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**Replies of the Government of Hungary to the List of Issues
(CCPR/C/HUN/Q/5) to be taken up in connection with the
consideration of the fifth periodic report of Hungary
(CCPR/C/HUN/5)***

Budapest, June, 2010.

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

General Remarks

The Government of the Republic of Hungary submits its supplementary report concerning to the Fifth Periodic Report to the Human Rights Committee. The report contains answers to the lists of issues, which were adopted by the 98th session of the Human Right Committee. As State Party to the International Covenant on Civil and Political Rights the Republic of Hungary submitted its First Report on the implementation of the Covenant in 1977, its supplementary report in 1979, its second report in 1985, its third report in 1991, its fourth report in 1999 and the fifth in 2009.

Answers to the list of issues

Constitutional and legal framework within which the Covenant is implemented (article 2)

1. The relevant provisions regarding the Parliamentary Commissioners' mandate, human and financial resources are contained in:

- Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter referred to as: Constitution);
- Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (hereinafter referred to as: Parliamentary Commissioner Act);
- Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest (hereinafter referred to as: Data Protection Act).

According to Article 32/B of the Constitution the Parliament shall elect a Parliamentary Commissioner (ombudsperson) that is responsible for the protection of civil rights and a Commissioner that is responsible for the rights of national and ethnic minorities. The Parliament may also elect special Commissioners responsible for the protection of a particular constitutional right. Currently, beside the Commissioner for Civil Rights and the Commissioner for the Rights of National and Ethnic Minorities two special Commissioners are elected, namely the Commissioner for Data Protection and the Commissioner for the Future Generations (the latter is responsible for issues concerning environmental protection).

The Parliamentary Commissioner for Civil Rights is responsible for investigating or initiating the investigation of cases involving the violation of constitutional rights, which come to his/her attention, and initiating general or specific measures for the remedy of such violations (Art. 32/B par. (1) of the Constitution).

With regard to the relationship between the Commissioners, Art. 2. par. (2) of the Parliamentary Commissioner Act – in line with Art. 32/B. par. (4) of the Constitution – states that the Commissioner for Civil Rights, who has a general competence concerning fundamental rights issues, is not competent in matters that belong to the competence of special Commissioners (i.e. the Commissioners for the Rights of National and Ethnic Minorities, for the Data Protection and for the Future Generations).

In order to complete the information contained in paragraphs 50 and 51 of the State report – concerning the mandate of the Parliamentary Commissioner for Civil Rights – it is necessary to point out the followings:

- He/she may also start a procedure ex officio in case of detecting a violation of constitutional rights (Art. 16 par. (2) of the Parliamentary Commissioner Act).

- The Commissioner has the right to carry on an examination (Art. 18 of the Parliamentary Commissioner Act), and is entitled to enter the localities of the bodies/authorities under examination, to request information and explanation (not only from the authorities under examination but also from any other person or authority), or to access the content of the documents possessed by these bodies with certain limitations concerning qualified data and data held by the law enforcement or national security agencies or the Hungarian Armed Forces.
- If the Commissioner concludes that a violation of fundamental rights has occurred, he/she recommends a solution to the authority itself or its supervisory authority (Art. 20 and 21 of the Parliamentary Commissioner Act).
- The Commissioner has the right to initiate a procedure at the Constitutional Court that intends to oversee the compliance of different laws with the Constitution or an international agreement. The Commissioner also may request from the Constitutional Court the interpretation of the Constitution. Finally the Commissioner may initiate at the Constitutional Court the establishment of the violation of the Constitution by omission (Art. 22 of the Parliamentary Commissioner Act).
- The Commissioner has the right to initiate the submission of an objection by the competent prosecutor (Art. 23 of the Parliamentary Commissioner Act).
- If the Commissioner detects the commission of an infringement or a disciplinary offence he/she may launch a procedure at the competent body, in case of he/she detects the commission of a crime he/she shall initiate a procedure (Art. 24 of Parliamentary Commissioner Act).
- In case the breach of a fundamental right is detected to be stemming from the lack of appropriate legal provisions the Commissioner may propose the competent legislative body the elaboration, amendment or repeal of the law (Art. 25 of the Parliamentary Commissioner Act).
- The Commissioner shall present the Parliament an annual report on his/her activities that also highlights the cases where the recommendations of the Commissioner have been rejected (Art. 26 and 27 of the Parliamentary Commissioner Act).

The other Commissioners are also entitled to these tasks and competences restricted to their particular field of activity.

As regards the financial and human resources of the Commissioners and their Office, Article 28 paragraph (3) of Parliamentary Commissioner Act states that the costs and staff of the Commissioners and their office shall be determined as a separate chapter of the state budget. The employees of the Commissioners are appointed and dismissed by the Commissioners.

Principle of non-discrimination, rights of minorities, and freedom from torture and cruel, inhuman or degrading treatment (arts. 2, 3, 7, 26, 27)

2. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (hereinafter: Equal Treatment Act) defines the persons who shall observe the principle of equal treatment in two different ways.

Firstly in Article 4 it lists the entities (mainly bodies exercising public functions) who shall observe the principle of equal treatment in the course of all their legal

relationships.¹ Article 4 e) was amended, the above-mentioned obligation was extended to the interest representation organisations of employers and employees. The amended provision came into effect the 1st October 2009.

Secondly, in the course of legal relationships listed in Article 5 all the persons irrespectively of their legal nature shall observe the principle of equal treatment, so it applies also to several private actors. According to Article 5, the following persons shall observe the principle of equal treatment in respect of the relevant relationships: 1) those who make a proposal to persons not defined preliminarily to enter into contract or those who invite such persons to tender; 2) those who provide services or sell goods at their premises open to customers; 3) self-employed persons, legal entities and organisations without legal entity receiving state subsidies, in respect of their relationships established in the course of their utilisation of such state subsidies, from the time when the state subsidies are utilised, during the period while the competent authorities may audit the utilisation of the state subsidies in accordance with the regulations applicable to them; and 4) employers in respect of employment relationships, and persons entitled to give instructions in respect of other relationships aimed at work and relationships directly related thereto.

The exemptions listed in Article 6 (State report para. 16.) are aimed at preventing conflicts with other basic rights, such as freedom of association. According to Article 6, the provisions of the law on equal treatment shall not apply to relationships between members of non-governmental organisations, legal entities and organisations without a legal entity, related to membership, except for the establishment and cessation of membership. This provision was also amended by effect 1st October 2009. Due to the amendment the exemption does not apply to the membership of and involvement in public bodies and in interest representation organisations of employers and employees. Article 6 establishes exemptions regarding to relationships in the family and with relatives and relationships directly linked to the religious activity of churches. These exemptions safeguard the protection of family life and free expression of religion.

According to Article 13 (4) the budget of the Equal Treatment Authority (hereinafter: Authority) forms an independent title within the budgetary chapter of the Minister overseeing its operation. According to Article 13 (3) the Authority cannot be instructed in issues of its competence specified by the Equal Treatment Act. This provision intends to guarantee the Authority's independence from the Government.

In 2008 the turnover of cases of the Authority suddenly rose: while it proceeded in 491 cases in 2005 and 592 cases in 2006, it proceeded in 756 cases in 2007, 1153 cases in 2008 and 1087 cases in 2009. The number of decisions declaring the violation of law also increased dramatically in the past 5 years. In 2005 on 9, in 2006 on 27 occasions the Authority declared the violation of the requirement of equal treatment; while in 2007 29, in 2008 37 and in 2009 48 resolutions declaring violation of law were adopted.

