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1. The national minorities in general

The Hungarian Republic is situated in a region in which the various national, ethnic and religious minorities have been mixing indefinitely throughout history. Hungary was already ethnically very distinct at the time when it first became a state, a lot of nationalities merging with the Hungarian people after the original settlement. Only settlement names indicate the former existence of these nationalities today. In following centuries the ratio of the national minorities grew because of natural migration and deliberate settlement. The settled minorities played a serious role in the development of the country's economic life and the populating of deserted areas. The situation of the nationalities was characterised by the minorities being dispersed among the multitude, the unequal cultural level and by the absence of a clear territorial definition.

The Hungarian minorities that have been present for centuries are the indigenous minorities, the Bulgarian, Gypsy, Greek, Croat, German, Polish, Armenian, Romanian, Ruthenian, Serb, Slovak, Slovenian and the Ukranian minorities. The real number of Hungarian national and ethnic minorities is hard to define lying between the value of the census return and the estimated values (appendices 1 and 2). These are informative values, accurate ones concerning the real number of minority inhabitants are not available. Everyone claimed to belong to one nationality in the 1990 census. Most of the Hungarian minorities have a double identity, therefore this census cannot give a real picture on the number and the nature of the inhabitants.

The level of identity within the minorities is sharply different, all the nationalities tend to assimilate and lose their original languages. The census results indicate, that while the number of inhabitants claiming that they are not Hungarians grew, the number of the minority native language groups continued to decrease – excluding the German and the Gypsy minorities. The main reason this is that, the passing on of the native language has come to a halt in the majority of the minority families. The 40–60 % of the adult minority inhabitants are in ethnically mixed marriages. Geographically the most important feature of the minorities is that they are widely dispersed.

The national and ethnic minorities' social and economic integration – excluding the Gypsy population – is a process that has ended. The most important indicator of all this is that the minorities have a level of education equal to the national average. The situation of all the individual minorities is absolutely different: a huge number of the German and Serb minorities have university degrees, while the Slovenians this value is only half of the national average. The indicators of the Gypsy population sharply differ from the national average and the average of the other minorities. If the current situation remains then this population will be poorly qualified, in bad health, strongly hurt by society's antipathy, and marginalised over the long term.¹

¹ The J/3670 Report on the situation of the national and ethnic minorities in the Hungarian Republic.

The Bulgarian community in Hungary

1370 persons claimed to be Bulgarian speaking at the 1990 census. The estimated population: 3500.

The Bulgarian society's cultural centers were created in Budapest, Miskolc and Pécs, their schools and churches were built here. The Hungary's reservation of the Bulgarian society. The association's bilingual social and cultural periodical is the "Haemus". The Hungarian National Television broadcasts a monthly Bulgarian minority programme. The Bulgarian society's latest institution is the Bulgaristics Institution founded by the Bulgarian National Self-government on July 4th 1996.

The Gypsy community in Hungary

The information referring to the Hungarian Gypsy population show significant differences. 142.683 inhabitants claimed to be of Gypsy nationality at the 1990 census. According to the most accepted estimates, some 450.000–500.000 Gypsies live in Hungary.

The Hungarian Gypsy population is characterised by multi-language and multi-culture at the same time. The Gypsy population is not an ethnically homogeneous society: 70 % are Hungarian speaking, 22 % Romany speaking, and 8 % are "beás" gypsies. The latter mostly live in the region south-west of the Danube, the other two linguistic types are evenly scattered around territories populated by gypsies.

A better understanding of the Gypsy culture is provided by the Gypsy documentation group in the Ethnographic Museum. The Gypsy Research Institution has operated as an institution of the National Gypsy Minority Self-government since June 1995. The most important Gypsy periodicals are the following: Amaro Drom, Lungo Drom, Cigány Hírlap (or Gypsy Daily), Kethano Drom, Rom Som, Phralipe. The Hungarian national Radio's Gypsy programme: "Cigány Félóra" (or Gypsy's 30 minutes) and the Hungarian National Television broadcasts the biweekly Gypsy minority programme: "Patrin Cigány Magazin" (or Patrin Gypsy Magazine).

The Greek community in Hungary

1640 inhabitants claimed to be Greek speaking at the 1990 census. A further 1260 inhabitants speak Greek as a second language. There has never been a registration by Greek nationality. Their estimated population is between 4.000 and 4500.

The Greek Cultural Center was opened in 1993 in the city of Kecskemét. The Greek minority's native language periodical is the "Kafeneio". The Hungarian National Television broadcasts a Greek minority programme weekly.

The Croat community in Hungary

13,570 inhabitants claimed to be of Croat nationality in Hungary in the 1990 census, and 17,577 inhabitants named Croat as their native language, more than 17

thousand persons speak Croat as their second language in addition to their native language. According to estimates, the Croat population in Hungary is between 80.000–90.000.

One of the cultural centers of the Croats in Hungary is the Croat Theatre in the city of Pécs. In the capital of Budapest, there is a Croat elementary school and high school. There are four Croat library bases in the country. The role of the ethnic museum is played by the Dorottya Museum in the city of Kanizsa.

The Polish community in Hungary

3,788 inhabitants claimed to be of Polish nationality in the 1990 census. Their estimated population is 10,000 inhabitants.

The Bem József Polish Cultural Association, which was founded decades ago, plays a very important role in the life of the community. The preservation of identity is helped by the National and the Capital's Polish Minority Self-governement's monthly, the "Magazin Polonijny". Polish minority broadcasts can be seen monthly on Hungarian National Television.

The German community in Hungary

11,310 inhabitants claimed to be of German nationality in the 1990 census, and 31,231 inhabitants named German as their native language. According to estimates the number of German nationalities is higher than these values at some 200,000–220,000 inhabitants.

The earlier national interest representation organisation, the National Association of Germans in Hungary dissolved itself after the local government elections, its role was taken over by the national self-governement. The research of the Germans in Hungary is co-ordinated by the University ELTE BTK (arts department) Germans in Hungary Research and Teacher Training Center. The Deutsche Bühne (German Theatre) in Szekszárd is an independent institution since 1989. There is a German Nationality Museum in Tata. The weekly newspaper of the German minority is the Neue Zeitung. A 90 minute regional and a 30 minute German national broadcast can be heard on Hungarian National Radio. The Hungarian Television's German nationality programme is aired twice weekly for 25 minutes each session.

The German minority's connection with German speaking countries is helped by the fact that more than 100 settlements have their partner town or partner village in Germany and Austria. The connection is especially intensive with the province of Baden–Württemberg.

The Armenian community in Hungary

37 inhabitants claimed to be Armenian speaking in the 1990 census. The Armenian National Cultural Association, founded in 1992 estimates the families of Armenian origin as between 1000–1,500, that is some 3,500 inhabitants, while the

National Armenian Self-government founded in 1995 estimates the number of Armenian inhabitants in Hungary as 10,000.

The National Armenian Self-government's bilingual periodical is the "Ararát". The Hungarian Television's Armenian minority programme called "Rondó" is broadcast monthly.

The Romanian community in Hungary

10,740 inhabitants are Romanian in Hungary according to the census of 1990. The number of Romanian speaking inhabitants is 8,730. The various estimates mention some 25,000 as the Romanian minority in Hungary.

Romanian museum foundation work is carried out in these towns. A Romanian country house was created in Kétegyha. The Romanian Research Center started its operation in 1993. A daily 30 minute national and a 90 minute regional minority programme is aired on Hungarian National Radio. Their periodical is the magazine "Noi".

The Ruthenian community in Hungary

The Ruthenian minority founded two local minority self-governments in two villages in the county of Borsod: in the villages of Mucsony and Komlóska. In Komlóska, the Miskolc based Herman Ottó Museum maintains a Ruthenian country house. The Hungarian Ruthenian Research Center commenced operation in 1996. The periodical entitled "Ruszinszkj Zsivot" is published in Ruthenian and Hungarian. A Ruthenian programme is periodically broadcast on Hungarian National Television.

The Serb community in Hungary

2,905 inhabitants claimed to be of Serb nationality in the 1990 census. Their estimated population is 5,000 inhabitants.

A significant cultural institution of the Serb minority is the Pomáz based Joakim Vujic Serb Theatre. The various art groups play a role in the preservation of national identity. Their periodical is the "Srpske narodne novine". Their national radio programme is 30 minutes long, and their regional radio programme is 70 minutes. A bi-weekly 25 minute Serb minority programme is broadcast on Hungarian National Television.

The Slovak community in Hungary

According to the 1990 census the number of Slovak speaking inhabitants is 12,745. The number of inhabitants claiming to be of Slovak nationality was 10,459. According to estimates, more than 100,000 Slovak inhabitants live in Hungary.

The national Slovak museum foundation, the Munkácsy Mihály Museum, is located in Békéscsaba. More than 20 village museums, country houses, and private collections can be found in Hungary.

The Slovak language literature can be studied in four regional base libraries. The Slovak periodicals are: the Ludove Noviny, and the Cesta Pravda a Zivot. The Hungarian National Television broadcasts 25 minutes of weekly nationality programmes. The Hungarian National Radio broadcasts 30 minutes of national and 90 minutes of regional Slovak programmes.

The Slovenian community in Hungary

2,627 inhabitants claimed to speak the Slovenian/Wend language according to the minority information of the 1990 census, 1,930 inhabitants regard themselves as citizens of Slovenian/Wend nationality. According to the Slovenian organisations in Hungary there are some 5,000 Slovenian nationality inhabitants.

The Slovenian minority's bi-weekly publication is the "Porabje". The Hungarian National Radio broadcasts a 25 minute Slovenian minority regional programme weekly. The Hungarian National Television broadcasts a 25 minute Slovenian minority regional programme bi-weekly.

The Ukrainian community in Hungary

674 inhabitants of Hungary are Ukrainian speaking according to the information of the 1990 census. The Ukrainian cultural associations estimate their number at 2,000.

The Ukrainians in Hungary do not have a national minority self-government. Their two significant social organisations are the Association of Ukrainian Intellectuals in Hungary and the Cultural Association of Ukrainians in Hungary. The periodical "Gromada" is published by this organisation.

2. The conditions for reclassification of minority groups to national minorities

The European countries have two basic ways of acknowledging minorities: through taxation and by definition. The essence of the first system is that they regard the minority groups as nationality groups when they are included in the taxation. The other legal method is, when a general definition is created and all groups fulfilling the criteria are legally treated as a national minority.

