to preserve their language, to develop their culture, and to strengthen their self-identity. In perspective, the law will be an appropriate instrument in securing the survival of the minorities as communities. The law guaranteeing a more comprehensive implementation of national and ethnic minority rights intends to serve first of all the interests of the citizens and the communities of minority origin of the Republic of Hungary, and consequently it also contributes to the unfolding of the Hungarian democracy, as well. The minority policy of Hungary is not subordinated in any way to the minority policies of other countries with respect to the Hungarian minorities. Nevertheless, the Republic of Hungary is aware of the fact that the question of realization of minority rights affects both foreign and security policy. Therefore it remains convinced that the law will have great significance and effect as the legal establishment of the noble, most precious guarantees, based on European values, going beyond the borders of Hungary as well."

46. It was on 18 December 1992, during the reporting period, that the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities was adopted. The Hungarian Government welcomed this important event in an official statement. This statement, along with the statement outlined above, contains both the national and international minority policy of the Republic of Hungary; the text of the latter therefore is quoted verbatim:

"Statement of the Government of the Republic of Hungary on the adoption of the United Nations Declaration on minority rights:

"The Government of the Republic of Hungary attaches great importance - in terms of international protection of human rights,

promotion of regional and international peace, security and stability, advancement of civilized norms of behaviour among States, and respect for individual freedoms alike - to the Declaration adopted by the United Nations General Assembly on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. By the adoption of the Declaration it has become universally recognized that comprehensive standard-setting on minority rights within an international document is a timely and necessary step, since protection and promotion of the identity of minorities and guarantees for their institutional participation in public affairs constitute a prerequisite for the democratic functioning of the State and the elimination of discriminatory political practice, thereby strengthening internal peace, stability and confidence in the democratic institutions.

"It is an historical paradox that the elaboration of the Declaration has been initiated almost a decade and a half ago by the former Yugoslavia, several regions of which now offer a series of tragic examples of how the pursuit of a policy of assimilation against minorities and violation of their rights can lead, in the absence of appropriate political culture and decisive action by the international community, to crimes against humanity and to ethnic cleansing.

"The Republic of Hungary, along with several other European States, advocated an instrument having high standards of the protection on the rights of minorities, on the grounds that a better framework should be provided for the protecting of the identity of the minorities and the democratic realization of their specific interests. Hungary, for its part, has been consistently striving for establishing a dialogue based on respect for international norms which would replace incitement to hatred, assimilation, a policy of discrimination, exclusive, anti-democratic practices, and deliberate raising of international tension. A decisive role in accelerating the process of the elaboration of the Declaration and arriving at a consensus was due to the fact that the international community perceives the unresolved ethnic conflicts accompanied by grave violations of human and minority rights as a source of danger that may not merely undermine the stability of certain areas or even whole regions, but ultimately pose a serious threat to international peace and security.

"The Declaration is the first comprehensive international document which stipulates the obligation of States to protect the existence and identity of minorities and promote their identity as well as the right of minorities to enjoy their own culture, to profess and practice their own religion, to use their own language, to participate effectively in decisions concerning them and to maintain contacts across frontiers. An essential element of the document is that it applies the exercise of these rights not only to individuals but also to their communities. The Declaration assigns as the task of the State, e.g. the creation of favourable conditions indispensable for the promotion of the minority language and culture, the creation of conditions for education in the mother tongue, as well as the learning of the minority language, and promotion of the dissemination of the history, traditions and culture of the minorities.

"States must respect and take into consideration the legitimate interests of minorities in applying their policy and practical programmes, as well as in their international cooperation, and take measures to assure them the possibility to participate fully in the economy. An important feature of the Declaration is that it makes the task of States to cooperate regarding minority issues, inter alia, in promoting the observance of the rights laid down in the document, thereby excluding the possibility of certain States rejecting, as interference into their internal affairs, any discussion of minority issues or debate on the problems either in a bilateral framework or at multilateral fora. It is the view of the Hungarian Government, that international cooperation on minority issues thereby becomes a legitimate and natural process, which has to be backed up, apart from the traditional ways and means of diplomacy, by the possibilities and system of measures provided by the United Nations mechanisms for monitoring human rights.

"The Government of the Republic of Hungary is firmly convinced that the elaboration and implementation of a document binding on States in terms of international law is indispensable to a genuinely effective international protection of minorities. The Declaration adopted by the United Nations can serve as a starting point for a process of codification that effectively protects the rights of minorities. The Hungarian Government will continue, by the diplomatic means at its disposal, to call for the earliest possible elaboration and adoption of a legally binding instrument that also contains international guarantees of universal protection for minorities."

Article 3

47. The Republic of Hungary condemns racial segregation and apartheid. The Republic of Hungary has fulfilled its obligations undertaken in this article also in terms of its consistent and firm condemnation of the policy of apartheid practised in the Republic of South Africa. Conversely, it fully supported the process of reforms started in South Africa, as a result of which the complete elimination of the apartheid regime can take place at last.