According to Art. 15. para 5 of the Act on Equal Treatment, the Equal Treatment Authority shall proceed ex officio in cases where the principle of equal treatment is violated

¹ According to Article 4 the principle of equal treatment shall be observed by the Hungarian State, local and minority self-governments and the bodies thereof, organisations exercising powers as authorities, Hungarian Armed Forces and law enforcement bodies, public foundations, public bodies, organisations performing public utility services, institutions of public education and higher education, persons and institutions providing social care and child protection services, as well as child welfare services, museums, libraries, general educational institutions, voluntary mutual insurance funds, private pension funds, entities providing health care, parties, and budgetary agencies that do not belong to the above-mentioned bodies in the course of establishing relationships, in their relationships, in the course of their procedures and measures.

by the bodies defined in Art. 4 a)-d): the Hungarian State, local and minority self-governments and the bodies thereof, organizations exercising powers as authorities, armed forces and law enforcement bodies. To commence an investigation ex officio it is indispensable to receive a notification as a minimum condition for exploring the infringement of the requirement of equal treatment as special violation of law. It should also be noted that in most cases involving the violation of the principle of non-discrimination the personal assistance of the victim of the discrimination cannot be substituted as discrimination injures human dignity or is connected with features related to personality. In 2008 and 2009 the number of cases commenced ex officio was negligible, due to the lack of notifications. Investigation of matters of discrimination, informing the public, maintaining contact with nongovernmental and social organizations and satisfying information needs of international human rights organizations constituted priority. In 2009 two cases were commenced ex officio when the violation of the principal of equal treatment affected a large group of persons that could not be determined accurately.

In view of increased tasks and workload in 2008 the Authority was allowed to extend the staff by 4 but it was still much below the headcount necessary for more efficient performance of work, taking the drastically rising number of complaints and non-authority tasks formulated in law and governmental decree into consideration. As of 1st June 2010 the Authority consists of 20 civil servants, of which – beyond the supervisors- 9 employees are legal officers conducting investigations. In May 2009 the Authority signed a contract for a program named TÁMOP 5.5.5. „Social Renewal Operational Programme/ ‘Combating discrimination – shaping social approach and strengthening’. The 51 months long program’s budget is 911.000.000 HUF. One of the most important elements of the program is that a lawyer in each of the 20 Houses of Opportunities of the country and in Budapest will help complainants to ensure that the Authority should receive professional complaints. As a matter of fact, the number of consulting hours has grown, so the number of cases, complainants can be expected to rise significantly too.

The Authority’s budget in 2005 was 119.806.000 HUF, in 2006 it was 199.528.000 HUF, in 2007 it was 200.363.000 HUF, in 2008 211.176.000 HUF, in 2009 was 207.600.000 HUF and in 2010 it’s 201.500.000 HUF.

3. There are three specific provisions in the Penal Code aiming to punish incitement to discrimination, hostility or violence:

- Penal Code Article 269 on the incitement against a community;
- Penal Code Article 269/B on the use of totalitarian symbols;
- Penal Code Article 269/C on the public denial of the Holocaust.

It is important to stress that Penal Code Article 269/C on the public denial of the Holocaust is to be amended by the denial of the genocides committed by the communist regime.

Besides that, Article 10/C of Government Regulation 218/1999 (XII. 28.) on the administrative offences prohibits the activities declared illegal by the court in the decision dissolving an association and the participation in the functioning of the dissolved association and the wearing of the uniform of the dissolved association.

All those dispositions and their possible amendments in the future must align to the constitutional provisions regarding to the right of free expression of opinions.

(b) For personality rights considerations no statistical data on the ethnic origin of perpetrators or injured parties are collected; factual data on the issue could only be obtained by reviewing each criminal case file, provided that the injured party declared himself to be of Romani origin.

A review from this aspect of all the relevant criminal files would, however, impose unmanageable workload for the public prosecutor's offices (and for the investigation authorities and the courts) as well.

Therefore this question cannot be answered.

In general it can be established that injured parties belonging to a minority are protected under several provisions of the Criminal Code (e.g. Section 155 on genocide, Section 174/B on violence against a member of a community and Section 269 on incitement to hatred against a community.)

4. The Ministry of Local Government and Regional Development, then its successor, the Ministry of Local Government had taken several measures to further the social inclusion of Roma people:

1. In 2007 the section of the Ministry responsible for regional development worked out a manual for local governments for preparing its *integrated urban development strategies* that contain requirements of anti-segregation and equal opportunity. This strategy is the condition of participating in the EU project proposal procedures. The goal of these requirements is, that only those urban renewal and regional development projects can be realized by means of EU support that serve enhancement of equal opportunity and hinder discrimination and segregation.

2. The Ministry provided significant financial support from the national budget in the years of 2008-2009 *for the infrastructural development of crèches and public educational institutions* and for the procurement of school buses (communal buses). (Considerable financial sources are available for this goal in 2010 as well.)

The financial sources and tender opportunities of the national budget did not constitute a consistent financial assistance system eliminated specifically to decrease the disadvantages of Roma people; at the same time they contained the aspects of equal opportunity.

In order to improve the opportunities of people with multiple disadvantages, including the Roma, those applicants who laid emphasis on equal opportunities in their tenders were given preference. Local governments and associations of local governments that are situated from social, economic and infrastructure point of view underdeveloped regions or in regions where the unemployment rate is over the national average received a larger amount of money.

(E.g. the applicants had to verify that developments realize the institutional conditions of nursery schools for children with multiple disadvantages, possibly from the age of three, including Roma children.)

Making available supplementary support from the EU Own Resources Fund, the Ministry helped local governments to receive money from EU funds for the infrastructural development of nurseries and primary schools.

3. The Ministry supported sport programs that helped thousands of young people with multiple disadvantages or belonging to the Roma minority to involve in regular sport activity. Other programs helped talented young persons to advance by sport success.

Beyond assisting national leisure time sport programs the Ministry gave significant financial support to Leisure Time Sport Programs and to so-called Open-gate Facilities Program, which means that Sport Facilities are open in the afternoon, in the evening or at the weekend, and people can use them free in these time periods.

The Ministry supported several programs with cooperation of NGOs that helped specifically people with multiple disadvantages, including Roma people to go in for sports.

The following programs are regularly given financial assistance from the budget: the training and foreign football matches of the National Gipsy Football Team, events connected to the European Cup of Children's Homes and the Moonlight Program. (The goal of the Moonlight Program is to encourage young people - belonging to the most endangered age group and living in endangered circumstances - to spend their weekend nights - especially in summer - doing sports.) The above mentioned programs received regular financial assistance. Beyond that the Ministry supported programs initiated by Roma NGOs.

6. According to the draft of the Hungarian Strategy on Migration it is necessary to establish a suitable legal and institutional background to ensure the integration of refugees. Furthermore, it is also necessary to make it mandatory for them to do everything possible in order to learn the language of the country, culture, society and to succeed on the labour market in return for the benefits they receive. In accordance with the Constitution of Hungary even asylants, refugees and asylum seekers who have settled in Hungary for a longer period of time have the right to vote in elections of the local self-government if they are on the territory of the country on election day. The same ruling applies for voting in local referendums and in popular initiatives.

The Act III of 1989 on Freedom of Assembly allows the foreign nationals migrated or settled to Hungary or who possessing resident permit to be the organizer of a public event, while the Act II of 1989 on Freedom of Assembly endows them also with the right to be members of the managing and representative bodies of a civil society organization.

The Hungarian legislation in force fulfils the efforts of the Council of Europe in the field of nationality. Hungary was among the first signers of the European Convention on Nationality that was ratified and published in Act III of 2002. Act LV on Hungarian Citizenship was also modified in order to fulfill all requirements.

The alien control regulation in force also helps the integration of migrants by allowing them to change their purpose of stay freely at any time during their stay without making it necessary to leave the country. It is also allowed for them to be employed even if their permission was not granted for occupational activity.

The aim of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities is to establish a coherent and efficient anti-discriminative legal background. The Equal Treatment Authority was established to deal with individual and public complaints and to implement the principles of equality and non-discrimination. The right on equal treatment is ensured for everyone legally staying in the territory of Hungary.

Currently an act is under preparation to help the integration of the citizens of third countries. The integration would be mainly based on the access to possibilities to learn the language of the country.