In the Hungarian legal system, the condition for the acknowledgement of a national minority is the fulfilment of the criteria described by law. The LXXVIIth nationality and ethnic minority rights law in 1993 (refer to as: Nektv.) 1§ section (2) defines the term national and ethnic in the following way:

"all such nationalities, settled at least one century ago in the territory of the Hungarian Republic, which are in a minority as regards the number of inhabitants of the state, are Hungarian citizens and are different from the rest of the population in their language, culture and traditions, and such a consciousness of banding together can be seen in them which preserves this

heritage, protects their historically created societies and represents their interests".

This definition is equally valid for national and ethnic minorities, as the Hungarian legal system does not differentiate them and their legal status is equal. The legislator sought to achieve two aims through the creation of the definition: first, that all minorities settled in Hungary are able to fulfil these criteria, and secondly that no other minorities are not acknowledged for financial preference or for any other reasons as a national minority.

The legal condition for being acknowledged as a national minority is the criteria in the definition to be cumulative or all the conditions should be fulfilled. The conditions were defined so that it is possible to legally prove them. Only Hungarian citizens can be members of a national minority. Refugees and foreign citizens settled here cannot be regarded as national minorities in the Hungarian legal system. Separate rules of law define the legal status of these persons: the LXXXVIth law in 1993 concerning the entry of foreign citizens, their residence and settlement in Hungary, and also the 19th decree of law in 1989 concerning the legal status of persons acknowledged as refugees. Proof of settlement for at least one century is possible by legal means – documents or any other papers. The "own language" term in the definition refers to all members of the nationality, independent of the fact of whether all of the community speaks the language. According to the Nektv. law 'culture' refers to the total of the material and the intellectual values, 'tradition' is the inherited habit, 'taste' the way of life, 'conception' the intellectual heritage.

According to the 61. § section (1) of the Nektv. law, the nationalities settled in Hungary are: the Bulgarians, Gypsies, Greeks, Croats, Germans, Poles, Armenians, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and the Ukrainians. The Hungarian Jewish community is not in the list by their definite wish, as this community does not want to be acknowledged as a national minority. The list has an open nature, it registers the fact that these are the minorities that fulfil the criteria at the time when the law in effect. The rules of law make it possible, that further minorities are acknowledged with the legal status of a national minority. The 61. § section (2) of the Nektv. law says:

"if more minorities than those listed in section (1) wish to prove that they are eligible to fulfil the conditions of the law, then at least a 1,000 voters who claim to belong to the minority can submit a nationality initiative in this matter to the Chairman of the Parliament. During the case, the relevant rules of law from the XVIIth census and national initiative law in 1989 should be applied".

The rules of acknowledgement of national minority are the following according to the national initiative law. All citizens (currently at least a 1,000 voters claiming to belong to the minority that they wish to have acknowledged) are allowed to collect – as well as in public places – signatures for the submitting of the national initiative, or are allowed to campaign for the collection of signatures. In the documentation of the national initiative there must be the name and address of the initiator – next to their signature, and also their personal identification data or personal identification code. All the documentation for the collection of signatures collecting has to begin with the description of the initiated matter. All signatures collected in contravention of this directive are invalid. The Chairman of the Parliament sends the submitted national initiative documentation with the collected signatures to the National Election Presidency within eight days after receipt. The National Election Presidency

authenticates – through the local election presidency – the national initiative. The authentication includes the numerical value checking described by the law, and also the identification of the citizens signing the initiative according to the record of the state population statistics, exclusive verification of the right to vote and the address. In a case, when suspicion is raised during the authentication of the authenticity of the signatures, the National Election Presidency is entitled to check the identification through random sampling. The authentication should be done within 30 days. The National Election Presidency informs the Chairman of the Parliament of the result of the authentication procedure. The Parliament decides about the consideration of the national initiative – after the hearings of the relevant committee – and defines the session's agenda. If the authentication is invalid then the Parliament rejects the national initiative and does not consider it. If the national initiative's consideration is omitted because of an invalid authentication then a constitutional complaint can be forwarded to the Constitutional Court.

3. The legal status of the national minorities

It is important to explain a great number of laws created last year and rules of law that order the implementation of all these for the examination of minority legal status. There were also minority protective instructions in the legal system earlier, but what was missing was coherent statutory regulation. Minority rights in effect are a coherent system, the basic principles of which are stated in the Constitution, the detailed instructions of which are stated in the Nektv. law. The minority protection instructions can be found in the laws describing the basic conditions of life. The most important of these are: the IVth law in 1978 concerning the Penal Code, the LXXIXth law in 1993 concerning public education and the Ist law in 1996 concerning radio and television. This legal material includes international treaties and also additional documents. But first, we should examine the international legal aspects concerning the legal status of the minorities.

3.1. The connection between the Hungarian law and the international minority protection norms

The effective international human rights protection system of organisations can be regarded as established. The creation of the protection mechanism for the international minority is still today an on-going process. It is accepted that ensuring complete and discrimination-free human rights is not a sufficient guarantee for the minorities. At the approach of the millennium the national and ethnic conflicts appear so complex that the establishment of an independent minority control mechanism which has the capacity to ensure minority rights becomes necessary.

Hungary has played an active role in international minority codification. According to the constitution the international treaties have priority and their content should be mentioned by the legal system. It is a constitutional principle that coherence between the internal law and international treaties should be created. The § 7 section (1) of the constitution states: "The legal system of the Hungarian Republic accepts the generally acknowledged rules of the international law's harmony of duties and internal

law." Despite this the harmonisation of the internal law with international norms has not yet been synchronised through the ratification of the international treaties, in most of the cases it can be realised with the shifts.

A significant international minority treaty is the European Charter for Regional or Minority Languages. This document defines the direction of development despite the fact that it deals with only one segment of minority rights, the right to use languages. Hungary was one of the 11 states signing the Charter on September 5th 1992, later in 1996 submitting the ratification document. Commitments could be fulfilled with the internal norms according to the nature of the Charter. I will now go through the rules of law prescribing the fulfilling of the commitment of the Charter.

According to the Nektv. law's § 42 the following languages are used by minorities: Bulgarian, Gypsy (Romany, and the "beás"), Greek, Croat, Polish, German, Armenian, Romanian, Ruthenian, Serb, Slovak, Slovenian and the Ukrainian languages. The Charter's third part significantly refers to the instructions that serve the use of the regional or minority languages in public life, where " language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter ". It is not possible to apply these rules of law for all the languages listed in the Nektv. law. Hungarian minorities are scattered throughout the country and it is very difficult to define their distribution within the settlements without registration. There are no territories where they are so great in number that it would give grounds for the commitment rather they are scattered geographically. Taking all this into account, and realising that a ratifying country decides freely in harmony with the document which languages the commitments cover, Hungary takes responsibility for establishing institutional types of instructions for the Croat, German, Rumanian, Serb, Slovak, and the Slovenian languages. The Charter provides the possibility that the commitments can cover a new language so this list could later be enlarged.

Each Party undertakes to apply a minimum of thirty-five paragraphs or subparagraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

Hungary has fulfilled the prescriptions in the number and nature of the commitments (3rd appendix). These commitments are in harmony with the Nektv. law, that is with the rights in the rules of law, their implementation is however – especially in the area of the education and public administration language use – not yet fully ensured.

The minority right to use their native language is an important result of last years' codification activity. Minority protection however can not be limited to the codification of certain rights, but has to move towards the creation of the most complete legal catalogue. Such an international document is the Framework Convention concerning the Protection of National Minorities accepted by the Council of Europe on November 10th 1994. Hungarian representatives took part in the CAHMIN committee of governmental consultants when working on the Framework Convention.

The significance of the Framework Convention is due to the fact that this is the first legally compulsory Council of Europe document that covers all aspects of minority protection. The following can be noticed when comparing the Hungarian minority law and the rights in the Framework Convention. The Hungarian legal system defines the term national and ethnic minority. The Framework Convention does not contain the definition of minorities. The reason for this is that it was not possible to elaborate a definition acceptable for all states during codification. The lack of definition could allow

great numbers to join the list, that being states outside the Council of Europe. The other significant difference is the nature of the rights ensured. The Hungarian law acknowledges the existence of collective minority rights. The Framework Convention is based on individual rights. The first article states: "*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 co-operation.*" This method of composition does not mean the acknowledgement of collective rights according to the interpretation attached. The commentary however records that: the protection of the national minorities can be realised by the protection of the persons belonging to it. The Framework Convention does not include the right for autonomy and positive discrimination, and also the right to take part in the cultural, economic and social life as a collective legal approach all of which is in the 1201 recommendation of the Council of Europe. With this the number of such clauses grew which could be categorised as "shy minority protection".² The control mechanism of the Framework Convention builds on the periodic obligation for making reports. The parties signing the agreement will be obliged to report the realisation of the commitments through the Ministry Committee of the Council of Europe. The control mechanism is as important in minority protection as the catalogue of rights, therefore I note that this system seems to be quite unclear in this form.

The point of view of the minority consultants is ambiguous on the question of whether it is reasonable to make a distinction between the minority problems in Western and Central-Europe. There is a firm point of view for the method of comprehensive problem handling. The final document of the European Stabilising Conference states: "our aim is to encourage those states, that have not yet signed agreements for co-operation and good neighbour policy, including agreements regarding minorities and the border questions". The European Union declared that it is ready to play the role of a mediator between the relevant parties in bilateral talks at their request.

The bilateral system of agreements in Central-Europe is the best method of implementing the aims declared in the final document. The first document of this type was the Hungarian-Ukrainian basic agreement in 1991. Serious debates broke out in

² Dr. Kovács Péter: International law and minority protection. Osiris, 1996. 114. p.