48. Regarding this article, it is worth noting that the previous National Assembly passed resolution No. 14/1994 (III.18) on 8 March 1994 on the fiftieth anniversary of the tragic events that followed the Nazi occupation of Hungary. In that resolution, the National Assembly paid tribute to all those who had lost their lives as a result of mass murders committed in concentration camps or elsewhere after 19 March 1944. Their tragic fate remains an eternal memento. The National Assembly in its resolution further invited the organizations and citizens of the country to commemorate the victims of this tragedy on 19 March or another convenient date. Numerous State and non-governmental commemorations, memorial meetings, arrangement of exhibitions and other programmes in memoriam of the holocaust victims took place in the country.

Article 4

49. The Republic of Hungary fulfils its obligation under article 4, paragraph (a), according to which States parties shall "declare an offence

punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof."

50. The Penal Code contains provision for "Criminal offence against a national ethnic, racial or religious group" (art. 156) among the crimes against humanity. According to this law "a person who causes a grave bodily or physical injury to a member of a national, ethnic, racial or religious group because of his/her being a member of the group, commits an offence and shall be punished with deprivation of liberty from two to eight years". The Penal Code also regulates the criminal offence of "Racial discrimination" (art. 157): "A person who commits an act prohibited by international law in order to assist a racial group in bringing another racial group under its rule, or to maintain such rule, or systematically oppresses the other racial group, unless the act constitutes a graver offence, shall be punished for a crime with deprivation of liberty from one to five years".

51. It was after the preparation of the previous report of the Government that Act XXV of 1989 introduced a new relevant criminal offence into the Penal Code regarding the Convention. A person who, in the presence of others, incites to hatred against the Hungarian nation or a national minority, or a people, religion or race, or particular groups of the population, commits the criminal offence of "affront to community" (art. 269) and shall be punished with deprivation of liberty up to three years.

52. The second part of the newly introduced offence was also to punish the crime manifesting itself in using insulting or derogatory expressions with respect to the Hungarian nation, a particular nationality, people, religion or race, or in committing another similar act. However, the Constitutional Court in its resolution No. 30/1992 (V.26) of May 1992 established the unconstitutionality of this part and annulled it. In judging the constitutionality of article 269 of the Penal Code the Constitutional Court examined the following questions:

(a) Is it unavoidable to restrict the freedom of expression and the freedom of the press at the occurrence of crimes outlined in the facts of cases?

(b) Does the restriction meet the proportionality requirements, i.e. are the system of means of the penal law in general, and the given penal facts of case within it, necessary and appropriate to reach the desired goal?

53. According to the opinion of the Constitutional Court the crime prohibited by article 269, paragraph (1), of the Penal Code affects society so gravely and has such serious consequences that the civil law and petty criminal law are insufficient against those committing such crimes. The firm expression of disapproval and condemnation of such crimes would constitute reinforcement of the democratic ideas and values offended by those committing such acts and therefore the restoration of violated legal and moral order requires the means of enhanced penal law.

54. A more serious form of "affront to community", that of "incitement to hatred" meet the requirement of proportionality and only the most dangerous crimes are within its scope, and the elements of facts can unambiguously be interpreted by those applying the law. In the case of "abuse", however, the fact that the insulting expression or an act of the same value is disturbing of public order is not an element of the facts of the case. Unlike "incitement to hatred", it is not inferable from the exhibited behaviour. The Penal Code takes as its point of departure that the use of an expression which insults a national or religious community in general violates the desirable public order. So the non-material facts of criminal case protect the public order, the public and social peace in itself, in an abstract way. The criminal offence is considered as committed even in the case where the insulting expression, owing to the circumstances, does not endanger individual rights. Such an abstract endangerment of the public order is an insufficient reason to restrict constitutionally the freedom of expression by penal law punishment.

55. The Constitution ensures that free communication - individual behaviour and the social process - and the basic right to freedom of expression are separate from the content of such expression. In this process, there is room for every opinion, whether it is good or harmful, pleasant or insulting, especially because the qualification of the opinion itself is also a product of this process. In order to maintain public order it is not inevitable that the law should sanction the use of insulting or derogatory expressions in the presence of others with respect to the Hungarian nation or to particular national, religious or racial groups (or the commission of other similar acts) with penal law punishment. In the case of "abuse", the offence unnecessarily and, compared to the desired goal, disproportionately restrict the right to freedom of expression. The abstract, possible threat to public order is an insufficient reason to restrict, according to article 269, paragraph (2), of the Penal Code, the basic right to freedom of expression that is indispensable for the functioning of a democratic State based on the rule of law.

56. According to the resolution of the Constitutional Court, the dignity of community may be a constitutional limit to the freedom of expression. Thus, the resolution does not exclude the possibility that the legislator should provide for this point even with penal law protection beyond the case of incitement to hatred. However, other legal means are also appropriate for the efficient protection of the dignity of community, e.g. the expansion of the possibility to impose compensation for non-material injuries.