According to the Hungarian Act LXXX of 2007 on Asylum, we can observe that the rights and obligations of beneficiaries of international protection are equal to that of Hungarian nationals. Therefore no discrimination in terms of social allocations, medical treatment etc. can be experienced vis-à-vis beneficiaries of international protection. Furthermore, due to their special status, they are entitled to additional benefits intending to facilitate their successful integration in the Hungarian society. They are therefore provided with a wide range of provisions such as: access to medical treatment, reimbursement of education-related costs, a monthly allowance, travel reductions, financial support for schooling, a unique financial contribution for settlement, the reimbursement of the translation costs of official documents, cost-free Hungarian language courses, support for housing etc.

As regards the elimination of discrimination practices vis-à-vis women, Hungary has recently adopted a strategy aiming at promoting the social equality of men and women (1004/2010. Government Resolution), which also applies to beneficiaries of international protection recognised in Hungary. The above-mentioned strategy considers as a priority to eliminate all forms of violence against women, facilitate their access to the labour market, as well as the introduction of a gender-orientated approach. These priorities are of crucial importance especially for the successful integration of women beneficiaries of international protection, as they remain to be a particular vulnerable group within beneficiaries of international protection.

The UNHCR project entitled “Age, Gender and Diversity Mainstreaming Participatory Assessment” (hereinafter referred to as: AGDM project) conducted by a multifunctional team in 2009 has found out that in general, residents are satisfied with the conditions prevailing in the Bicske Pre-Integration Reception Centre designated to accommodate recognised beneficiaries of international protection. The residents of the Reception Centre reported about the existence of employment opportunities within the facility (residents work in the laundry, in the kitchen, looking after children – part time job with salary), and expressed their satisfaction concerning the language classes, emphasising the fact that babysitting during language courses is organised, enabling mothers with small children to participate as well. As regards leisure activities, there are many different programme opportunities (football teams, excursions, etc.), NGOs and volunteers also organize programmes and projects. As regards positive developments, it has been reported by beneficiaries of international protection that children have the possibility to go to school and residents are encouraged to participate in camp management through regular meetings. Last but not least, in order to meet their particular needs, Somali Women are provided with special therapy in the PTSD Clinic, run by the Cordélia Foundation.

Furthermore, it also has to be noted that in 2009, a project of the Hungarian Bicske Pre-integration Reception Centre aiming at the improvement of integration provisions of beneficiaries of international protection as well as 3 projects of the Hungarian Reformed Mission (one focusing on ensuring better housing opportunities to beneficiaries of international protection, another project aiming at facilitating the integration of children of beneficiaries of international protection at school, and a third programme providing vocational training to beneficiaries of international protection in order to facilitate their access to the labour market) were granted financial support from the Hungarian allocation of the European Refugee Fund.

Due to the fact that Hungarian legislative elections have taken place recently, considerable structural changes within the Government are envisaged to be introduced, therefore we are at the moment unfortunately unable to foresee the near future and provide reliable information as regards the possible adoption of an integration strategy for beneficiaries of international protection. However, the Hungarian Ministry of Justice and Law Enforcement has recently assigned an organisation with the aim of making an analysis on the current situation in the field of integration of beneficiaries of international protection, identifying the main difficulties experienced and making recommendations in terms of changes to be introduced. The observations and suggestions made could be of useful help in the elaboration of a future integration strategy as regards beneficiaries of international protection.

Equality between men and women, and violence against women (arts. 3, 7, 25)

8. Hungarian criminal law does not recognise “domestic violence” as an independent statutory definition, or as a single criminal offence. The reason is that there are nearly thirty statutory definitions in the Hungarian CC. that include physical, psychological and sexual abuse, as well as neglect, thus they cover all legally indictable and morally condemnable

domestic violence actions. A few examples: defamation, harassment, physical abuse, breach of domicile, rape or murder.

The Hungarian criminal law does not have an independent statutory definition for “marital rape”; nevertheless, rape is a serious criminal offence which covers all types of acts forcing someone by violence or imminent duress against this person’s life or bodily integrity to have sexual intercourse, or using the incapacity of the person for defence or for the manifestation of the person’s will for sexual intercourse, not depending on whether the perpetrator is a member of a family, a spouse or an other person.

Until the 15th of September 1997. Hungarian CC. included another regulation of rape. According to the original legislation the perpetrator could be just a man, and couldn’t be the husband of the victim. The act LXXIII. of 1997 modified the offence. According to the original text of the offence in 1997:

Rape

Section 197

(1) The person who constrains a woman outside marital cohabitation with violence or with direct menace against life or limb to sexual intercourse, or uses the incapability of the woman for defence or for the declaration of her will for sexual intercourse, commits a felony and shall be punishable with imprisonment from two years to eight years.

(...)

(3) If the perpetrator and the injured party contract marriage before the passing of the sentence of the court of first instance, the punishment may be mitigated without limitation in case of subsection (1) and subsection (2), paragraph a).

As for the actual legislation the perpetrator could be also a man and a woman. The fact of the marriage is not a relevant circumstance. According to the updated text:

Rape

Section 197.

(1) Any person who forces another person by violence or imminent duress against her/his life or bodily integrity to have sexual intercourse, or uses the incapacity of the another person for defence or for the manifestation of her/his will for sexual intercourse, is guilty of a felony punishable by imprisonment between two to eight years.

(2) The punishment shall be imprisonment between five to ten years, if:

- a) the victim forced by violence or imminent duress against her/his life or bodily integrity to have sexual intercourse is under twelve years of age;
- b) the victim is in the care, custody or supervision of the perpetrator or receives medical treatment from the perpetrator;
- c) more than one person has sexual intercourse with the victim on the same occasion, knowing about each other's acts.

(3) The punishment shall be imprisonment between five to fifteen years if the provisions of Paragraph b) or c) of Subsection (2) also apply to rape as defined in Paragraph a) of Subsection (2).

It must be noted that the Hungarian Criminal Code contains no independent provisions on “violence within the family” or “spousal rape”.

As to the merits of the question it must be noted that, similarly to the question raised under 3/b, the statistical system does not make possible such search, therefore no data can be provided on these issues either.

In general, however, it can be noted that violent conducts committed against women within a family are sanctioned under several provisions of the Criminal Code (e.g. Section 166 on homicide, Section 170 on bodily injury, Section 175 on violation of personal liberty, Section 176/A on harassment, Section 197 on rape and Section 198 on sexual assault).

Measures to combat terrorism; respect for the rights guaranteed in the Covenant

10. The rules concerning counter-terrorism – including the definition of terrorism – are laid down in the CC. According to Section 261 (1)-(2) of CC, the definition of terrorism reads as follows:

“(1) Any person who commits a violent crime against persons or commits a crime that endangers the public or involves the use of a firearm referred to in Subsection (9) in order to:

a) coerce a government agency, another state or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another state, or to disrupt the operation of an international organization;

is guilty of a felony punishable by imprisonment between ten to twenty years, or life imprisonment.

(2) Any person who seizes considerable assets or property for the purpose defined in Paragraph a) and makes demands to government agencies or non-governmental organizations in exchange for refraining from harming or injuring said assets and property or for returning them shall be punishable according to Subsection (1).”

The punishment of the act of terrorism is the most severe within the sanctioning regime of the CC: imprisonment from ten years to twenty years or life imprisonment.

Attempt is criminalized for all offences according to general criminal law principles in Hungary as set forth in Sections 16-17 of CC and is applicable to act of terrorism. The attempt carries the same level of sanction as the main offence.

Subsection (1) of Section 261 of CC stipulates those aims which classify the commission of the offences as an act of terrorism which are enumerated in Subsection (9) of this Section.