Hungary, but also in the relevant countries concerning the content of the basic agreement.³

The interpretation of the rights stated in the basic agreement especially differ in the case of the Hungarian–Slovak agreement. Hungary and Slovakia both signed the Council of Europe's Framework Convention concerning the Protection of the National Minorities. This document is referred to by the basic agreement, and similarity can be noticed in a lot of significant matters. Both documents contain the free choice of identity, the forbidding of discrimination, the protection from assimilation against the free will, the right of coalition, the right to use minority languages, the right to culture, education and media, the right to use the native language on settlement and street signs and on public notices. The basic agreement is more strict with individual rights. It states for example, that persons belonging to national minorities shall have the right to take part effectively at the national, and where appropriate, at the regional level, in decisions affecting the minorities or the regions inhabited by the minorities, in a manner which is not incompatible with domestic legislation.⁴ The Framework Convention's relevant instruction only prescribes the creation of the necessary conditions 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.⁵ So the basic agreement exceeds the repetitive declaration of rights stated in the Framework Convention. An debate concerning interpretation developed, after the signing about the analysis of the harmony between the basic agreement and Recommendation 1201. The basic agreement states, that the parties, in order to ensure minority rights, use Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, respecting individual human and civil rights, including the rights of persons belonging to national minorities.⁶ After signing Slovakia gave its separate standpoint – in an unusual way in international law – in which Slovakia stated in connection with the acceptance of Recommendation 1201:

– it does not accept such an interpretation of the recommendation which make the creation of autonomy minority self-governement boards possible,

³ After intensive talks the following minority bilateral agreements were signed:

- 1991. Declaration over the principles of co-operation between the Hungarian Republic and the Ukrainian Soviet Socialist Republic, in the area of national minority rights.
- 1991. Agreement for the good neighbour policy and the basis of co-operation between the Hungarian Republic and the Ukraine.
- 1992. Agreement for ensuring special rights for the Slovenian national minority in the territory of the Hungarian Republic and for the Hungarian national community in the Slovenian Republic.
- 1992. Treaty of friendship and co-operation between the Hungarian Republic and the Slovenian Republic.
- 1992. Treaty between the Hungarian Republic and the Croatian Republic on friendly ties and co-operation.
- 1992. Treaty between the Hungarian Republic and the German Federal Republic on friendly co-operation and the European partnership.
- 1992. A joint declaration between the government of the Hungarian Republic and the government of the German Federal Republic on the German minority in Hungary and the support of German as a taught foreign language .
- 1995. Treaty between the Hungarian Republic and the Croatian Republic on protection of the Croat minority in the Hungarian Republic and the Hungarian minority in the Croatian Republic.
- 1995. Treaty between the Hungarian Republic and the Slovak Republic on good neighbour policy and friendly co-operation.
- 1996. Treaty between the Hungarian Republic and Romania on understanding, co-operation, and good neighbour policy.

⁴ Basic agreement article 15 section 1.§ f).

⁵ Framework Convention article 15.

⁶ Basic agreement article 15. section 4) par. b).

- it does not accept such a wording, which would serve the acknowledgement of collective minority rights,
- it only approved the insertion of the recommendation with a restricting clause.

In our point of view, this reserving standpoint has no legal consequence. A reservation can only be made with a multilateral international treaty. The basic agreement is a bilateral agreement, so it is not the subsequent standpoint, but, according to the international norms, the will of the parties at the time of signing which is the deciding factor.

3.2. The internal legal norms defining the situation of minorities

The Hungarian legal system both acknowledges the rights of persons belonging to a minority and the rights of the minority community, and it ensures their enforcement through both general law institutions, and through law institutions specially established for this purpose.

The Constitution's minority prescriptions can be categorised into two groups. On one hand they define the constitutional rights of minorities, on the other hand the ban of prejudicial discrimination is made a principle. The following are the basic Constitutional rights of minorities:

"68. § (1) The national and ethnic minorities living in the Hungarian Republic are part of the people's power: they are state-establishing factors.

(2) The Hungarian Republic protects the national and ethnic minorities. It ensures that they are collectively able to take part in public life, to patronise their own culture, to use their native language, to have native language education and to have native language names.

(3) The Hungarian Republic's laws ensure the representation of the national and ethnic minorities living in the area of the country.

(4) The national and ethnic minorities are allowed to create local and national self-governments".

According to the orders of the Constitution, the Hungarian minorities in their legal status are regarded as state-establishing factors. This category is generally worded due to the nature of the regulation, the Constitution does not define the content of the minorities' state-establishing factor. The Constitutional Court has stated in its 35/1992. (VI.10.) AB resolution: "The Constitution's declaration, which acknowledges the national and ethnic minorities as state-establishing factors, makes the legal regulation of minority rights remarkably important. ... The representation is a necessary condition in order that the national and ethnic minorities are able to play the role of a state-establishing factor. One of the elements of the category "state-establishing factor" is the right to representation. A more accurate definition of the term can be found in the Nektv. law. It means that the national and ethnic minorities together with the Hungarian nation take part with equal rights in solving statutory, social, and economic tasks, that they are provided with the benefits that derive from this and are responsible for the burdens that the Hungarian Republic is responsible for. The "state-establishing factor" in this interpretation can be regarded as the definition of minority equal rights. The minority consultants have different opinions in this matter. There is an opinion that this category can be interpreted as a break from the XIXth century's idea of the nation-state. According to some opinions

this regards the minorities' public law's status, but others oppose this opinion. In my view, for the Constitution's relevant rules of law to be made coherent, the state-establishing factor does not have to be defined by appearing in the normative text – with either a positive or a negative content.

The Parliament created the law concerning the rights of national and ethnic minorities, for implementing the prescriptions of the Hungarian Constitution, which on one hand states the rights of citizens belonging to national and ethnic minorities and the rights of national and ethnic minorities, on the other hand it created the system of special institutions for the protection of minority rights, the minority self-government system, and also elected the parliamentary commissioner for minority rights. The law acknowledges the free choice of identity, the right to use a native language, the right to form organisations, the right to have a connection with the mother country, and it ensures the right to have self-governments and parliamentary representation.

3.4. *About the autonomy of minorities*

The Hungarian legal system acknowledges minority autonomy implemented in public law form.

The Hungarian legal system ensures *cultural autonomy*, due to the specialities of the public law system, for national and ethnic minorities. The minorities have the possibility to form either in connection with local government elections, or independently of that, in the elections specially organised for them, *local and minority self-governments*. This double tier local government system ensures the institutional guarantee of cultural autonomy. So long as the local minority self-governments are able to practise their rights in close co-operation with the local governments, they are able to exercise jurisdiction, then the national self-governments operate as individual public law entities.

When summarising the current regulation in effect it has to be noted that the current form of regulating the minority self-governments does not make individual regulating-administrative exercise of jurisdiction possible for the minority self-governments, their jurisdiction meaning cultural autonomy (for example the establishment of an institution) in a public law nature can only be exercised in connection with another public legal entity (for example through having been allowed to decide together).

The minority law acknowledges a special form of *territorial autonomy*, when it gives the declaration to make, after the local governments elections provided more than half of the elected board belongs to the same national or ethnic minority – a *minority self-government* possible. In this case citizens of Hungarian and other nationalities, living in a numerical minority in that settlement, are provided with the same national and ethnic minority rights as the minorities would receive. As can be noted from the interpretation of the regulation, in those territories in the country where the minorities live in a numerical majority, there is a possibility that the populations ethnic location appears in the public law system.

We only have to qualify this form of territorial autonomy special in that sense, that the given minority have rule only over those rights which any local government would have, there is no way that the legal system acknowledges any minority's national-ethnic existence as a special public law form.

According to the law, there are thirteen nationalities settled in Hungary. The minorities have individual and collective rights. The individual rights are in brief: free choice of identity, and also the right to be able to claim that identity; the right to equal opportunity; the right to be free from discrimination; the right to take part in public life; the right to patronise the culture; the right to culture and to native language education. The collective rights are in brief: free choice of identity; the right to be free from discrimination; the right to establish self-governments; the right to cultural and educational autonomy; the right to patronise traditions; the right for parliamentary representation etc.

The Hungarian minorities established their self-governments in 1994–95. As the minorities live scattered throughout the country, it was sensible to create a system which is connected to the local government system. This system is a unique solution in Europe.

According to the minority law in effect to claim or to belong to any national or ethnic group is the exclusive and inalienable right of the individual. It is not obligatory to report about belonging to a minority group. This principle – the free choice of identity – is valid at the declaration of minority individual and community rights, and this is the basis of the minority self-government model. There is no minority registration in Hungary because of this. The minority self-government model is a cultural autonomy. The minority citizens voted for the minority self-government candidates according to the idea of the free choice of identity, creating the local minority self-government at the given settlement.⁷ The minority self-government representatives created – through electors – the national minority self-government.

The local minority self-governments can decide in their own jurisdiction on their organisational and operational regulations, signs and names, they can establish and maintain institutions, especially in the area of local public education, local media, the patronising of tradition and public education.

The minority self-government system – due to its nature – is in close connection with the local government system. The national and ethnic minority rights law state commitments also for the local governments. For example according to the § 29 section (1) in questions that have an impact on the minority population such as local public education, local media, the patronising of local traditions and culture, and also collective language use the local government-board can only decide in accordance with the local minority self-government. According to section (2) the relevant minority self-government's agreement is needed for the appointment of the leaders of minority institutions, and also for the local government decisions that have an impact on minority education.

According to the above rule the local government is obliged to co-operate in certain questions with the local minority self-government. The local governments will have to take care of the interest of the minorities living in the settlement and have to create the rules of communal living, and also have to keep to the regulations of the minority law. The minority self-governments have to learn the technique and the rules of interest enforcement and interest representation. These are the new tasks for both types of governments, therefore I pay extra attention to this matter.

The situation is similar with the national minority self-government. The national minority self-government declares an opinion about the plans of rule of law in the area

⁷ There are 3200 settlements in Hungary. 679 minority self-governments were created in the 1994 local government elections, 138 in 1995, a total of 807 minority self-governments were created.

of their minority, they have the right of agreement in the creation of the basic material of minority education. They also have the right of agreement in the creation of rules in connection with the preservation and maintenance of historical settlements and architectural monuments.

3.5. About the statutory guarantees of minority rights

The guarantee of enforcement of minority rights appears on one hand in the individual public law system that enforces the minority rights (the minority self-government system), on the other hand the enforcement of the minority rights is the task of the organisations of the executive power, both in respect of the general governmental organisations, and through the operation of the statutory organisations created specially for the enforcement of minority rights.