57. The crime of "use of totalitarian symbols" (art. 269/B) as a further new relevant criminal offence was introduced into the Penal Code by Act XLV of 1993 on 21 May 1993. A person who spreads, displays before a large number of people or exhibits in public the swastika, SS badge, arrow-cross, hammer and sickle, five-pointed red star or symbols of these commits a felony and shall be punished with a fine, unless a graver offence has been committed. A person who commits such acts for informational, educational, scientific and artistic reasons or to give information about the present time shall not be punished. The rules above do not apply to the official symbols of other States.

58. An important event of the reporting period in terms of penal law is that in addition to the new Act on Data Protection (Act LXIII of 1992) the personal data files qualified as special are given increased protection by the fact that the legislator has determined the abuse of such data as a criminal offence. The crimes and minor offence of "abuse of special personal data" are graver cases of the minor offence of "unauthorized data use" (art. 177/A) which was introduced by Act XVII of 1993 into the Penal Code on 15 May 1993.

59. Personal data concerning racial origin, belonging to a nation or nationality, ethnic affiliation, political opinion or party affiliation, religious or other belief are qualified as special data. A person who unlawfully makes public or without authorization uses or makes available for non-authorized persons special data obtained while dealing with data defined in the law on the protection of personal data commits the crime of "abuse of special personal data" and shall be punished with deprivation of liberty of up to three years. Furthermore, a person who illegally obtains special data for him/herself or someone else commits a felony and shall be punished with deprivation of liberty of up to two years or with a fine.

60. Árpád Göncz, President of the Republic of Hungary, announced at the plenary session of the National Assembly on 7 April 1994 that for a better and full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination he considers an amendment to the Penal Code to be urgently necessary. The President has prepared his proposed amendment in addition to article 156 of the Penal Code, which he submitted to the Government. According to this bill, to be submitted to the National Assembly by the Government, the persecution of national, ethnic, racial or religious groups, humiliation and injury of persons belonging to such groups and causing of fear against them would be punishable. The explanatory memorandum to the proposal states: "it is widely known that recently incidents in the form of attacks glaringly against communities but first of all against certain national, ethnic, racial or religious groups of citizens have proliferated on the part of particular extremist political groupings. The Hungarian law fails to handle these incidents adequately." The Government concurs with the President on the issue and the relevant Act will be submitted to the National Assembly.

Statistical data

61. Statistical data regarding the above criminal offences are given below.

62. On acute suspicion of the crime of "racial discrimination" as defined by article 157 of the Penal Code, an investigation was ordered in nine cases and charges were brought in seven cases in 1993. (The investigation had to be given up before formal charges were made in two cases because in one of them commission of the act was impossible to prove and in the other one the offender could not be identified.) Seven of the eight proven criminal offences were committed in Budapest and one in the city of Pécs; 20 of the 24 offenders were juveniles.

63. Concerning commission of the offence of "affront to community" as defined in article 269 of the Penal Code: in 1990 the investigation was completed in 39 cases and charges were brought in 5; in 1991 the investigation was

completed in 27 cases and charges brought in 8; in 1992 the investigation was completed in 21 cases and charges brought in 2; in 1993 the investigation was completed in 33 cases and charges brought in 9. In nearly half of the cases the investigation was stopped because the offenders could not be identified in the course of the investigations, and in about one tenth of the cases it was proven that no criminal offence had been committed. Half of the cases consisted of criminal procedures undertaken on the basis of offences committed in Budapest, and the other half was evenly distributed among the individual counties. Almost every offender was a juvenile or young adult (under the age of 24). Four of the offenders were female. This explains the fact that the court placed 7 of 12 persons condemned for the offence in the listed years on probation instead of punishing them, and imposed fines on 4 persons and punished 1 person with suspended deprivation of liberty. Most of the offended parties were persons of Gypsy origin living in Hungary and some of them were coloured people from foreign countries.

64. As above, the Constitutional Court annulled paragraph (2) of "affront to community" (art. 156 of the Penal Code) by its resolution 30/1992 (V.26) AB. Since that date "a person who, in the presence of others, uses insulting or derogatory expression with respect to the Hungarian nation, a particular nationality, people, religion or race, shall not be punished". According to paragraph (1) of article 269 still in effect, only the incitement to hatred is punishable. Therefore, the number of criminal procedures initiated with regard to such crimes and finally qualified as mentioned above is very slight.

65. Among the cases that occurred the following can be considered typical. According to one of the relevant sentences by the Budapest City Court, the three defendants, members of a "skinhead" gang, were drinking in a brasserie and then they left for another bar. While going there, they met two Pakistani citizens who were students at the Technical University of Budapest. They attacked the two Pakistanis by punching, kicking and beating them with baseball bats. As a result of the act one of the offended parties suffered wounds which healed within eight days. The court found the defendants guilty of attempting to commit grievous bodily injury, instead of committing the offence defined in article 156 of the Penal Code. The Budapest City Court did not establish the commission of the criminal offence defined in article 156 of the Penal Code in its sentence No. 6.B. 311/192, although it did establish the fact that the defendants had injured parties of Gypsy origin or from foreign countries exclusively for their membership of certain national or religious groups. In its sentence No. Bf. IV. 1354/1993/13 the Supreme Court stated that the acts by the defendants, although to some extent having some organized character, had not been aimed at partial or full extermination of particular racial groups and had not been addressed against such groups themselves; therefore, they could not be classified as offences defined in article 156 of the Penal Code.