According to Subsection (9) of Section 261:

“(9) For the purposes of this Section:

a) 'violent crime against a person and crime of public endangerment that involves the use of firearms' shall mean homicide [Subsections (1) and (2) of Section 166], battery [Subsections (1)-(5) of Section 170], wilful malpractice [Subsection (3) of Section 171], violation of personal freedom (Section 175), kidnapping (Section 175/A), crimes against transportation safety [Subsections (1) and (2) of Section 184], endangering railway, air or water traffic [Subsections (1) and (2) of Section 185], violence against public officials (Section 229), violence against persons performing public duties (Section 230), violence against a person aiding a public official (Section 231), violence against a person under international protection (Section 232),

public endangerment [Subsections (1)-(3) of Section 259], interference with public works [Subsections (1)-(4) of Section 260], seizure of an aircraft, any means of railway, water or road transport or any means of freight transport (Section 262), criminal misuse of explosives or explosive devices (Section 263), criminal misuse of firearms or ammunition [Subsections (1)-(3) of Section 263/A], criminal misuse of military items and services, and dual-use items and technology (Subsections (1)-(3) of Section 263/B), criminal misuse of radioactive materials [Subsections (1)-(3) of Section 264], criminal misuse of weapons prohibited by international convention [Subsections (1)-(3) of Section 264/C], crimes against computer systems and computer data (Section 300/C), robbery (Section 321), and vandalism (Section 324);

b) 'terrorist group' shall mean a group consisting of three or more persons operating in accord for an extended period of time whose aim is to commit the crimes defined in Subsections (1)-(2)."

In order to facilitate the investigation of terrorist acts, Subsection (3) of Section 261 of CC ensures the possibility of commutation of the punishment if a person abandons the commission of the act of terrorism before serious consequences of it could occur and cooperates with the investigative authorities in order to mitigate the consequences of the offence, or to find other co-perpetrators of it.

"(3) The punishment of any person who:

a) abandons commission of the criminal act defined under Subsections (1) and (2) before any grave consequences are able to materialize; and

b) confesses his conduct to the authorities;

in such a manner as to cooperate with the authorities to prevent or mitigate the consequences of such criminal act, apprehend other co actors, and prevent other criminal acts may be reduced without limitation."

The preparation of acts of terrorism is punishable according to Subsection (4) of Section 261 of CC. The provision gives a whole list of the preparatory acts, moreover, it ensures that also providing or raising funds to finance the terrorist activities constitutes a criminal offence. Under this provision, the financing of terrorist acts which are not committed or intended to be committed by a terrorist group is punishable.

"(4) Any person who invites, offers for, undertakes its perpetration, agrees on joint perpetration of any of the criminal acts defined under Subsection (1) and (2), or provides for the perpetration of the crime the conditions required therefore or facilitating that, or by provides or raises funds or facilitating the perpetration of the crime finance the activities of the commission is guilty of felony punishable by imprisonment between two to eight years."

Under Subsection (5) of Section 261 of CC the financing of terrorist acts which are intended to be committed by a terrorist group is punishable.

"(5) Any person who is engaged in the conduct referred to in Subsection (4) or in the commission of any of the criminal acts defined under Subsections (1) and (2) in a terrorist group, or supports the terrorist group in any other form is guilty of felony punishable by imprisonment between five to ten years."

Under Subsection (6) of Section 261 of CC the person who confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act shall not be liable for prosecution for the terrorist act. According to this provision, the interest of disclose and prevent terrorist acts takes priority over the interest to punish the offender.

“(6) The perpetrator of a criminal act defined in Subsection (4) or (5) shall not be liable for prosecution if he confesses the act to the authorities before they become aware of it and reveals the circumstances of the criminal act.”

Under Subsection (7) of Section 261 of CC threatening to commit a terrorist act is punishable.

“(7) Any person threatening to commit the crimes specified in Subsections (1) and (2) is guilty of a felony punishable by imprisonment between two to eight years.”

The omission to report act of terrorism is also punishable according to Subsection (8) of Section 261 of CC.

“(8) Any person who has positive knowledge concerning plans for a terrorist act and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment for up to three years.”

II.

In the Act of XIX of 1998 on Criminal Proceedings (hereinafter referred as to CP) there is only one special provision concerning terrorist act.

According to CP, the court of first instance is a local court or a county court. According to Section 15 of CP the judgement of criminal offences in the first instance shall fall within the competence of the local court, unless they are referred to the competence of the county court by the CP. The terrorist act is a crime which falls within the competence of the county court. As a main rule the county court acting as a court of first instance may conduct its procedure in a panel consisting of one professional judge and two associate judges.

Freedom from torture and cruel, inhuman or degrading treatment, treatment of prisoners, liberty and security of a person, the right to a fair trial, and rights of minorities (arts. 7, 9, 10, 14 and 27)

11. According to CP video-recording of interrogations is not obligatory in Hungary. As a main rule, the prosecutor and the investigating authority shall take minutes on the investigatory actions, including the interrogations of the suspected person and the measures implemented by the prosecutor and the investigating authority. The minutes shall be drawn up by the keeper of minutes or a member of the investigating authority [Section 166 (1) of CP].

According to Section 167 (1) the prosecutor and the investigating authority may order the recording of the investigatory action by shorthand, a video or audio recorder or other equipment, and shall order the same at the motion of the suspect, the counsel for the defence or the victim filed simultaneously with an advance payment of the costs. Such recording shall not substitute the minutes, however, in the case of the concurrent voice and video recording made by the prosecutor or the investigating authority, the minutes shall only contain the names of those present and the place, time and other conditions of the recording.

Please provide more detailed statistics on all cases of ill-treatment by law enforcement officials, including the number of reported cases as compared to indictments and as compared to sentences, in detention and outside of detention, as well as on acquittals, during the reporting period. Please also indicate:

Year	Criminal procedures	Investigation terminated	Criminal charges	Acquittals	Sentence			In progress
					Fine	Imprisonment		
						Case	Suspended for probation (months)	
2000	34	27	7	5	1	1	8	
2001	58	49	9	3	5	1	7	
2002	42	42						
2003	30	22	8	4	3	1	10	
2004	37	33	4	3	1			
2005	102	94	8	3	4	1	16	
2006	80	66	14	4	8	2	19	
2007	88	72	16	7	8	1	4	
2008	79	69	10	2	4			4
2009	202	163	39	12	4	3	22	20
Total:	752	637	115	43	38	10		24

(a) *whether video-recording of interrogations is obligatory in the State party;*

No video camera used during the hearings of prisoners in Prison Service facilities. If any events related to a criminal case gets recorded by security cameras on corridors, landings or other community areas of the prison, those footages are handed over to the investigative authority.

(b) *whether detainees alleging ill-treatment are examined by an independent physician and without the presence of a law enforcement official; and*

The Hungarian Prison Service - in accordance with the CoU recommendations on European Prison Rules - operates a separate healthcare system including basic and in- and outpatient special care.

This function is based on the following legal base (mentioning the most relevant pieces only):

- 11. Statutory Rule /1979 on execution of criminal measures and punishments
- CLIV. Act of 1997. on healthcare. This consists elements to be applied on prisoners (prisoners as donors of body parts or tissues, limitations of medical researches, official procedures in case of death). It authorizes the Minister of Justice to regulate the special elements of prisoners' health care.
- LXXXIII. Act of 1997. on social security provisions and private pension entitlement of prisoners (15. §. (2) c), 16.§. (1) n). The prisoners are entitled to receive emergency care and health services covered by the social security system.
- 217/1997. (XII. 1.) Government Decree on implementation of LXXXIII Act of 1997. on mandatory health insurance. It states that prisoners health care shall be provided by the Prison Service, if proper care is not available within the system, other services shall be involved.
- 6/1996. (VII. 12.) Decree of the Minister of Justice on implementation of rules of imprisonment and pretrial detention
- 5/1998. (III. 6.) Decree of the Minister of Justice on prisoners' health care.

- 30/2003. (VII. 18.) IM-ESZCSM Ministers Common Decree on the cooperation of public health authorities (ÁNTSZ) and the Prison Service.

Most of the members of the Prison Service health care system are full- or part-time Prison Service employees, thus can not be regarded as fully independent persons from the Service. In all other respect they are under the authority and supervision of the healthcare government, professionally licensed by it exclusively. From this perspective the medical personnel is independent from the prison regime, and obliged to provide services on the basis of scientifically based and carefully edited protocols and regulations.

If a prisoner reports a case of abuse, or any injury is detected by the staff, or any other information emerges of such an event, the prisoner is brought to see a doctor, and record the injuries, if necessary, with no delay. In these cases, other personnel than the doctor or the nurse is present only if the behaviour of the prisoner endangers the staff. The results of the examination are filed in the medical documentation and stored according to the data protection rules, classified as sensitive personal data.