The Parliament's Human Rights, Minority and Religious Committee within the organisation of the Parliament deals with the handling of the minority question at the top level of state power. The Parliament moreover has elected the specialised institution for minority rights enforcement, the minority rights parliamentary commissioner, whose responsibility is the protection of minority rights, and who has the right to control the whole public administration in terms of its constitutionality.

The central public administration's organisations with general responsibilities fulfil their task of minority rights enforcement. The following organisations should be mentioned with special emphasis in connection with cultural autonomy – the *Educational and Public Educational Ministry*, in connection with the existence of the minority self-government and the *Ministry of Internal Affairs*, which is the central supervisory authority of the local governments, and which (through the county's [capital's] public administration offices) is responsible for the legal supervision of the minority self-governments.

The central public administration's authority for handling minority questions is the *National and Ethnic Minority Office*, which is responsible due according to its mandate for the statutory decision preparation and enforcement in connection with minorities.

The *local governments* obligatory tasks include minority protection and enforcement at the given settlement, and also the protection of minority rights and enforcement of those rights at a county level. They have to do this task both during their general operation, and during their co-operation with the minority self-governments.

The *minority self-governments* (similarly to the local governments) have court legal protection, that is they can turn to a court when their self-government rights are violated.

3.6. About the national and ethnic minorities presence in the government and about the forms of co-operation between the minorities and statutory organisations

As we have mentioned, the minorities are regarded as state-establishing factors by the Hungarian Constitution, and this makes the minorities eligible to take part in the government in a suitable form. According to the rules and regulations in effect the national and ethnic minorities as minorities do not play a role in the central government

(the parity principle is not valid with the minorities in Hungary), but they can enforce their minority rights through separate organisations (through the minority self-government system). The legislation wants to achieve by the suitable modification of the right of vote law, that the minority representatives are present in the Hungarian Parliament with preferential seats.

The minority self-governments have co-operative decision rights in definite – minority – matters at local level. Further to this the chairman of the minority self-government, or those with the minority mediator board right are allowed to take part at local government board meetings.

The minority self-government can turn to the operating statutory organisations in any matter, and the organisations are obliged to reply to the request. Furthermore, in the framework of the cultural autonomy practice of the minorities' self-governments have co-operative decision-making right in definite regulative and administration rights with the statutory and local government authorities (for example in the question of the appointment of the leaders of minority institutions the local minority self-government have right of veto).

7. Education of Nationalities

The education of nationalities is a high priority area of minority rights, since the Hungarian Republic provides native tongue education for those belonging to national and ethnic minorities based on 68. § (2) of the Constitution. Paragraph 43. § (2) of the Nektv. law leaves the decision of whether the child is to participate in a nationality or Hungarian language education up to the child's parent or ward who may not be restricted in these rights. If the person belonging to the minority is familiar with his/her group's language and culture it can be a great help in the free choice and preservation of identity. Since generations of minorities have lost their language due to assimilation, kindergartens and schools can help the children – and their parents – in finding and preserving their identities and in stopping the assimilation process.

It should be noted that there is no separate minority education system in Hungary, minority education has been organized as an integral part of the Hungarian public education system. Another important point is that although minority education has an effect on several minority groups, there are two distinct areas of education: *the education of nationalities and the education of the ethnic minority, the gypsies*. The education of nationalities has a well established structure of schools, education programs and qualified teachers belonging to the specific nationality, while these conditions are completely missing from the education of gypsies.

The minority model described in the minority law strives to create a cultural autonomy where the educational self rule of minorities plays a central role. The current form of educational autonomy is the practice of the rights to consent and opinion regarding the decisions that also concern the education of minorities. In other words the minorities (their self-governments) do not decide the questions regarding them, they can only influence decisions made by others.

The year 1996 has brought significant changes in the area of legislative regulation that is partially concerned with minority education, since the amendment of the law 1993/LXXIX. on public education came into force on September 1st 1996. The previous rules of the public education law did not take the regulations of the Nektv. law

into account, it wasn't unambiguous which institutions might be considered as minority institutions. The minority self-governments have not always been able to practice their rights to consent and opinion because of this. The public education's finance system did not make the upkeep of small nationality schools possible, the regulations were ignorant of the fact that the per capita costs of small nationality schools are higher than those of schools with more students. I have had meetings with the president of the Human Rights, Minorities and Religious Affairs Committee in order to solve the problem as well as with the leaders of the National and Ethnic Minorities Office. The danger of small nationality schools becoming unable to function has temporarily been averted due to coordinated governmental intervention, but a final solution to the problem that is also reassuring for the minorities can not be averted. I am well aware of the fact that public education is the government's largest service system, and therefore has to operate economically, but I find the attitude unacceptable that says that everything that is more expensive than the others should be terminated. The Nektv. law makes it possible for nationality education to function even with a lower than average number of people and the extra expenses to be transferred to the government and the local government. These regulations ensure the enforcement of constitutional rights, so their inadequate execution causes legal constitutional controversies.

When examining nationality education, we have to take the fact that the public education law strives to reform the public education system as a whole into account. A new national basic curricula has been passed, and the independence of schools increased appropriately. They have a range of selection when deciding on their programs. Naturally the reform also affects nationality education. We can not forecast at the moment what effects the law will have on nationality institutions. Teachers of nationalities have to face new challenges, initiate new programs, and there is relatively little time for this. This is why I consider keeping an eye on nationality education and the enforcement of minority education rights an important task of mine.

When analyzing the legal background of nationality education we have to consider and collectively interpret the regulations of the Constitution, the 1993/LXXVII law on national and ethnic minorities, the 1990/LXV law on local governments and the 1993/LXXIX law on public education. According to paragraph 68.§ (2) of the Constitution the Hungarian Republic grants protection to national and ethnic minorities. It ensures their collective participation in public life, the cultivation of their own culture, the usage of their native tongue, their education in their native tongue and the right to use their names in their own language.

According to 42. § of the Nektv. law languages that count as being used by the minorities are Bulgarian, Gypsy (Romany and "beás"), Greek, Croat, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian.

According to paragraph 43.§ (2) of the Nektv. law a child belonging to the minority may receive education in their native tongue, a bilingual school (both native and Hungarian) or in Hungarian according to the decision of the parent or ward.

Based on paragraph (3) the native or bilingual education of minorities may happen in a minority kindergarten, school, school class or group according to local opportunities and requirements. According to the above rule the concept of nationality education has to include kindergarten education as well.

Paragraph (4) grants favors when organizing nationality education, as the creation and operation of a minority class or student group is mandatory if requested by eight parents belonging to the same minority or by their legal representative.

According to paragraph 8.§ (4) of the law on local governments the local government has to enforce the assertion of national and ethnic minority rights. Paragraphs 86 and 87 of the law on public education regulate what public education tasks the local government has to perform. The township, city, capital district, and the leader of the county government has to provide kindergarten education, elementary and junior high school education required to satisfy the demands of compulsory school attendance as well as the kindergarten education, elementary and junior high school education required to satisfy the demands of compulsory school attendance of those belonging to the national or ethnic minority in a settlement inhabited by national and ethnic minorities.

The county and capital governments have to provide for dormitory and national and ethnic minority dormitory support, the high school level support of national and ethnic minorities in cases where the township, city or capital district government will not take on these tasks, or if these solutions are not available in the area of the county and capital.

The public education law's amendment contains numerous regulations that are concerned with the education of minorities, thus creating a consistency with the regulation of the Nektv. law and the demands of the National Basic Curricula have also appeared in the regulations. The law made it unambiguous that the language of education is Hungarian as well as the language of the national and ethnic minority. The language of examinations may also be the language of the national and ethnic minority, the grade certificate has to be filled out in two languages; Hungarian, and the language of national and ethnic minority. The local and national minority self-governments may also maintain educational institutes. National and local minority self-governments often also have the right to consent and opinion. Local governments have to acquire the consent of the local minority self-government competent in the seat of the institution and the opinion of the national minority self-government in order to establish public education institutions, to extend the scope of an existing institution's responsibilities, to discontinue the operation of an institution or certain services and to hand over an institution. Before determining the operational (admission) area of the institution the consent of the local minority self-government, or in the case of a school with a regional or nationwide task the consent of the national minority self-government has to be acquired.

This version of the cultural autonomy of education may suit the majority of minority self-governments, especially since most nationality schools are so-called language schools, that is institutions dealing only in the minority language, and the majority of these can be found in settlements with a population of less than five thousand, where local minority self-governments do not have the professional background and knowledge required for upkeep. Neither has the public education law made it clear that bilingual institutions – that is institutions teaching other subjects than the minority language in the minorities' language, and nationality language institutions – that is institutions teaching all subjects in the minorities' language should be gradually available, according to the preparedness and requirements of local and national minority self-governments. If one reads the amended public education law carefully regulations can be found which allow minority institutions to be taken over. Paragraph 88.§ (7) regulates the question of what are the conditions of the local government transferring the ownership or the operating rights of educational institutions owned by them to others. Following this, under section e) of paragraph 81 §

(1) the minority self-government that has become the operator may sign a public education agreement with the local government responsible for educational tasks, stating how the institution participates in fulfilling local municipal tasks. The intention to make the minority education self rule complete by having them decide on relevant questions of education (naturally while adhering to certain legal and professional requirements) is not apparent behind the regulation. This process may not involve the minority self-government operating the institution receiving less budget funds than the local government. Furthermore the transfer of institutions would not mean that the structure of the system of Hungarian education loosen up. Nationality education would still be a part of the Hungarian system of education – just like church and private schools – it would merely be the operator's person that would change in the case of some institutions. Although the legislation allows them the opportunity to determine the institution, considering the financial background of minority self-governments they will not be able to support schools for a long time without the opportunity to take them over.

My office has received several petitions where minority self-governments have complained about the breach of the right to consent and opinion. I have always taken stern measures in these cases against the adverse judgment of the settlement minorities or ministries, since I find it unacceptable if for example a school that states is setting up nationality courses for minority students receives governmental grants, while at the same time it will not admit to the minority self-government's right of consent when appointing the director or on other educational decisions.