66. The statistical statement on the specified criminal offences is as follows:

Affront to community

| Year | Completed investigations in total | Investigations concluded with | | | | | | | | | | | |
|---|-----------------------------------|-------------------------------|-------------|----------|---|---|----|---|---|---|---|---|-------|
| | | Accusation | Termination | Reasons* | | | | | | | | | Other |
| | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | |
| 1990 | 39 | 5 | 33 | 4 | 4 | 2 | 15 | 1 | - | - | 6 | 1 | 1 |
| 1991 | 27 | 8 | 16 | 1 | - | 2 | 11 | 1 | - | - | - | 1 | 3 |
| 1992 | 21 | 2 | 19 | 8 | 3 | 1 | 6 | - | 1 | - | - | - | - |
| 1993 | 33 | 9 | 23 | 3 | 1 | 2 | 14 | - | - | 1 | - | 2 | 1 |
| Offence against national, ethnic, racial or religious group | | | | | | | | | | | | | |
| 1993 | 9 | 7 | 2 | 1 | - | - | 1 | - | - | - | - | - | - |

* See below for the reasons of termination.

Persons condemned for commission of affront to community

| | Validly condemned | | | | | | | | |
|--|-------------------|--------|----------|-------|--------|----------|-------|--------|----------|
| | 1990 | | | 1991 | | | 1992 | | |
| | Total | Female | Juvenile | Total | Female | Juvenile | Total | Female | Juvenile |
| Suspended deprivation of liberty | 1 | - | - | - | - | - | - | - | - |
| Enforceable fine | 1 | - | - | - | - | - | 3 | - | - |
| Independently imposed supplementary punishment | 1 | - | 1 | 4 | 1 | - | 2 | - | - |
| Punishment, put on probation | 1 | - | 1 | 4 | 1 | - | 2 | - | - |
| Total | 2 | - | 1 | 4 | 1 | - | 5 | - | - |
| Young adults among the offenders | - | - | - | 2 | - | - | 4 | - | - |

Reasons for termination of investigation

1. No criminal offence.
2. Felony instead of crime.
3. No commission of crime could be proven.
4. Offender could not be identified.
5. The commission of crime by the suspect could not be proven.
6. Juvenile.
7. Other reason, excluding punishability.
8. Pardon.
9. Reprimand.

Affront to community

| Place of commission of criminal offence | Year criminal offences became known | | | |
|---|-------------------------------------|------|------|------|
| | 1990 | 1991 | 1992 | 1993 |
| Capital City | 19 | 8 | 2 | 14 |
| Baranya | | | | |
| Bács-Kiskun | 1 | | | |
| Békés | 2 | | | |
| Borsod-A-Z | 3 | | | |
| Csongrád | | 2 | | 1 |
| Fejér | | | 1 | |
| Győr-M-S | | | 3 | |
| Hajdú-Bihar | 2 | 2 | | 4 |
| Heves | 2 | | | 3 |
| Jász-N-Sz | | 1 | | |
| Komárom-E | | | | 2 |
| Nógrád | | 2 | | |
| Pest | | 1 | | 1 |
| Somogy | 1 | | 1 | |
| Szabolcs-Sz-B | | 1 | | |
| Tolna | | 1 | | |
| Vas | | 1 | | |
| Veszprém | | 1 | 2 | |
| Zala | 1 | | | |
| Abroad | | | | 1 |
| Total | 31 | 20 | 9 | 26 |