If prison staff personnel is not available at the event of such cases, external medical doctor is called in, in which case the same rules are applied.

- (c) *what steps the State party envisages taking to address the low reporting level as indicated in para. 100 of the report.*

The Prison Service makes serious efforts to fight against the abuses and other unlawful acts of the staff. For this end several Director General's commands and circular letters to the prisons have been issued.

It is a general view, that in the case of suspicion of abuse or other unlawful act committed by staff members emerges, proper criminal and disciplinary procedures are due to be initiated.

The directors of the prisons appear in the cellblocks on a regular basis, and keep a direct contact with the prisoners. The managers' controls are aiming to filter out any unlawful treatment is continuous and the number of such occasions are increasing.

The prisoners are entitled to apply for personal hearing with the director, also can approach the investigative bodies (military attorneys office) as well as submit complains indirectly to the national and international rights protection organisations. The prisoners are fully informed about these opportunities, the address of these organisations are advertised on notice boards on all landings. These letters are sealed by the prisoners and forwarded to the addressee without control.

12. The statistical figures of criminal cases initiated on the suspicion of abuse committed in official procedure can be found in the statistical table under article 11. As it shows, during the period of 10 years 48 out of the 752 cases concluded with conviction. In 38 cases the court imposed fine, in 10 cases the sentence was imprisonment suspended for probation.

13. The involvement of higher management in the procedure of staff selection procedure increases in prisons. The staff training system is improved by planned development elements of training methods and enhanced curricula.

The commissioned officers are educated at the Police Academy. The subject of constitutional rights deals with the issue of human rights separately, and the subject of prison related law discusses the special matters of prisoners' human rights. The general psychological education consist of elements of social prejudices, and within framework the six semesters of prison psychology one semester covers the psychological aspects of prisoners' human rights issues, among others, prejudices.

It is a general practice that human rights organisations are invited to speak at these courses.

The Prison Service operates its own training centre for the non-commissioned officers (line staff). The document of European Prison Rules is an integral part of the training curricula as well as the fight against prejudices concerning social minorities.

In all prisons crime prevention trainings and lectures are organised inviting speakers from the military attorneys' office, and the higher authorities. These crime preventive elements appear also in the talking points of the briefings of the daily shifts, and staff meetings.

14. 120 persons are in more than 2 year pre-trial detention.

15. The rules concerning prisoners' contacts with their relatives and also with the defence attorney in case of pretrial detainees is regulated in 6/1996. (VII. 12.) Decree of the Minister of Justice on implementation of rules of imprisonment and pretrial detention. The prisoners has to be informed in written form at the admission that he/she can establish contact with his/her relative or other person he she names with the consent of the other person, meaning that this persons' personal data will be registered by the Prison Service, according to the data protection regulations. In case of a defence lawyer or representatives of international organisations no such consent needed. In order to get this consent, the prisoner is allowed to write one letter to the person. Written consent needed to enter the persons' data into the system.

The content of communication between the prisoner and official authorities or international organizations can not be controlled. If suspicion emerges that the letters coming from other source than the defence lawyer, official authority or international organization, the envelop can be opened in the presence of the prisoner and the event shall be officially recorded. The procedure can aim the identification of the sender only.

According to the phase of the procedure the attorney or the judge is entitled to decide on the contacts of the pre-trial detainee. It includes:

- the control of the correspondence and telephone calls
- the limitation or prohibition of correspondence, telephone calls, receiving parcels or visitors.

If neither the judge nor the attorney prescribes special rules for the contacts of the prisoner, the Prison Service applies general rules.

The implementation of these rules under the continuous scrutiny of the Prison Service Headquarters. Neither in compliant practice has been reported on the basis of these inspections, nor follow-up examinations revealed malpractice after complains has been received from prisoners or their legal representatives.

That indeed causes problems, that the contact can be established only after the consents of the relatives has been received. It may take weeks, and this concerns the prisoners. In this case the delay is due to the regulations, not the fault of the Prison Service.

The Decree cited above prescribes that the Prison Service shall guarantee the conditions that make it possible for the pre-trial detainee to exercise their rights in the criminal procedure. They can communicate with their defence lawyer both verbally and in written form without control. The personal consultation can take place during the office hours, except the delay would have legal consequences in the criminal procedure. For telephone conversation only the Prison Service property telephones can be used. The conversation can not be intercepted, but the defence lawyer can be called back in order to

check his/her identity. The duration of the call can be limited only on the basis of the need of other prisoners to use the available telephones.

The pre-trial detainee can keep his/her notes with him/her and allowed to give it to the defence lawyer without control. The defence lawyers' notes or sound recordings made during the consultation with the pre-trial detainees can be taken out of the prison facility without control. The personal protection of the defence lawyer is provided by the Prison Service on request or with consent. The Prison Service shall not limit the criminal procedural rights neither the pre-trial detainee nor the defence lawyer. For non-Hungarian citizen pre-trial detainees the contact with the consular representative of the country of origin the same rules have to be applied accordingly.

B.)

A defence counsel is appointed by the organ (investigation authority, public prosecutor's office or court) in whose proceedings the necessity of the appointment arises.

Defence counsels are appointed from registers compiled and made available by the county bar associations. In counties with a low number of attorneys all the attorneys practising in the county are included in the register as available for appointment, while in counties with sufficient number of attorneys admission in the register is on a voluntary basis. A defence counsel shall be appointed in three cases:

- where a counsel's participation is mandatory under the law and the defendant has no defence counsel of his own;
- where, based on the income and means test, the defendant has been granted exemption from costs and he requests for the appointment of a counsel;
- where the proceeding authority deems such appointment necessary in the defendant's interest.

The participation of a defence counsel is **mandatory** in criminal proceedings if the defendant is detained or deaf, mute, blind or mentally disabled, or does not speak the Hungarian language or the language of the proceedings or is unable to defend himself personally for any other reasons, or if it is expressly stipulated in this Act on the code of criminal procedure (e.g. in proceedings against juveniles or absent defendants).

Where the defendant is granted **personal exemption from bearing the costs** the appointed counsel's fee and expenses shall be paid by the state. Such exemption may be requested if the defendant's monthly income, in case he lives alone, does not exceed twice the amount of the lowest old age pension (57000 HUF) or, in case he lives with family members in the same household, the amount of the lowest old age pension (28500 HUF). A further condition for granting personal exemption from costs is that the defendant should have no assets other than basic items necessary for life and living, production and work equipments necessary for subsistence, and the real estate in which he lives. Minors, children under temporary or permanent care, homeless persons, applicants receiving old age allowance or regular social benefit and dependent applicants in care of persons receiving old age allowance or regular social benefit shall be granted personal exemption from costs without an income and means test. Requests for such exemption shall be lodged with the investigation authority or the public prosecutor or the court proceeding in the given case.

Only **attorneys, European Community lawyers** and, in certain cases, junior associates may proceed under appointments. Appointments shall last until the final termination of the criminal proceedings and shall cover special proceedings, too.

The fee of the appointed counsel shall be included in the criminal costs. Criminal costs shall be advanced by the authority in whose proceedings they emerge. Decision on the advancement of criminal costs related to the proceedings of the public prosecutor or the

investigation judge shall be taken by the public prosecutor; decision on the advancement of criminal costs related to the proceedings of the court shall be taken by the judge. Where proceedings are discontinued by the public prosecutor, criminal costs shall be born by the state. The court shall oblige the defendant to bear the criminal costs in case it finds him/her guilty or establishes his/her liability for the commission of a petty offence. The court may exempt a defendant from paying part of the criminal costs if those costs are disproportionately high as compared to the weight of the offence. The costs advanced by the state shall be born by the state if the defendant cannot be obliged to bear them or has been granted personal exemption from costs.

Based on a Government decision adopted in 2007 the concept of the reform of the system of appointed defence counsels is being under preparation at the Ministry of Justice. A substantial element of the concept is that defence counsels shall, in the future, be appointed not by the organ conducting the criminal proceedings (investigation authority, public prosecutor, court) but – upon notification of the necessity of legal representation from the organ conducting the proceedings– by an independent organ, the Office of Justice. The task of this organ shall be to finance the operation of this legal institution (determination of fees, effecting payments). Decision on launching the reform will probably be taken by the Government by the end of 2010.