The amendment of the public education law has stated that the nationality complementary norm may not be used for other purposes. The feedback received by the minority commissioner has given voice to the anxiety that enforcement of the "not to be used for other purposes" is hard to implement. From this point of view there is no accordance between the regulations of the laws on public education and local governments. Up till now local governments were free to use their available monetary funds. As of 1997 they are not allowed to use nationality subsidies for other purposes, but the legislation fails to pose the question of what counts as a nationality education task: does it only mean the organization of education, or does it also involve operating costs (e.g. heating, electricity), since these expenses can not be separated according to majority and minority education. I have ordered a nationwide investigation to examine this controversial situation, and will request legal harmonization based on the experiences received. It is understandable that it may cause a conflict in smaller settlements if the minority institute receives more grants than a majority school or kindergarten, but even the Nektv. law admits that nationality education involves more costs, this is what the complementary grant is striving to cover. Everyone knows how limited the financial resources of small settlements are, but the methods of financial economy, the fact of saving money can not lead to a breach of the national and ethnic minorities' rights.

The current financing system still fails to note the special situation of small nationality schools. The solution of this problem falls to Parliament, since the defenselessness of these institutions grows in proportion with the increase in expenses.

The general problem of nationality education is a bad supply of textbooks. Nationality education can only become an integral part of the new public education system if appropriate textbooks and teaching tools are published in accordance with the National basic curricula, the nationality education programs and the goals of nationality education, if the system of professional nationality education services is created.

The future of public nationality education is tied to the development of nationality teacher training. Public nationality education can only live up to the new challenges and the growing demands (verified by surveys), if an appropriate number of nationality teachers with proper training are available. The amendment of the public education law sets higher standards when employing teachers and institution managers of nationality, so it is the government that has to elaborate appropriate programs and measures in the interest of the professional development of nationality teachers and teacher refresher courses.

According to the statistics of the Ministry for Education and Culture the present network of institutions contains 298 kindergartens and 370 schools excluding schools training Gypsy students and counting institutions training two nationalities twice. 56 % of kindergartens teach German, 23 % Slovak and 11 % the Croatian languages, or in these languages. The ratio of all other nationalities are under 5 %. 60 % of nationality schools teach German, 22% Slovak and 11% the Croatian languages, or in these languages. More than 60 % of the institutions are in settlements with a population of less than 5,000, that is small townships. The Serbian, Romanian and Slovenian minorities have all their educational institutes in small townships and towns. German schools and kindergartens are represented in all types of settlements. The fact that German is also a world-wide language plays an important role in this.

60 % of nationality schools have less than two hundred students, 25 % of them have even less than a hundred.

The Bulgarians have one educational institute that contains a 12-class school and kindergarten. This used to be financed by the Bulgarian government. The institution is currently supported by both Hungary and Bulgaria. The number of students is 100–120 a year.

Greeks only have elementary and junior high school level education in approximately six settlements.

Croatian language education is carried out in 40 kindergartens and 41 elementary and junior high level schools, 7 of which are bilingual. There are two high schools that have Croatian language education. There is no university level education. There are undergraduate 4-year teacher training courses in Pécs and Szombathely.

Polish people have one educational institute that is an elementary, junior high and high school in one and uses the current Polish curricula.

The number of German kindergartens is 198, the number of schools is 258. Nine of these are high schools that are either independent or have nationality branches. Nationality German and teacher degrees may be acquired in 8 institutions of higher education in Hungary. University level training is carried out at the University of Sciences in Pécs. This is daytime training with 1–2 semesters spent abroad. There is also a 3 year undergraduate course at the same place that trains nationality language teachers. There is a 4 year teacher training course at Szeged.

During the 1995/96 academic year Romanian nationality education was carried out in 12 kindergartens, 11 elementary and junior high schools (5 of which are independent Romanian nationality schools), and one high school. Romanian language kindergarten teacher training is carried out in Szarvas, grade teacher training in Békéscsaba and teacher training in Szeged and Budapest.

During the academic year 1995/96 an experimental Ruthenian language education program commenced in a Ruthenian settlement with 18 elementary and junior high school students.

Currently there are four Serbian kindergartens and 11 Serbian schools operating, one of which is a Serbian language high school in Budapest. Nationality teacher training is carried out at the University of Sciences in Szeged and Budapest.

The number of Slovak kindergartens is 74, there are 67 elementary and junior high schools and 2 high schools. Kindergarten teacher training is carried out in Szarvas and Esztergom, Slovak students may acquire grade teacher degrees in Esztergom and Békéscsaba and teacher degrees in Szeged and Budapest.

Slovenian language education is present in five kindergartens and four schools. Slovenian teacher training is performed in Szombathely.

The education of Gypsies has to be mentioned separately. We can see from the above that nationalities have independent kindergartens and schools while there is only one Gypsy training institute, which is a high school in Pécs. At the same time 7.12% of students in Hungary are of Gypsy origin. Half of the Gypsies live in rural areas in small settlements. Although the number of Gypsies who have finished junior high school rose after 1990 (70–75 %), the ratio of those continuing their education is still low. While more than a half non-Gypsy students continue their studies in high school, only nearly 3 % of Gypsy students are admitted in high schools and only 1% of these continue in a higher level education institute.

Sociologists in Hungary are divided on the question of the reasons are of this devastating situation. According to one view the reasons lie in the Gypsies' social, cultural and hygienic situation. Nearly 45% of Gypsies in Hungary are unemployed. Every third Gypsy student is raised in a family where both parents have lost their jobs. The chance of these parents getting back in the labor market are decreasing and this has an effect on the child's education. At the same time another view says that the Gypsy students' lack of success is not only due to the social situation described above. The signs of discrimination in the public education system have become clear today and no alternatives have been worked out for remedying this situation. The Hungarian public education system has no tolerance for the Gypsies' different cultural background, and the emphasis on uniformity characteristic of governmental education systems is so strong that Gypsy students either "drop out", or are forced into so-called auxiliary schools. Some programs that have been inaugurated have targeted the catching up of Gypsy students. The pedagogic methods of these programs, however, are not yet clear. At the same time programs such as this get less and less of a chance in the more and more competitive Hungarian public education, since these require further budget resources. Pedagogic programs can also only be successful if the decrease in the economic and social disadvantage of regions inhabited by Gypsies is influenced by coordinated governmental efforts. In my opinion the key question of the Gypsy population's long term – assimilation free – integration is whether we can achieve a breakthrough in the field of education. At the threshold of Hungary's European integration language and computer skills and education plays an even more important role. If the Gypsies are excluded from the opportunity to acquire these skills the further growth of the already huge gap between the two communities might lead to tensions that are impossible or very difficult to handle. I consider the problems of Gypsy education such a serious controversy that I have seen it necessary to order a nationwide investigation. The goal of this investigation is to shed light on the controversial situations latent in public education, and to devise regulations in order to remedy these.

7.1. The Question of Finances

On the financing of minority self-governments and the minority culture in general we can say that it is very hard to coordinate the financing of majority culture since many authorities have jurisdiction over minority resources including Parliament, the Ministry of Internal Affairs and the Prime Minister's office as well as the local governments. I will try to give a picture of how big the sums are that can be used for minority culture and their source according to the regulations of the 1997 budget legislation.

Parliament has jurisdiction over HUF 70 million provided for civilian organizations (cultural associations) of national and ethnic minorities. These sums are annually distributed by the Human Rights, Minorities and Religious Affairs Committee based on the tenders received. Minority self-governments may not receive sums from these resources, these are strictly set aside for the civilian sphere.

Parliament's chapter also contains 11 budget resources for national minority self-governments, the total sum of which is HUF 306.2 million distributed in the following manner:

Bulgarians	10,0
Greeks	10,0
Croats	32,0
Germans	63,2
Romanians	16,0
Gypsies	96,0
Poles	10,0
Armenians	10,0
Slovaks	32,0
Slovenians	12,0
Serbs	15,0

The Prime Minister's Office has jurisdiction over the 395 million HUF set aside for the Hungarian National and Ethnic Minorities Public Foundation that you have also mentioned. Last year the Public Foundation distributed nearly HUF 250 million based on tenders. Tenders were submitted by individuals, civilian organizations and minority self-governments. The Public Foundation has supported minority education, minority publishing activities, minority theaters, libraries, public collections and monuments, minority media, social programs for children and young people, programs related to minority religious life, international minority connections, the training of minority politicians and research concerned with minorities. A Public Foundation for Hungarian Gypsies also exists that is managing HUF 170 million this year and distributes sums to Gypsy civilian organizations and minority self-governments through tenders.

The minority coordination and intervention budget also belongs to the Prime Minister's Office and is HUF 50 million in 1997. Last year minority self-governments received finance from this sum to cover the expenses of renewing and outfitting headquarters and offices as well as operating small rural schools.

Local minority self-governments have received governmental subsidy through the Ministry of Internal Affairs. The reason for this is that the Ministry also forwards the money to the local governments which is then transferred to the minority self-governments by the local governments. The sum transferred to the minority self-

governments was HUF 300 million in 1997 that is evenly distributed among nearly 800 minority self-governments. This sum is a little more than last year. Minority self-governments have received this sum to cover operating expenses.

The Ministry of Internal affairs is also the one that transfers the complementary subsidy to the local governments for the kindergarten education of minorities. The measure of this is HUF 3,246.8 million. In Hungary the upkeep of so called governmental education institutes is covered by the local governments and they receive government grants for this purpose. The measure of government subsidy is generally 65–70 % and this is supplemented by the local governments. In addition, nationality institutes also receive the complementary subsidy described above, since the government concedes that minority education involves additional costs. The amended regulation of the public education law has called this subsidy *unusable for other purposes* from this year on. This subsidy is received by the local governments based on the data submitted by the schools according to a per capita quota. A minority kindergarten child receives HUF 19,500 while a student receives HUF 23,000 as an annual complementary subsidy. In addition, the so called small schools receive a further sum of HUF 18,000 per student, since the expenses of schools with a low number of students are even higher. These data are hard to compare because the budget grant allocated to education is HUF 164.1 billion, this includes the government subsidy (the 65–70 % mentioned above) received by minority schools as well. The remaining part is provided by the local government, although many settlements exist in Hungary that practically solely exist on government subsidies, the government paying for 100 % of the education. Naturally there are also settlements where the local government is able to provide financial support for minority education and culture. We regretfully lack relevant data. The situation is further complicated by the fact that besides the minority schools there are also majority schools with minority branches or classes, this makes it even harder to calculate the amount of subsidies that minority and majority schools receive.