Affront to community

| Place of residence of offender | Offenders identified | | | | | | | | | | | | | | | |
|--------------------------------|----------------------|--------|----------|-------------|----------------|--------|----------|-------------|----------------|--------|----------|-------------|----------------|--------|----------|-------------|
| | 1990 | | | | 1991 | | | | 1992 | | | | 1993 | | | |
| | Offenders were | | | | Offenders were | | | | Offenders were | | | | Offenders were | | | |
| | Total | Female | Juvenile | Young adult | Total | Female | Juvenile | Young adult | Total | Female | Juvenile | Young adult | Total | Female | Juvenile | Young adult |
| Budapest | 4 | 1 | 1 | 1 | 6 | | 3 | | | | | 1 | | | | |
| Baranya | | | | | | | | | | | | | | | | |
| Bács-Kiskun | | | | | | | | | | | | | | | | |
| Békés | 2 | | | 2 | | | | | | | | | | | | |
| Borsod-A-Z | | | | | | | | | | | | | | | | |
| Csongrád | | | | 1 | | | | | | | | | | | | |
| Fejér | 1 | | | | | | | | | | | | | | | |
| Győr-M-S | | | | | | | | | | | | | | | | |
| Hajdú-Bihar | | | | | | | | | | | | | | | | |
| Heves | | | | | | | | | | | | | | | | |
| Jász-N-Sz | | | | | | | | | | | | | | | | |
| Komárom-E | | | | | | | | | | | | | | | | |
| Nógrád | | | | | | | | | | | | | | | | |
| Pest | 2 | | 1 | 1 | 3 | | 2 | | | | | 2 | | | | 1 |
| Somogy | | | | | | | | | | | | | | | | |
| Szabolcs-Sz-B | | | | | | | | | | | | | | | | |
| Tolna | | | | | | | | | | | | | | | | |
| Vas | | | | | | | | | | | | | | | | |
| Veszprém | | | | | | | | | | | | | | | | |
| Zala | | | | | | | | | | | | | | | | |
| Külföldi | | | | | | | | | | | | | | | | |
| Total | 9 | 1 | 2 | 5 | 11 | 1 | 7 | 3 | 4 | 3 | 3 | 8 | 3 | 3 | 2 | 2 |

Offences and offenders against national, ethnic, racial
or religious groups in 1993

| Place of commission of crime Place of residence of offender | Crimes that became known | Offenders identified | | | |
|--|-----------------------------|----------------------|----------------|-----------|------------------|
| | | Total | Offenders were | | |
| | | | Female | Juvenile* | Young adult** |
| Total | 8 | 24 | 3 | 20 | 4 |
| In the capital | 7 | 19 | 3 | 17 | 2 |
| In Baranya county | 1 | 5 | - | 3 | 2 |

* Aged 14 to 17.

** Aged 18 to 24.

Article 5

67. As outlined in detail in part I of the report, one of the main driving forces of the democratic transformation in Hungary was the prevalence of human rights and fundamental freedoms. New Acts were passed on the Right to Freedom of Association (Act II of 1989), Right of Assembly (Act III of 1989), and Freedom of Conscience, Religion and the Churches (Act IV of 1990). All three Acts establish the above rights as fundamental freedoms of every individual, recognized and guaranteed by laws of the Republic of Hungary. The notable provisions of these laws with respect to the Convention are as follows.

68. The exercise of one's right to freedom of association may not violate article 2, paragraph (3), of the Constitution, i.e. "no activity of a social or State organization or no endeavour of any citizen may be aimed at acquiring or exercising power by violent means, or at acquiring exclusive power. Everyone has the right and is obliged to take action against such endeavours in any lawful manner." Exercise of rights of association may not constitute a criminal offence or attempt to commit a criminal offence, nor may it violate the rights and freedoms of others.

69. Hungarian citizens, non-Hungarian citizens settled in Hungary or in possession of a residence permit and, in the case of international social organizations, other non-Hungarian citizens are allowed to be members, administrators or representatives of social organizations, unless prohibited from taking part in public affairs. Only a Hungarian citizen is allowed to be a founder or official of a party, however, any person of any nationality may become a member. Members of a party not possessing Hungarian citizenship are not entitled to run as a candidate or to vote.

70. The exercise of the right of freedom of assembly cannot constitute a criminal offence or attempt to commit an offence, and may not violate the rights and freedoms of others.

71. A Hungarian or non-Hungarian citizen in possession of a residence or settlement permit may organize political events.

72. The Act on Freedom of Conscience, Religion and Churches declares that nobody may be disadvantaged or obtain advantage as a result of religion, beliefs, their expression or practice. No data concerning religious or other beliefs shall be recorded in official (State) registers. No one may be prevented from exercising the freedoms of religion or conscience, however, unless the law provides otherwise, exercise of such rights does not exempt one from fulfilling the civil duties. The individual and communal practice of religion should be made possible to those nursed in social and health-care institutions, child-care and youth protection institutions and also to those in custody in law enforcement institutes. Those in military service are free to practise their religion in accordance with the rule of operation of the military organization and fulfilment of military service. Any church may be founded for any type of religious activity not violating the Constitution or the law.

73. During the reporting period Hungary has become a haven for refugees. The Hungarian refugee policy is based on the principle that the question of refugees is indivisibly linked to the violation of human rights and fundamental freedoms. It is the inalienable right of every nation, community and individual to live on its native land where their human rights and fundamental freedoms should be guaranteed. It is acknowledged that an appropriate human rights policy serves as the most effective way of preventing and handling the problem of refugees. The voluntary repatriation of refugees, with proper guarantees, is an important tool that has not been adequately utilized so far. Although Hungary acceded to the Geneva Convention of 1951 relating to the Status of Refugees with the territorial reservation provided under article 1, section B, protection and shelter are given to refugees from countries outside Europe provided that they meet the criteria contained in the Geneva Convention. The revision of the aforementioned reservation is currently under consideration.