According to Section 47 and 48 of CP, a legal counsel for the defence is primarily appointed by the defendant. A power of attorney may also be conferred by the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country. If defence is statutory and the defendant has not retained a counsel for the defence, the court, the prosecutor or the investigating authority shall appoint a counsel for the defence ex officio. The court, the prosecutor or the investigating authority shall also appoint a legal counsel for the defence if defence is not statutory, but the defendant requests the appointment of a legal counsel because of his inability to make arrangements for his defence due to his financial standing. If deemed necessary in the interest of the defendant, at the request of the legal representative or a relative of legal age of the defendant, or, in the case of foreign citizens, the officer at the consulate of their native country, or ex officio, the court, the prosecutor or the investigating authority shall appoint a legal counsel for the defence.

The circumstances which are grounds for statutory defence are the followings:

According to Section 46 of CP the participation of a counsel for the defence is statutory in criminal proceedings if

- the law orders a five-year or more severe imprisonment for the criminal offence,
- the defendant is detained,
- the defendant is deaf, mute, blind or – regardless of his legal responsibility – mentally disabled,
- the defendant does not speak the Hungarian language or the language of the procedure,
- the defendant is unable to defend himself personally for any other reasons,
- if expressly stipulated so in CP, e. g.:
 - if the investigating judge holds the session by way of a closed-circuit communication system,
 - in the court procedure in front of the county court as court of first instance,
 - in the review procedure,

- in the procedure against a juvenile defendant
- in military criminal proceedings the presence of the counsel for the defence is statutory at the trial if the criminal offence is punishable by five years' or more imprisonment by law, in the cases of obligatory defence, if there is a substitute private accuser,
- in arraignment, at the trial,
- in procedure against an absent defendant at the trial,
- upon a waiver of trial,
- in case of the deposit of a security,
- in case of request for legal remedy on legal grounds (the Prosecutor General may report a legal remedy on legal grounds at the Supreme Court against the unlawful and final decision of the court, unless the final decision may be contested by other means of legal remedy).

16. (a) See Question 6 concerning the structural changes to be introduced within the Government.

(b) In March 2009 the Public Prosecutor – by the Hungarian Helsinki Committee's initiative – has conducted a procedure as regards the continuous alien-policing detention of asylum seekers once their claim has been referred to the in-merit procedure. In its report, the Public Prosecutor has concluded that this practice is unlawful and shall cease to exist. In line with the Public Prosecutor's observations, the Hungarian Ministry of Justice and Law Enforcement as the supervisor body of the Office of Immigration and Nationality, has urged the Refugee Authority to comply with the legal obligations set out in the Asylum Act and initiate the termination of the alien-policing detention of asylum seekers referred to the in-merit procedure.

(c) According to the Act II of 2007 on the Admission and Right of Residence of Third Country nationals, detention can only be ordered for a maximum duration of seventy-two hours, and it may be extended by the court of jurisdiction by reference to the place of detention until the third-country national's departure, with a duration of maximum 30 days per extension. The total duration of detention can not exceed 6 months. Third-country nationals may not apply for the suspension of proceedings for ordering their detention. However, a third-country national placed under detention may lodge a *complaint* - as a form of remedy, on the grounds of an infringement of the law - against the resolution ordering his/her detention *within seventy-two hours* from the time when ordered. The complaint shall be adjudged by the local court of jurisdiction by reference to the place of detention. According to the court's decision: detention shall either be terminated if declared to be unlawful, or any measure that has been omitted must be carried out, or any infringement must be remedied.

According to the Act II of 2007 on the Admission and Right of Residence of Third Country nationals, a third-country national placed under detention has the *right to lodge a complaint* in the event of the immigration authority's *failure to comply with its obligations related to the execution of detention* (such as the obligation to inform the third country national of his/her rights and obligations on his/her mother tongue or a language that he/she is supposed to understand; men should be placed in a different place as women, and several other rights of the detained third country national, enumerated in the above-mentioned Act have to be ensured). The complaint shall be adjudged by the local court of jurisdiction by reference to the place of detention.

17. A.) According to the findings of the 2009 AGDM project, the observations made show some improvements as regards the conditions prevailing in detention facilities.

Concerning the detention facility located in *Nyirbator*, it can be concluded that the facility is kept very clean, the monthly hygienic package increased recently (one package of toilet paper is provided for two weeks whereas before the same for a month), and bed linen are cleaned every two week.

As regards the administrative detention centre located in *Győr*, the residents reported that the staff is helpful and kind, some detainees mentioned that they were well informed about detention however some of them seemed uninformed. They told that the quality and the quantity of the food are sufficient and appropriate, only the lack of fruits poses a problem. Detainees have access to pay-phone and they are informed about the possibilities of means of communication; *the healthcare system of the facility functions well*, residents reported to receive all help needed.

As for the detention facility of *Kiskunhalas*, detainees noted as positive features that *legal counselling is available twice a week*; they receive hot water after lunch to make coffee and/or tea; women are not separated from each other; *four types of food adhering to religious criteria are available at every meal*.

As regards the Administrative detention centre of the *Budapest International Airport* positive findings were reported such as the fact that lock-up doors are not locked; sports and recreational possibilities are provided; TV is available both for male and female detainees; staff is friendly and helpful; food is good; *fruits and chocolates* provided, *the doctor speaks English*; if residents run out of hygienic package, they are provided with an additional one; bed-sheets are cleaned on a regular weekly basis; *legal advice* and pay-phone are available

B.) In order to reduce the overcrowding of the prison facilities, two new prisons have been opened in 2008, with 1380 capacity. By this the overcrowding rate reduced from 126% to 117%. As the population is growing continuously since than, and two units of two prisons have been closed due to economy reasons, the current rate is 135%. The management of the Prison Service is seeking solutions to reduce the overcrowding permanently.

The equalization program to achieve a better dislocation of prisoners among prisons has been launched in September 2008. The program targets those local (county) pre-trial prisons in which the overcrowding exceeds the national average, and the living conditions were more grave (Budapest capital, Baranya, Borsod-Abaúj-Zemplén, Hajdú-Bihar, Fejér, Szabolcs-Szatmár-Bereg counties). Under the disposal of the judge, those pre-trial detainees who had already been charged by the attorney, can be transferred to less busy facilities. This initiative successfully equalized the disproportionate overcrowding rates among prisons.

Although this program still in progress, the 4151 pre-trial population of September 2008. increased to 4578 at May 2010. The overall prison population increased with 1357 within this period. The two new prisons, operating on Public Private Partnership basis, are mainly for convicted prisoners.

The other aspect of the problem, contributing to the uneven overcrowding of prisons, is that the crime rates differ from region to region as well. The pre-trial detainees can not be transferred too far from the jurisdiction region (for instance the problematic Eastern counties) in which their cases are dealt with and their relatives live. Also the Prison Service has no effect on the actual penal policy, the sentencing practice or the number of remand orders whatsoever.

As a consequence, the management of the Prison Service is keen on seeking the opportunities to increase the capacity.

Besides, the Prison Service strived to put forward proposals to promote and widen the use of alternative, non-custodial sanctions (e.g. electronic monitoring). These solutions require change of legislation but would have a positive effect on tackling the overcrowding problem.

18. The Igazságügyi Megfigyelő és Elmegyógyító Intézet (Forensic Observation and Psychiatric Treatment Institute, IMEI), as all the other healthcare provider, is under the professional disposal of the healthcare authorities. At the same stance, it also operates under the governance of the Minister of Justice as a closed Prison Service facility, and statutory supervision of the Attorney's Highest Office. It is an entity with special legal status, carrying out mandatory psychiatric treatment regulated by the Criminal Code, and temporary mandatory psychiatric treatment by the Criminal Procedure Act.