We can, however, safely say that the nominal value of the sums granted for minority purposes has grown compared to last year, the real value of which has hardly increased due to inflation. At the same time we can also say that the present finance system is wasteful. While minority self-governments receive money in equal proportions irrespective of the kind of activities they perform, no one will be interested in productivity and more active work. In our opinion minority self-governments should be subsidized based on what services they take off the government's or local government's shoulder. We think it conceivable for minority self-governments to take over the operation of minority education institutions and public collections together with the monetary tools involved. Correspondingly the minority self-government that assumes governmental tasks that are beneficial to minorities would receive a larger subsidy. Per capita financing is not fair on the one hand because it could not be implemented, since Hungary lacks minority registration, one of the basic principles of the minority law being free choice of identity. The number of minority students, however, is known, similarly the number of people visiting a minority library can be measured, as can the cost of the upkeep of a minority museum. It is a fact that it is more comfortable and simpler for the Hungarian Ministry of Finance to distribute the money evenly, claiming that other calculations could not be implemented due to the absence of accurate figures. The minority ombudsman has made a suggestion in his 1996 account of the introduction of a new type of financing system.

8. Media

The normative basic principle of the Hungarian minority legislation is the right to self identity. The free choice of identity, however, can only be considered voluntary if it is based on the conscious decision of sovereign individuals. From the point of view of the formation and strengthening of the knowledge of belonging to a minority it is essential that the language, minority culture and traditions become distinguishable to a wider audience. The 18. § of the Nektv. law strives to aid in the preservation and maintenance of self identity by stating “Public radio and television – according to the regulations of a separate law – has to provide for the creation and broadcast of national or ethnic programs.” The Constitution and the Nektv. law both declare that minorities are a part of the people’s power, they are a government forming factor. The broadcast time set aside in the electronic media, often referred to as “the fourth branch of power” might serve the manifestation of this regulation in concrete legal institutions. Due to the government forming role of minorities this broadcast time can not be solely limited to programs with special minority subjects, they have to proportionally come across in the whole program structure of public service media. It has a very important role from the point of view of the constitutional legal order which has other significance than minority rights that the majority society has proper knowledge of the life and problems of minorities. Each social prejudice is a complex phenomenon, although the lack of information about minorities is often a determining factor in their emergence as well as the fear resulting from this. The public service media’s programs featuring minority subjects might help the emergence of a democratic public opinion and the strengthening of the tolerance towards being different. The financial, procedural and organizational regulations of the 1996/I. law on radio and television (referred to as RTV. law) have to help in creating a balanced and realistic picture of minorities.

The RTV. law strives to enforce minority rights by implementing a wide range of guarantees in the institutional system of public service radio and television. The basis of this is the regulation that states that information depicting the culture and life of national and ethnic minorities as well as minority points of views is classified as a public service broadcast. Broadcasts like this might be subsidized within the framework of the public service broadcast system and the public broadcast services.

One of the RTV. law’s basic principles is that the activities of the broadcaster may not breach human rights and may not serve to incite hatred against national, ethnic and other minorities. This regulation includes all broadcasters. The respect for the dignity and life of national and ethnic minorities as well as the depiction of minority cultures is mentioned in particular in the case of public service broadcasters and public broadcast services. In the event that these regulations are breached the National Radio and Television Public Body may implement various sanctions, such as instructing the broadcaster to stop the breaching of rights, suspending the practice of broadcast service rights, the imposition of fines and the immediate termination of the contract in the case of the repeated breaching of rights.

It is the duty of public broadcast providers to help the maintenance of the national and ethnic minorities’ culture and native tongue as well as providing regular information in the native tongue. A regulation that acts as a guarantee is that the time span of nationality broadcasts may not be less in either the national scope or the total of regions than when the RTV. law came into effect. According to our views this regulation

may not be interpreted in respect to the total broadcast time, just as the ratio of different nationality broadcasts – that have been accepted by the national self-governments – may not be changed arbitrarily.

The minorities' national self-governments have significant rights in the public service media. They have the right to determine the principles of using the broadcast time allotted to minorities. This decision has to be respected by the public service broadcast provider. National self-governments may jointly delegate one person to the board of advisors of the Hungarian Radio, Hungarian Television and the Hungarian Television Public Foundation.

We can say of the RTV. law's regulations that they are an appropriate regulation of the minorities' depiction in the electronic media. The law's most important merit is that it does not declare the rights of minorities, but rather provides an appropriate order of procedures and sanctions against those who breach these rights. The RTV. law may open the road to the practical enforcement of the minority laws previously laid down and the minority rights defined in this law as well (*using the minority commissioner's report*).

9. On the Forms of Minority Rights Protection

The Hungarian Constitution makes the protection of minority rights a fundamental element of the legal system. Every governmental organization is bound to protect minority rights, and every citizen is bound to respect minority rights in the Hungarian Republic. The protection of minority rights is among the basic principles of the legal system's every branch, the breach of these rights may be remedied in a court of law.

The basic elements of the system of institutions serving the enforcement of minority rights are the minority self-governments that may take on the role of protecting minority rights due to their special sphere of authority (such as for example the right to petition according to which the minority self-government may petition the administrative authorities on any matter). The institution of the Parliamentary commissioner of minority rights has a similarly large importance concerning the Constitutional protection of minority rights, a high priority duty of whom is to ensure the enforcement of minority rights. The minority commissioner has a certain sphere of authority to revise any matter of the administrative authorities from a constitutional point of view in order to be able to satisfy this duty.

The social organizations and legal consulting offices dealing with minority rights protection play an important role in enforcing the practical implementation of minority rights. These organizations are also trusted by citizens belonging to minorities, and consequently have the opportunity to practice certain forms of minority rights protection that governmental organizations can not practice. It would still be very important for the minority legal protection organizations to be able to carry out their work having an appropriate financial background. The appropriate funding of these organizations is currently not provided for, so some organizations have to deal with perpetual problems of survival. The organizations maintain themselves using funds from domestic and international organizations, professionals working within their framework often volunteer for these tasks with no financial compensation whatsoever.

The general and specific judgment of the investigations of international rights protection organizations in Hungary has also changed. Governmental organizations are helping the work of these agencies primarily due to the Euro-atlantic integration process, since these organizations' reports play a very important role in how our country is viewed abroad.

This is where we have to separately mention the role of the prohibition of discrimination in the legal system that counts as a special legal institution from the point of view of the protection of minority rights. The Constitution contains the prohibition of discrimination in general, and the legal regulations of branches also take steps against discrimination. The 1996 amendment of the Penal Code has a special significance, since it provides an opportunity for the authorities to use increased rigor when dealing with violent actions committed specifically because of the belonging to some nationality, ethnic, racial or religious minority.

9.1. Protection from Discrimination

The frequency and seriousness of ethnic conflicts shows an increasing tendency in Hungary. Discrimination is a phenomena most often seen against the Gypsy population. Legislation might follow two methods to remedy the discrimination of minorities: either reform the circumstances themselves that form the basis of discrimination through legislation, or create regulations that effectively prohibit discrimination and effectively sanction breaches of rights in order to prevent discrimination. The former is called positive discrimination, when the legislation favors certain individuals and aspects in order to ensure social equality and equal opportunity as interpreted on a wide scale. The latter form of regulation is called anti-discrimination legislation.

Anti-discrimination legislation is aware of two regulation methods: anti-discrimination regulation may be found in either a separate law or between the paragraphs of laws dealing with other scopes of interest. The English "Race Relations Act" might serve as an example of separate regulation, this defines and sanctions all direct and indirect forms of discrimination. The legal system in Hungary follows a different method of regulation, there being no separate anti-discrimination law. The highest level of law, paragraph 70/A. § (1) of the Constitution states that:

"The Hungarian Republic ensures human and citizen rights for all individuals within its borders without distinguishing between any race, color, gender, language, creed, political or other opinion, national or social origin, wealth, birth or other position.

(2) The law deals strictly with any discrimination of individuals according to paragraph (2) ".

According to the AB decree 61/1992. (XI. 20.) the prohibition included in the paragraph 70/A. § (1) of the Constitution does not serve as a directive merely where human and basic citizen rights are concerned, this prohibition covers the whole legal system, including the rights that do not belong to human rights and basic citizen rights. Hungary accepted the obligation to prohibit and eliminate all racial discrimination against any person, group or organization using all available tools – even legislation if so required – in the international treaty on the elimination of all forms of racial discrimination

published in the 8th executive order of 1969. According to the 1993/LXXVII. tv. 3. § (5) law on the rights of national and ethnic minorities all kinds of discrimination against minorities is prohibited. These regulations state the general prohibition of discrimination. They are suitable for preventing the creation of laws implementing direct discrimination as well as the enforcement of such regulations. The effective laws and the existing Constitutional protection tools represent sufficient guarantees for the elimination of the direct legal discrimination of minorities.

However, the administrative aspect of the legal system can only be enforced in practice if it contains other guarantees than the prohibition of direct legal discrimination. This can only be realized if an appropriate system of regulations is created for the exposure of discrimination experienced during legislation, the control of legal relations carrying the potential for discrimination, the sanctioning of existing breaches of rights and the system of compensation. Minority protection and anti-discrimination legal regulation passed during recent years have created the basis for this system of regulations, but this may not mean that the process of administrative legislation can be considered complete.

According to the generally accepted view, four major areas of discrimination are distinguished: personal, official, employment and cultural discrimination. The examination of employment discrimination is especially important, since unemployment poses a serious social problem in Hungary. Controversial situations in the field of employment are the illegal, discriminative refusal to establish an employment relationship and the discrimination in the field of rights and obligations of the employment relationship based on the employee's national or ethnic background. The following statements may be made based on the examination of discrimination during employment relationships. Paragraph 5. § (1) of the 1992/XII law on the Labor Code states:

"It is forbidden to implement discrimination concerning the employment relationship between the employees based on their gender, age, nationality, race, origin, creed, political views, membership of employee's federation or activities related as well as all other circumstances not related to the employment relationship".