74. The refugee policy of the Government is widely supported by the society. This support was manifested in the form of direct aid to tens of thousands of refugees coming both from Romania in the late eighties and early nineties and from the former Yugoslavia in past years. The Office of United Nations High Commissioner for Refugees recommended the Hungarian refugee policy and the form of aid (directly to the self-governments and families; not necessarily and exclusively building of camps, but encouragement of willingness to give shelter to the families) as a precedent to be followed elsewhere.

75. Fact Sheet No. 1993/3 provides further information - facts and figures - on the activity by the Republic of Hungary concerning refugee affairs and migration.

76. A new Act - No. LXXXVI of 1993 - on the Entry, Residence and Immigration of Foreign Persons into Hungary has been adopted during the reporting period. The new Act has rendered the system of legal remedies wide-ranging compared to the former regulation and within this framework it has also opened the possibility of court competence. The other significant progressive change compared to the former regulation is that, with regard to decisions taken within discretionary jurisdiction, the State has created self-restriction by specifying in the law the possible and applicable causes of refusal of entry and expulsion. It is also noteworthy that from now on positive discrimination

will prevail in the case of family unifications and, furthermore, the law gives preference to those who have resided in Hungary for an extended period.

77. During the reporting period an Act on the Protection of Personal Data and the Publicity of Data of Public Interest was adopted. Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest promulgated on 17 November 1992 qualifies personal data concerning racial origin, belonging to a nation or nationality or ethnic affiliation as special data and provides increased protection to them. According to the provisions of the Act, personal data concerning political opinion or party affiliation, religious or other belief, health condition, pathological addition, sex life and criminal record are also qualified as special data. As has already been reported concerning article 4, penal sanctions for abuse of special personal data more serious than for unauthorized data use are imposed by the Penal Code amended by the Act above.

78. New Acts on election adopted after the submission of the previous report, in the course of change of the system, such as Act XXXIV of 1989 on the Election of Members of Parliament, or Act LXIV of 1990 on the Election of Representatives of Local Self-Governments and Mayors, ensure universal and equal suffrage. In terms of promoting the implementation of provisions contained in the Convention it is a remarkable development that the latter Act ensures the active suffrage - the right to vote - of non-Hungarian citizens with permanent residence in Hungary.

79. The provisions of Law Decree No. 11 of 1979 on the Rights of Condemned Persons have been re-regulated by Act XXXII of 1993. According to this law the condemned person is entitled to, inter alia, freely choose religious or conscience belief and express or practise it. In terms of the Convention a further relevant right is that a condemned person of foreign nationality has the right of access to the diplomatic or consular mission of his/her State or to contact its representative.

80. Article 5 of the Labour Code (Act XXII of 1992) declares the prohibition of negative discrimination as a basic principle. Accordingly, it is forbidden to discriminate among employees on the basis of their sex, age, nationality, race, origin, religion, political beliefs, membership in an organization representing their interests or involvement in any related activities, or any other factor unrelated to their employment. However, at the same time, discriminatory treatment arising unequivocally from the type or nature of the work shall not be considered negative discrimination. The Supreme Court's College on Labour Issues has stated in its decision No. 97 concerning this latter provision: discrimination based on the relevant and lawful conditions to be taken into consideration in the course of employment is not qualified as negative discrimination.

81. If any dispute arises with respect to the violation of the prohibition of negative discrimination, the employer must produce evidence that his/her action did not violate this prohibition. The employer must provide the opportunity to employees for promotion without discrimination, and solely on the grounds of seniority, professional skills, experience and performance. Employment rules may prescribe affirmative action in respect of a specific set of employees working under certain conditions.

82. Unlike the previous uniform regulation simultaneously with the new Labour Code a new independent Act - No. XXVIII of 1992 - taking into consideration the international obligations of the Republic of Hungary has been adopted on the Legal Status of Public Servants. The introductory part of the new Act declares that the prerequisite of a democratic public administration being generally respected is that public affairs be managed by public servants not committed to party policies, acting lawfully, having up-to-date professional skills and being impartial. It is for the sake of realization of this goal, among others, that public servants, in conformity with the new Act, have to pass a basic exam and subsequently, within a fixed period, a special exam on public administration. The domestic and international provisions prohibiting any form of racial discrimination form part of the examinations.

83. Act I of 1992 on Cooperatives promulgated on 20 January 1992 during the reporting period provides that, in pursuance of the principle of open membership, in the course of admitting members and in defining the rights and duties of members negative discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation is prohibited.