Further tasks of the IMEI are to carry out the psychiatric forensic observation of pretrial detainees, by applying up-to-date diagnostic and treatment methods, the psychiatric and neurological diagnosis and treatment of convicted prisoners, the examination and observation of offenders with limited criminal accountability and with personality disorders and also the professional supervision of psycho-therapeutic programs run in prisons.

Further regulations are in effect, namely the 11. Statutory Rule /1979 on execution of criminal measures and punishments, the 36/2003. (X. 3.) Minister of Justice Decree on implementation of mandatory psychiatric treatment and temporary mandatory psychiatric treatment and the task and operation of IMEI. The CLIV. Act of 1997. on healthcare mentions IMEI and it's patients, authorizing the opportunity of special regulation.

In the respect of external professional supervision the 15/2005 (V.2) Minister of Health Decree on professional supervision of healthcare providers regulates IMEI as well.

The sanction of mandatory psychiatric treatment is dealt with the IV. act of 1978. on Criminal Code section 74/1. The mandatory psychiatric treatment shall be imposed in case of a perpetrator who committed violent crime or crime against public safety, if he/she can not be punished due to a mental illness, and the repetition of the act can be assumed, provided that the sentence, if imposed, would be longer than a year. The treatment is carried out in a dedicated closed institution, the IMEI.

The treatment can not exceed the maximum length of a sentence would be imposed for a crime in case of a perpetrator with no mental illness. In case of life sentence the treatment can not be longer than 20 years. After the expiration of the maximum term and if it is necessary due to certain circumstances described in the Healthcare Act, the treatment will continue in a psychiatric hospital other than the IMEI. The treatment should be terminated with no delay if its necessity no longer exists. The detailed rule of implementation is regulated in the 11. Statutory Rule /1979 on execution of criminal measures and punishments.

The temporary mandatory psychiatric treatment is regulated in the Criminal Procedure Act. It can be ordered by the judge, if it is assumed that the measure of mandatory psychiatric treatment will be imposed. In this procedure the rules of ordering pre-trial detentions shall be applied.

If the accused is in pre-trial detention, and the temporary mandatory psychiatric treatment comes into effect, the pre-trial detention shall be terminated.

If the pre-trial detainee needs psychiatric treatment but no necessity of ordering temporary mandatory psychiatric treatment emerges, the pre-trial detention – on the order of the judge - shall be carried out in the IMEI.

The length and the review of temporary mandatory psychiatric treatment are regulated in the Criminal Procedure Act 142-143. The detailed regulation is in the 36/2003.

(X. 3.) Minister of Justice Decree on implementation of mandatory psychiatric treatment and temporary mandatory psychiatric treatment and the task and operation of IMEI.

The detailed rules of review of mandatory psychiatric treatment regulated in the Criminal Procedure Act 566. The necessity of the mandatory psychiatric treatment is reviewed *ex officio* in every six months by the court but, it also can be reviewed on proposition. The proposition can be neglected only if the last review had happened no longer than three month before. The proposition can be submitted by the attorney, the subject under mandatory psychiatric treatment, his/her spouse or co-habitant, the defence lawyer, the legal representative or can be initiated by the director of the institution of detainment. Before the review it is necessary to receive medical expert's opinion, which can be issued by the doctor of institution of detainment.

The rule of the expert in the procedure is to judge the psychiatric status of the subject and declaring his/her opinion about the probability of repetition of the crime.

Elimination of slavery and servitude (art. 8)

19. A.) Hungary is a transit country as regards trafficking in human beings for sexual exploitation from Ukraine, Moldavia, Bulgaria, and Romania to Western Europe and the United States. Hungary besides is a country of origin especially in terms of trafficking in human beings to Austria, Germany and other Western-European countries for the purpose of sexual exploitation. Besides Hungary is a destination country in relation with Ukraine, Moldavia, Romania and Russia.

According to the available domestic statistics in Hungary between 2000 and 2005 153 cases became known from the crimes of trafficking in human beings.

As regards the sex of victims: most of them (72%) are women, 7% men, as regards the remaining amount there is a lack of data or the victim is unknown.

Continuing the examination of the victims it turns out that 38% are young adults (between 18 and 24), 18% are under 18. 52% of female victims were young adults, 25% was under 18. 40% of the male victims are adults, 50% is 1-year-old or younger child.

On the side of perpetrators the situation is the opposite. 63% of the known perpetrators are adults. 33% are young adults, and only 4% are under 18. As regards the sex of perpetrators we can establish that 77% of the perpetrators of these crimes are men.

Closer examination of the relationship between the perpetrator and the victim shows that the perpetrators in the majority of the cases (54%) are unknown to the victim, or are stray acquaintances (17%).

When examining the data above it has to be emphasized that at present we only have the police statistics and the data of ERÜBS, which means that we have no figures related to those crimes that avoided the scope of law enforcement. The investigation of latent cases as well as the detailed collection of figures related to the victims is missing, and so are the examinations of the groups in especially endangered situation. Therefore a much wider spectrum of data collection and processing is needed in the interest of accurate quantitative and qualitative examination of trafficking in human beings.

The figures related to crimes – with the purposes of prostitution –, related to trafficking (status of fancy, bawdry, supporting prostitution, prohibited use of human body), cannot be disregarded if we wish to gain complete set of data about the fact.

2000. Between 2000 and 2005 315 cases of supporting prostitution, 362 cases of status of fancy, 521 cases of bawdry and 1 case of prohibited use of human body became known.

Examining the perpetrators' side of the relevant crimes we can see that it is mostly committed by men age of 25-59– just like in the case of trafficking in human beings. However the analysis of the victims' side is hindered by the lack of data collection – apart from pandering –on the relevant crimes.

In 2009 27 prosecutions were started, which are still ongoing cases. Concerning convictions the following data are available.

Baranya County Court

7 perpetrators convicted for 16 crimes of THB for sexual exploitation:

- 7 years in high security prison and 8 years of restriction from public affairs and 4.000.000 Ft supplementary fine;
- 2 years 6 months in high security prison and 3 years of restriction from public affairs;
- 1 year in prison suspended for 4 years;
- 1 year 4 months in prison 2 years of restriction from public affairs and 300.000 Ft supplementary fine;
- 2 years 2 months in prison 3 years of restriction from public affairs and 500.000 Ft supplementary fine;
- 2 years in prison 3 years of restriction from public affairs;
- 1 year in prison suspended for 4 years.

Borsod-Abaúj-Zemplén County Court:

4 perpetrators convicted for 4 crimes.

- 3 years 8 months imprisonment and 4 years restriction from public affairs;
- 5 years in high security prison and 5 years of restriction from public affairs;
- 4 years 6 months imprisonment and 5 years restriction from public affairs;
- 5 years 10 months in high security prison and 6 years of restriction from public affairs.

Szabolcs-Szatmár-Bereg County Court

8 perpetrators convicted for 8 crimes

- 8 months in prison suspended for 2 years;
- 1 year 2 months prison and 2 years of restriction from public affairs;
- 8 months in prison 2 years of restriction from public affairs;
- 10 months in prison 2 years of restriction from public affairs;
- 1 year 2 months in prison 2 years of restriction from public affairs;
- 1 year 2 months in prison 2 years of restriction from public affairs;
- 2 years 6 months in high security prison and 4 years of restriction from public affairs;
- 2 years 6 months in high security prison and 3 years of restriction from public affairs and confiscation of 300.000 Ft;
- 1 year 6 months in prison 3 years of restriction from public affairs.

Vas County Court

3 perpetrators convicted for 3 crimes.

- 4 years in prison for minors 4 years of restriction from public affairs;
- 5 years in high security prison and 5 years of restriction from public affairs;
- 5 years in high security prison and 5 years of restriction from public affairs.

There are several international and EU documents to prevent, suppress and punish trafficking in human beings, and to protect and support victims, majority of which has been transposed to Hungarian law.