A rule of guarantees is that the law transfers insurance obligations and burdens to the employer in the event of an argument concerning the breach of the prohibition of discrimination. The trial date has to be set within fifteen days of the labor court receiving the petition if no other measures are necessary. This way the breach of rights may be remedied within the framework of a speedy procedure and a short trial. If the discrimination means the illegal termination of the employment relationship the employee has to be employed in his/her previous position upon request, and the arrears of pay as well as other damages have to be compensated. According to the 1996/LXXXV. law on the control of work affairs a work affair fine of HUF 50,000 to 1,000,000 may be imposed on the employer. Paragraph 75. § (1) of the 17/1968. (IV.14.) governmental decree on transgressions also regulates discrimination against the employee:

"The employer, who

a) illegally refuses employment based on gender, age, nationality, race, origin, creed, political views, membership of employee's federation or activities related as well as all other circumstances not related to the employment relationship,

b) implements discrimination of employees according to section a) may be punished with a fine of up to fifty thousand forints".

These financial and procedural regulations basically ensure actions against discrimination during the employment relationship. Despite this, employment discrimination still plays a role in the laying off of members of the Gypsy minority which already has a very high unemployment ratio – often seriously breaching legal regulations. I consider increasing the employee's disposition to enforce their rights the primary task in decreasing employment discrimination. Employees have to be made aware of the available legal tools for remedying grievous employer decisions.

The other kind of characteristic grievance besides discrimination during employment in the case of minorities is the illegal, discriminative refusal of employment. Since no employment relationship is created in the case of such discrimination the legal regulations serving the protection of employees may not be applied. The grievous party may sue because of the breach of individual rights, and may demand compensation according to the general rules of civic law. Civic law in itself, however, is not suited for the remedy of such grievances. The legal political goal of civic law is the regulation of the assets of legal entities and interpersonal relations connected, the solution of conflicts of such nature, due to this it is basically a law of representative character. On the other hand efficient anti-discriminative legal protection mechanisms have to be based on legal regulations of public law that primarily target the prevention of norm-breaching behavior and the control of legal relationships carrying the possibility of discrimination, so they are mainly preventative in nature. Civic legal relationships, where the parties participating are typically on the same level, require the party, in whose interest it is that the court accepts his/her case to prove the decisive facts. Trials started because of illegal, discriminative refusal to establish a legal relationship do not, however, feature parties of the same level. The would-be employee is in a defenseless position compared to the employer so the transfer of the burden of proof to the employee is not reasonable. The majority of people suffering from discrimination do not have a realistic opportunity to access the theoretical legal tools available in practice. Effective regulations do not ensure the legally possible protection against prejudices emerging when creating an employment relationship. The incomplete nature of legal regulations also play a role in the emergence of discrimination.

The most serious forms of discrimination in practice are the violent acts committed against those belonging to minorities. Among such acts the crimes committed against members of the Gypsy minority by members of the police force have to be mentioned separately. The limitation of basic rights is possible during police procedures within the limits of the framework laid out in the legal regulations, so the prejudicial and abusive practice of these powers may cause significant grievances. Such actions of individual members of the police force may not lead to the conclusion that the police as such are prejudiced against minorities, but they do draw attention to the fact that attitude training and the filtering out of unfit individuals has to be more dominant during police staff training. Measures have to be taken for the restoration of the lawful state of affairs and to have those responsible answer for their actions when any kind of discrimination is experienced on the behalf of the police. Violent crimes committed by members of the police force are seriously punished by law. The penalty for assault during an official procedure is imprisonment for up to two years, this may be as much as five years in the case of forced interrogation, the basic case of illegal detention may result in up to five, the aggravated case in up to eight years imprisonment. A fiduciary relationship between

the police and minorities, especially the Gypsy minority can not be created solely by remedying the possible breaches of rights, it needs a deeper change in attitudes. (using the minority commissioner's report)

9.2. Court Sentences

Of all the domestic minorities, the Gypsies are the most targeted by crimes with racist motivations. The two characteristic classes of crimes targeting minorities are crimes against life, corporal integrity and health, and crimes against freedom and human dignity.

The increase in violent crimes against minorities can be connected to the emergence of the Hungarian skinhead movement. This date can be traced back to the formation of the first skinhead band in 1983. Despite the fact that assaults on Gypsies and Arabs residing in our country have been happening since 1985–86 the authorities did not pay enough attention to this phenomena. The first crime that resulted in public outrage happened in 1988, when a group of 50–60 skinheads attacked a group of Cuban guest workers. Many of the perpetrators of the crime have been sentenced to actual prison terms. The approximate number of skinheads in 1990–91 was 4000, this number has probably increased during recent years.

On January 25, 1991 a juvenile skinhead group of 46 has assaulted several individuals of color in Budapest. Following this they attacked a bar where 4–5 Gypsy individuals were staying. One of the assaulted Gypsy men received a bleeding wound on the face as well as bruises on the arms and legs.

The attorney's office has started prosecution based on a crime committed against national, vernacular, racial or religious groups defined in 156. § of the then effective Penal Code. Contrary to the charges, the court of first instance has found the defendants guilty on several counts of malicious assault in part as an accessory and in part as an accomplice as well as an intention to commit this crime. The prosecution has lodged an appeal against the verdict of the court of first instance because of classification dissenting from the charges. The court of second instance has approved the classification of the court of first instance.

The Supreme Court of Justice has stated in its 299th decree of 1994 regarding the crime that determining the crime of malicious assault and the intention to commit this crime as an accessory or an accomplice is appropriate – as opposed to determining a crime committed against national, vernacular, racial or religious groups⁸ – if individuals belonging to the so called skinhead group bodily assault individuals of Gypsy origin, color, or Arab nationality because of their national, vernacular, racial or religious belongings. The reasoning states that there is no established court practice of dealing with crimes committed against national, vernacular, racial or religious groups, and the scholars of legal science have not attended to the practical enforceability of this legal regulation. The basis of the Penal Code's 156. § is the international treaty "on the subject of preventing and punishing genocide, December 9. 1948" that has been announced by the 16th executive order of 1955. This crime attacks the whole of certain

⁸ Crime committed against national, vernacular, racial or religious groups 156. § The person that causes serious bodily or mental grievance to a member of some national, vernacular, racial or religious group because of belonging to the group is committing a crime and may be sentenced to an imprisonment of two to eight years.

human communities, persons bound together by their national, vernacular, racial or religious common relationships, “the group itself as such”. The normative state of affairs leads to determining that the defendants’ actions did not in any way strive to eliminate the parts or the whole of certain racial groups and did not attack the group itself, either – despite the fact that they showed some level of organization.

Following the decision the practice of the court did not employ the special state of affairs serving the protection of minority rights, but has rather determined other crimes. In order for penal law states of affairs to comply with international anti-discrimination regulations and for them to ensure the more effective penal defense of minorities the Penal Code’s states of affairs had to be modified. The XVII law of 1996 has superseded the law on crimes committed against national, vernacular, racial or religious groups and a new form of crime has been drafted called violence against a member of a national, ethnic, racial or religious group. By having the Penal Code 174/B § sanction actions committed based on alleged membership of a group as well, the real motive behind the crime has become more provable. The new, more concretely defined state of affairs makes it possible for crimes with racist motives to fall under proper penal law evaluation.⁹

The other characteristic group of criminal offenses is the affront on the human dignity of individuals belonging to the minority. The most common form of this is the usage of insulting and derogatory terms.

On September 18, 1995 a man belonging to the Gypsy minority asked for a soda and coffee in a Pécs bar. His request was refused by the waitress who said her boss didn’t allow her to serve Gypsies. The bar’s operator confirmed what the waitress had said, adding that “Gypsies here may not eat, drink or have fun.” The offended party has instituted a private prosecution for misdemeanor of libel.

The court imposed a fined on the bar’s operator for misdemeanor of libel. The court’s verdict stated that the usage of the term “Gypsy” does not in itself have a character of libel. In this context, however, it expressed the perpetrator’s contemptuous and degrading judgment of the plaintiff. This declaration and the act of refusing service humiliated the plaintiff and therefore might impair his reputation. Under the given circumstances the statement regarding ethnic status had an unambiguously pejorative meaning, and represented a form of discrimination between citizens of equal rights that may not be tolerated.

10. The Activities of the Minority Ombudsman

The institution and the work of the minority ombudsman admittedly is still searching for the correct path to follow. This is a result of our not being able to lean on traditions, and examples of similar institutions abroad can not help, moreover the operation of the institute is quite unique. It is unique because the ombudsman acts in the government’s name, but in the individual’s interest “against” (and only against) the governmental organizations, public authorities and public providers, because he/she has no power, and still has an effect, because opposed to the bureaucracy that always tends

⁹ Violence against a member of a national, ethnic, racial or religious group 174/B. § (1) Anyone who assaults someone based on that person’s belonging or assumed belonging to a national, ethnic, racial or religious group, or forces by violence or threats to do, not to do or endure something is committing a crime and may be punished by a prison term of up to five years.

to close up he/she is not only open but is none other than the essential component of publicity.

This uniqueness is also characteristic of the methods used. The basis for intervention is not only the breach of rights, but all “controversies”, that is the immediate danger of the breach of rights even if there is no breach of rights, the sanction is not a decision or punishment, but an initiative, a proposal, going public, or a report to Parliament.

These tools play unclear and untraditional roles in Hungarian legal theory and practice. The definition of the concept and contents of “controversies” is not simple for example because the system and dogmas of minority law are undeveloped compared to general law. This is why this report dedicates a separate chapter to the analysis of this legal field’s set of regulations, having significance beyond the area of Constitutional controversies interpreted on a smaller scale and the experiences deductible from the materials that I have received. This is necessary because the government’s tasks involve not only the proper operation of the Constitutional system of institutions, it has also to provide for it’s development. This is where the ombudsman can be of help.

Our everyday experiences would have us say that despite all the results of democracy and being a constitutional state the human rights protection institutions are currently not idle. That is to say it is not sufficient to build the democratic system, it is at least as important that the operation of this system is just as democratic. We have to face new challenges in this field everyday.

The citizens’ legal security has become one of the most important basic values of the constitutional state. The basis of all human rights and the defense of human rights is respect for human dignity. Today it is natural to include human freedom, equal opportunities and social security in the life worthy of man. But does this apply to everyone equally?

As opposed to the evolution of human rights that is worthy of recognition, the protection of the rights of those living as minorities is still in its childhood. As a result, the legal protection system built for majority citizens only conserves the lack of opportunity without the creation of a minority legal protection system of the same level. It is exactly the ombudsman’s institution that seems to be the most suitable for the creation of equal opportunities and the handling of minority problems.