84. Act IV of 1991 with effect from 1 March 1991 on the Promotion of Employment and on the Provision for Unemployed Persons provides that foreign citizens in Hungary are allowed to work only with permission. According to the provisions of the Act no permission is required for refugees and immigrants in possession of an identity card that entitles them to permanent residence, foreign persons in possession of residence permission to settle, and for those in the process of obtaining refugee status to perform work. The law authorizes the Minister of Labour to establish further exemptions to the above-mentioned permission requirements and to lay down the detailed rules of the permission. On the basis of this authorization, in conformity with Decree No. 7/1991 (X.17) by the Minister of Labour on permission for foreign persons to perform work in Hungary, no permission is required:

(a) In case an inter-State or intergovernmental agreement and international contract (agreement) so provides;

(b) For foreign persons delegated by the parties concerned to diplomatic (consular) missions or other bodies of foreign States in Hungary, and to international organizations having headquarters or offices in Hungary or to a joint organization established by inter-State agreement;

(c) To perform a procedure of installation, guarantee, servicing or warranty activity on the basis of a contract with a foreign supplier;

(d) For a leading official of a company with foreign financial interests to perform work;

(e) For a widely known foreign person invited by higher educational, scientific research or cultural institutions to perform educational, scientific or cultural activity.

85. The labour centre issues a labour permit for a foreign person if in the country (capital) in question no Hungarian labour adequately trained for the

work to be performed is available and the employment of the foreigner is undoubtedly justified considering other aspects. The Minister of Labour, having consulted the Committee on the Labour Market, can define in a decree those spheres of activity in which foreign persons cannot be employed due to the tendency and composition of unemployment in Hungary. The labour centre issues the permission irrespective of the above-mentioned aspects.

(a) In case the inter-State or intergovernmental agreement provides an opportunity to hire foreign employees within stipulated limits, until the number of foreign persons equals the amount fixed in the agreement;

(b) To the spouse or child of a foreign person having been employed for eight years, at least, in Hungary if he/she has lived here with the foreign person for at least five years.

Article 6

86. The legal protection and the system of legal remedies are functioning efficiently in Hungary. The laws on legal procedures lay down the right to equality before the law, the freedom of use of mother tongue in spoken and written form and provide that lack of knowledge of the Hungarian language shall not be prejudicial to any person.

87. One of the basic principles of the criminal procedure is the principle of proceedings conducted ex officio. Thus, in the presence of the conditions defined in Act I of 1973 on Criminal Procedure, the authorities acting in criminal cases have a legal obligation to conduct criminal proceedings. The authorities acting in criminal cases are under the obligation to conduct proceedings if there is reasonable suspicion that criminal offences outlined in article 4 - implementation of provisions of the Convention - have been committed. A further basic principle of the criminal procedure is the right to legal remedy. Thus, legal remedy shall be allowed against the decisions and measures of the authorities or in case of their failure to take action, unless otherwise provided by the Act.

88. As for the system of legal remedies, it can be said in general that in a legal dispute within the competence of court in the first instance a single-grade legal remedy is ensured with an adequate time period to submit a case. No compulsory form is defined for the submission of a case. The final decision of the court, provided that certain conditions exist, can be contested by motion for retrial or review.

89. A remarkable event of the reporting period in this respect is the establishment by the Constitutional Court in its resolution No. 9/1992 (I.30) of the unconstitutionality of the system of judicial protest and the annulment of the legal provisions on judicial protest with effect from 31 December 1992. The President of the Supreme Court and the Supreme Prosecutor had exclusive discretionary power to raise a judicial protest and could take a decision relating to judicial protest without explanation. The Constitutional Court has established that these two legal institutions subordinated to the discretionary decision of these two authorized legal authorities were against the requirement of the principle of the rule of law, the institution of legal force and the fight of disposal of the parties in civil affairs.

90. Within the system of legal remedies of administrative procedure, the general right to appeal is complemented by the opportunity for the superior administrative body to take supervisory action, through which it can change or annul the decision by the administrative body violating the law, and then it can order the administrative body in question to conduct a new procedure. If the prosecutor finds that a law issued by an organ under his general legal supervision or any other legal means of the State administration violates the Constitution or a statute of higher level, he can lodge a protest with the organ in question for it to be annulled. To put an end to a violation of law owing to unlawful practice or negligence, the prosecutor can lodge an objection addressed to the head of the organ in question; if the danger of violation of the law exists, the prosecutor can submit a notice to prevent it.

91. In this field, the most significant legal development was the possibility to contest administrative decisions before court. Previously, positive succession prevailed and it was only possible to contest administrative decisions before court in the cases specified by the law. The present regulation has made the practice of contesting administrative decisions before court general, and this is restricted by a definitely limited negative succession. An instance within the scope of the latter is when the administrative decision is to execute the final court decision, e.g. a decision ordering a person liable to military service to report to the drafting committee and attend medical examination, decision on safeguarding the order of the frontier.

92. The National Assembly Commissioner of Civil Rights (Ombudsman) will play an important role in the full realization of the principle of appropriate legal protection. One of the primary goals of the Parliament formed as a result of the parliamentary elections in 1994 is the election of the Ombudsman.

93. A cornerstone in the creation of the rule of law was the establishment of the Constitutional Court in 1989. One of the directions of activity of the Constitutional Court was aimed at the revision of legal rules in terms of constitutionality, and at the pre-examination of certain provisions of bills with respect to their unconstitutionality, in order to prevent the Parliament from adopting laws at variance with the Constitution. If the Constitutional Court finds laws and other rules non-constitutional it will annul them, and this preliminary control can prevent unconstitutional laws and other rules from entering into force.

94. With respect to this article of the Convention, however, the activity of the Constitutional Court concerning complaints regarding the constitutionality of certain legal provisions is also considered important. Article 48, paragraph (1) of the Act on Constitutional Court declares that a person whose right has been violated due to an unconstitutional legal provision and who has exhausted available domestic remedies or if no other domestic remedies are available, can submit a complaint regarding the constitutionality of certain legal provisions to the Constitutional Court. The complaint regarding the constitutionality of certain legal provisions can be submitted within 60 days from the receipt of the final decision. In the absence of a normal legal remedy, anyone whose rights may have been

violated can apply to the Constitutional Court and, if all normal available remedies have been exhausted, a complaint regarding the constitutionality of certain legal provisions can still be submitted.

95. Beyond the available legal remedies, Hungary has taken numerous steps recently to ensure that legal remedies are available before international forums in case of individual complaint, as outlined in the section on general remarks.

Article 7

96. Act LXXIX of 1993 on Public Education adopted by the National Assembly on 12 July 1993 has stipulated the following objectives: assurance of the exercise of the right to education based on equal opportunity, a right laid down in the Constitution of the Republic of Hungary, and promotion of the freedom of conscience, freedom of religion and the nurturing of patriotism in public education, in implementation of the right of national and ethnic minorities to education in their mother tongue and the realization of the freedom of education and freedom of teaching. Article 4 of the Act provides that in the course of carrying out their tasks undertaken in the area of education and teaching the State and the local authorities are obliged to respect the rights of parents or guardians in such a way that children receive teaching and education which conform to their religious and ideological convictions. State and local authority institutions of education and teaching may not be committed to any religion or ideology. The curricula of State- and local authority-operated schools must ensure an objective and manifold projection of knowledge, including religious and ideological information. Schools have to make sure that students master the basic knowledge of moral issues. The curricula of State and local-government schools must contain the teachings of the moral and cultural-historical content of religions in an objective and unbiased way.

97. The public television and radio broadcast the programmes of minority studios regularly.

98. In the last few years, there was a wide-ranging reactivation of civil society, a phenomenon closely connected to the change of system. Numerous civil initiatives have developed in the field of education, teaching, culture and information, aiming at the preservation of the identity of various ethnic groups, promotion of understanding and tolerance between various ethnic groups, and elimination of prejudices resulting in racial discrimination. The Government welcomes every activity of this kind and considers it as an indispensable pillar, in addition to the undertaking by the State in preventing racial discrimination.

99. Merely as a case in points it is noteworthy that in 1992 with the support of the Roland S. Lauder Foundation, a new Lauder Javne Jewish Communal School has been established in Budapest with the goal of providing high-level education to Jewish children from the ages of 3 to 18.

100. The first of its type in Europe, a Gypsy grammar school has been opened in the town of Pécs. A secondary school has been established by the Ghandi Foundation. On the occasion of this event an exhibition of photographs

entitled "Photos of the history of Hungarian Gypsies in the twentieth century" was arranged at the University of Pécs. A Day of Romany Culture has been arranged twice so far with the assistance of the Hungarian Writers' Association, aiming at the creation of a tradition. A Festival of Gypsy Films took place several times in Budapest.

101. In 1992 the Hungarian Section of the International League Against Anti-Semitism and Racism was formed. Its activity is not restricted to actions against anti-Semitism only, but is aimed at the protection of all minority groups in Hungary. Numerous civil organizations function with the same goal. For instance, the widely acknowledged activity of the Christian-Jewish Association and the Martin Luther King Society is worth reporting with appreciation. The latter provides legal aid, social and other assistance to foreign students in Hungary.

List of annexes*

1. The Constitution of the Republic of Hungary.
2. The Republic of Hungary, Fact Sheets on Hungary No. 1/1990.
3. National and Ethnic minorities in Hungary, Fact Sheets on Hungary No. 9/1991.
4. Government Decree No. 34/1990. (VIII.30) Korm. on the Office for National and Ethnic Minorities.
5. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.
6. A brief summary of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.
7. A review on the Hungarian Gypsy minority.
8. Declaration on the Principles of Cooperation between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in the guaranteeing of Rights for National Minorities.
9. Protocol between the Republic of Hungary and the Republic of Croatia on the Principles of Cooperation in Guaranteeing of Rights for National Minorities.
10. Convention on providing special rights for the Slovenian minority living in the Republic of Hungary and for the Hungarian minority living in the Republic of Slovenia.
11. Activities of the Republic of Hungary regarding international refugee matters and migration, Fact Sheets on Hungary No. 3/1993.
12. Act LXXXVI of 1993 on the Entry, Stay in Hungary and Immigration of Foreigners.
13. Act XXXIV of 1989 on the Election of Members of Parliament.

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* Available for consultation in the file of the Secretariat.