If it is in generally true for the ombudsman that he/she is the mitigator of the citizen’s defenselessness, it is even more true for the citizens of minorities who are also defenseless in their identities.

If it is true that the ombudsman strengthens the citizen’s faith and trust in his/her government, and the knowledge of being in control of the government’s institutions, it is even more so in the case of the minority citizen who is different in language and culture.

If it is true that the ombudsman’s tool is rationality rather than power, persuasion rather than force, then it is not hard to realize that the ombudsman may play a significant role in the relationship of the majority and minorities – where the use of power is always harmful.

Since the ombudsman supervises the enforcement of rights his/her effect is stronger than usual, as the major and typical weakness of existing minority legal protection systems is the lack of control mechanisms.

The Parliament of the Hungarian Republic has declared in its preamble to the law on national and ethnic minority rights that the right to national and ethnic self-identity is considered to be a part of universal human rights, the unique individual and public rights

of ethnic minorities are basic rights of freedom that are to be respected, and all these are to be enforced within the Hungarian Republic. The sum of these rights is not a charity from the majority and not a prerogative of the minority, their source is not the ratio of national and ethnic minorities, but rather the right to be different based on the respect for individual freedom and the respect for social stability. When declaring the principles of equality and solidarity and the principles of active minority protection, the Parliament was guided by respect for minorities, respect for moral and historic values and the consistent representation of the existential interest of minorities and the Hungarian nation keeping universally accepted moral and legal norms in perspective. The language, material and intellectual culture, historical traditions and other characteristics connected to the minority existence of the national and ethnic minorities living in the area of the Hungarian Republic who are Hungarian citizens are a part of their individual and common self-identity. All these are special values, their preservation, maintenance and increase is not only the basic right of national and ethnic minorities, but the interest of the Hungarian nation and the community of all governments and nations.

Considering the fact that local governments form the basis of a democratic system, the creation and activities of minority self-governments and the cultural autonomy thus implemented is considered to be one of the most important basic conditions of the unique enforcement of minority rights by the Parliament.

The fact that the Hungarian Parliament has chosen an independent ombudsman for the protection of minority rights also goes to prove this.

The Hungarian Constitution also contains a decree on the minority commissioner. According to the 32/B. § (2) the task of the parliamentary commissioner for national and ethnic minority rights is to examine controversies concerning national and ethnic minority rights have come to the notice of him/her or to have these examined, and to initiate general or individual measures in order to remedy these.

Parliament, in order to protect constitutional rights, elected the parliamentary commissioner and the general assistant – with a two-third majority and as a commissioner responsible only to them – on June 30. 1995, as well as two separate commissioners for the protection of individual constitutional rights. The honorable task of acting in the protection of national and ethnic minority rights has fallen onto me.

The law on parliamentary commissioners was passed by Parliament in 1993. This regulation states that the ombudsman may examine the procedures and measures of all authorities, except for the courts of law. He/she may request documents during this examination, may hear those concerned, may carry out examinations on the scene and may request declarations and explanations.

The law on national and ethnic minorities also came into effect in 1993. This contains the decree according to which the minority commissioner acts on questions belonging to the scope of this law.

Minority self-governments often turn to my office asking me to explain my point of view on the interpretation of one legal decree or another. The interpretation of regulations is not my task when there is no concrete breach of rights, but I still don't refuse their request although I do not fail to comment in every case that my point of view does not have an obligatory nature, the final sentence can only be passed by a court of law. In my view interpretations such as this can aid the work of local governments and make the understanding and application of regulations easier.

Whenever I see that the constitutional controversy can be traced back to the unnecessary, ambiguous regulation of a law, and the question is the lack of effective

legal regulation I have the right to suggest the amendment, invalidation or publishing of the legal regulation to the legislative authority. There are two important laws that can be closely tied to the practice of minority rights: one is the law on local governments, the other is the law on public education. I have suggested modifications in the case of both laws. The amendment of the law on public education has been passed with legislators paying heed to my observations.

The fact that the regulations of the minority law are not accurate and the regulations of the minority and self-government laws are controversial in places and not complete causes further problems making legal implementation harder.

In numerous cases it is sufficient to start an investigation in a given case and to notify the authorities of this. In most cases they remedy the breach of laws or terminate the illegal state of affairs within their competency. In other cases we find ourselves confronted with total rejection.

The effectiveness index of the first one and a half years of our activities can be called good. Not everyone has gotten used to the fact, however, of our existence, that we have to be reckoned with. This is why we have to fight for our prestige and our reputation, and we have the opportunities to do this. The most important thing, however, is that commissioners and their colleagues have to perform a high level, honorable job. We may not, or to be more exact it is not proper for us to make mistakes, since we are the ones protesting against the mistakes of others, thus we lose our credibility if we also make mistakes. What is more, we may not keep our affairs on hold in the usual bureaucratic way, we have to establish a citizen and client friendly management. Besides all this we have to be very persistent and tenacious. We have to increase the citizens' trust in governmental institutions, since nothing can harm democracy more than the citizens turning away from it and having no trust in its institutions. The citizen should not be allowed to feel that this is not his/her democracy and government. This has an even greater importance where minorities are concerned since the minority citizen may feel his/her own government is even more alien. I consider it a further task of mine to play a kind of mediator role between the majority and the minorities in order to assist in mutual understanding and respect for rights. Since both the institution of the ombudsman and the minority legal system are new in Hungary, we are part of a learning process.

What Might the Future Bring?

The protection of minority rights – as it can be seen from the above – is new to the Hungarian legal system in practically all of its elements, so it might be surprising that the need for improvement has already appeared. On the other hand the “experimental” nature of the current legal system was apparent the minute it was formed to both the legislators and those concerned.

The unique Hungarian “half-municipal autonomy” may be traced back to the legislative question of whether the minority communities that are in a state of advanced assimilation are capable of independent, autonomous actions.

It has become evident within a few years' time, that revitalization – especially that of minorities with relatively large numbers (Gypsies, Germans, Slovaks, Croats, Romanians) – is not only possible, but has started spontaneously with the opening up of opportunities and the termination of the prohibitions on civil organizations. The creation of the system of minority rights protection has merely helped this process.

The further expansion of the legal framework has to be realized in part through the creation of the institutions earlier “promised” and in part by improving the “coherency” of the existing system.

The best example for the former is the creation of the minorities’ presence in legislation, and for the latter is making the contents of the autonomy real.

The minorities Parliamentary representation was first regulated in the 1990 amendment of the Constitution (XVIth law 1990), then the Constitutional Court in 1992 declared that the Parliament has a commitment to legislate in this matter – and also it stated that it was past time to do so [regulation 35/1992 (VI.10)]. Despite all this no formula was found until this time that would have been acceptable both to the parties and to the minorities.

The common feature in the plans elaborated so far (including a proposal that was turned down in Parliament in 1993) is that they make it easier for the minority organisation to nominate candidates, the minorities do not have the threshold of 5% and it gives an allowance in the number of votes necessary for one mandate. The latter gives ground for most of the debate. According to the current version the number of the least preferential mandates would be 10000. This would give a real chance for the “bigger” minorities (gypsies, Germans, Slovaks, Croats), the rest object to it precisely because of this.

The creation of the minority culture autonomy – at least on the level on common way of thinking – has already started. In my 1996 report I have made suggestions for the directions of development. The essence of this is the lack of gradual creation of functional and financial autonomy elements. In my belief the local (in some cases the national) part of educational-cultural public services that they are related to, at least in part can be delegated to the minority self-governments, of course together with their budgetary sources. The opposition local governments and the bureaucracy who do not support this idea have prevented this move forwards. The proof in the viability of the minority self-government system (and of course the protection of minority rights) is going to be whether we can take this step forward.

The minority data of the censuses in 1980 and 1990

The number of inhabitants in the country:

in 1980 10 709 463 inhabitants
 in 1990 10 374 823 inhabitants

According to native language			
Minorities	Inhabitants		Percentage of the total population in 1990
	1980	1990	
Slovaks	16054	12745	0.1228
Romanians	10141	8730	0.0841
Croats	20484	17577	0.1694
Serbs	3426	2953	0.0285
Slovenians	3142	2627	0.0253
Germans	31231	37511	0.3616
Gypsies	27915	48072	0.4634
Armenians	-	37	0.0004
Bulgarians	-	1640	0.0158
Poles	-	1370	0.0132
Ukrainians, Ruthenians	-	674	0.0065
Total	112393	133936	1.291

According to native language			
Minorities	Inhabitants		Percentage of the total population in 1990
	1980	1990	
Slovaks	9101	10459	0.1008
Romanians	8874	10740	0.1035
Croatians	13895	13570	0.1307
Serbs	2805	2905	0.0280
Slovenians	1731	1930	0.0186
Germans	11310	30824	0.2969
Gypsies	6404	142683	1.3743
Other minorities	16369	19640	0.1892
Total	70489	232751	2.242

Chart on the estimated population of the minorities in Hungary

Minorities	Number of inhabitants
Gypsies	400 000 – 600 000
Germans	200 000 – 220 000
Slovaks	100 000 – 110 000
Croats	80 000 – 90 000
Romanians	25 000
Polies	10 000
Serbs	5 000
Slovenians	5 000
Bulgarians	3 000 – 3 500
Greeks	4 000 – 4 500
Armenians	3 500 – 10 000
Ukrainians	1 000
Ruthenians	1 000
Total	790 500 – 1 085 000

Source: The declaration of the minority organisations

Hungary's commitments in the 3rd part of the regulations in the Regional and Minority Languages European Charter

Article 8

1.
 - a) (iv)
 - b) (iv)
 - c) (iv)
 - d) (iv)
 - e) (iii)
 - f) (iii)
 - g)
 - h)
 - i)

2.

Article 9

1.
 - a) (ii), (iii), (iv)
 - b) (ii), (iii)
 - c) (ii), (iii)
2.
 - a), b), c)

Article 10

1.
 - a) (v)
 - c)
2.
 - b), e), f), g)
3.
 - c)
4.
 - a), c)
- 5.

Article 11

1.
 - a) (iii)
 - b) (ii)
 - c) (ii)
 - e) (i)
 - f) (i)
 - g)

3.

Article 12

1.
 - a), b), c), f), g)
- 2.
- 3.

Article 13

1.
 - a)

Article 14

1.
 - a), b)