The most important ones are the followings:

- Universal Declaration of Human Rights (1948) 4. Articles 4 and 5;
- UN Convention on the Elimination of All Forms of Discrimination against Women (1979) Articles 5 and 6 and decree-act No 10 of 1982 on its promulgation;
- the UN Convention on the Rights of the Child (1989) and Act of 1991 No LXIV on its promulgation;
- the UN Convention against Transnational Organized Crime (hereafter: Palermo Convention), and Act No CI of 2006 on its promulgation;
- Article 1 of the Convention of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 – promulgated by Act No XXXI of 1993, Article 3 (Prohibition of torture), Article 4: (Prohibition of Slavery and forced labour);
- International Covenant on Civil and Political Rights, 1966, Article 7 and 8 – adopted on the XXI session of the Assembly of the United Nations on 16 December 1966, promulgated by No 8 decree-act of 1976;
- Protocol Supplementing the Palermo Convention to prevent, suppress and punish trafficking in human beings, especially women and children, (hereafter: Palermo Protocol), and Act No CII of 2006 on its promulgation;
- the Council of Europe Convention on Action against Trafficking in Human Beings (3 May, 2005), which was signed by Hungary on 10 October 2007;
- framework decision 2002/629/JHA of the Council (19 July 2002) on combating trafficking in human beings;
- Council framework Decision 2004/68/JHA (22 December 2003) on combating the sexual exploitation of children and child pornography;
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities;
- the Hague Programme: evaluation of EU policies on freedom, security and justice (November 2004);
- EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (December 2005)
- the conclusions adopted by the European Council at its special meeting in Tampere on 15 and 16 October 1999;

- The Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002);
- Report of the Experts Group on Trafficking in Human Beings of the European Commission (22 December 2004).

Separate offence of trafficking in human beings enacted by Article 43 of Act No LXXXVII amending Act IV of 1978 on Penal Code. The regulation is in force as of 1 March 1999.

The latest amendment of the offence of penal code was effected by Act CXXI of 2001. The amendment was necessitated by the requirements specified in the Palermo Protocol, as this international document required that certain types of behaviour of commission be punishable that had not been punishable before. Therefore the law enlarged the possible types and ways of commission.

Besides that the norms of the European Union were planted in the legislation further to the obligation of harmonization of law, amongst others the framework decision of the Council 2004/68/JHA (19 July 2002) on combating trafficking in human beings, which came into force as of 1 August 2004.

Testimonies of witnesses are essential to uncover the criminal networks and punish the perpetrators. Act No LXXXV of 2001 on Programme of Protection of participants of criminal procedures, persons supporting jurisdiction stipulates the protection of victim-witnesses of trafficking in human beings. Protection – which can be requested for foreign nationals, too – can be provided in relation to serious crimes, therefore it has important role in combating trafficking, too. In the framework of the Witness Protection Programme the endangered witnesses can be moved to a protected residence, their identity can be altered within Hungary or upon mutual agreement to another country. The state socially and financially supports protected persons as long as they are unable to make a living on their own for reasons out of their sphere of competence.

In accordance with the EU requirements Act CIV of 2001 on penalties against legal entities – which came into force on 24th December 2001 – provides opportunity for calling to penal account legal entities supporting trafficking in human beings on purpose, or making it possible.

Act CXXXV of 2005 on supporting the victims of crimes and on state mitigation of damage, came into force on 1st January 2006 and is aimed at implementing Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. It is to be emphasized that further to point e of Article 1(1) of Act 1§ the victim of trafficking in human beings can be entitled to receive victim support. It is to be mentioned that Article 9/A and Article 43(3), which came into force on 1st July 2007 with the aim of implementing sections 5 and 6 of Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

Pursuant:

Article 9/A In the event the victim supporting authority establishes that the national of the third country requesting support is a victim of trafficking in human beings – besides those specified in Article 9(1) – the authority shall inform him/her on the followings

a) the victim has one month time to consider whether he/she is willing to cooperate with the law enforcement authorities;

b) “the victim is entitled to certificate of temporary residence for the reflection period, and to receive residence permit for the period of co-operation with the authorities”

Article 43(3) The authority supporting the victim after providing information further to Article 9/A – and informing the authority of investigation, prosecutor or court of justice performing the criminal procedure – shall without delay initiate the procedure with the aliens department to provide the third country national with temporary residence permit”

The state provides the following support to victims pursuant to the act:

- complete information,
- providing help for assertion of interests,
- legal support,
- immediate financial aid,
- mitigation of damage.

Article 29(1)e of Act II of 2007 – came into force on 1st July 2007 – on enter and stay of third country nationals, for substantial national security or law enforcement reasons – by initiative of the national security or law enforcement agency – to any third-country national, or other affiliated third-country nationals on his/her account, who has cooperated with the authorities in a crime investigation and has provided significant assistance to gather evidence is entitled to receive residence permit for humanitarian purposes.

Further to decree 3/2008. (I.16.) of the Ministry of Justice and Law Enforcement on the scope of authority and competence of the investigating authorities of the police each forms of the crime of trafficking in human beings stipulated in Article 175/B of the Criminal Code fall into competence county (Budapest) police headquarters, except crimes with international relevance. In this latter case it is the Anti Trafficking Department of the National Bureau of Investigation that performs the investigation. The investigation of crimes which are delegated there by the National Police Commissioner or the Criminal General Director, also fall within the scope of competence of Bureau.

Besides that the police perform exchange of information within Interpol, Europol and SECI (Southeast European Cooperation Initiative) with the police bodies of several foreign countries.

Besides the above one of the most important achievements of the past years was the adoption of the Government Decision on the National Strategy against trafficking in human beings 2008-2012, which defines the general and specific aims of fight against trafficking. Moreover it establishes the position of the National Coordinator and the national coordination mechanism against trafficking.

B)

The legal provision of smuggling of human beings, in force at present, reads as follows:

Smuggling of human beings

Section 218 (1) Any person who provides aid to another person for crossing the state borders:

- a) without authorization;
- b) in an unauthorized manner;

is guilty of a felony punishable by imprisonment for up to three years.

(2) The punishment shall be imprisonment from one to five years if the smuggling of human beings is committed:

a) for financial gain or advantage;

b) by providing aid to several persons for crossing the state borders.

(3) The punishment shall be imprisonment from two to eight years if the smuggling of human beings is committed:

a) by tormenting the smuggled person;

b) by force of arms;

c) in a pattern of business operation.

(4) Any person who engages in preparations for smuggling of human beings as set forth in subsections (1)-(3), shall be guilty of a misdemeanour punishable by imprisonment for up to two years.

(5) Expulsion may also be imposed as ancillary punishment against persons engaged in the smuggling of human beings.

Number of human trafficking in Hungary, 2000-2009

year	Registered crimes	Registered perpetrators							Total
		by gender		by age					
		men	women	14-17	18-24	25-34	35-44	45-59	
2000	16	11	4	1	3	9	2	0	15
2001	34	29	10	2	15	16	5	1	39
2002	34	19	0	0	12	4	3	0	19
2003	19	13	9	2	10	9	1	0	22
2004	22	21	2	0	7	11	4	1	23
2005	28	16	8	2	3	9	6	4	24
2006	5	5	1	0	1	2	1	2	6
2007	28	15	5	1	3	7	5	4	20
2008	10	15	2	0	1	12	2	2	17
2009	9	14	2	0	4	5	5	2	16

Prohibition of incitement to racial hatred (art. 20)

20. The CC. regulates five independent offences in connection with hate crimes. The genocide, section 155. of the CC, apartheid, section 157. of the CC, violence against a member of the community, section 174/B of the CC, the incitement against a community, section 269. of the CC and the denial of holocaust before publicity, section 269/C of the CC.

Genocide was promulgated in 1996, by the Act XVII. of 1996, and entered into force on the 15. June 1996. Accordingly:

„*Genocide*

Section 155.

(1) Any person who - with the ultimate aim of the total or partial extermination of a national, ethnic, racial or religious group:

- a) kills the members of the group;*
- b) causes serious bodily or mental injury to the members of the group for reasons of their affiliation with the group;*
- c) constrains the group into living conditions threatening the demise of the group on the whole or certain members of it;*
- d) takes any action aimed to prevent births within the group;*
- e) carries off the children of the group to another group;*

is guilty of an offence punishable by imprisonment between ten to twenty years or life imprisonment.

(2) Any person who engages in preparations for genocide is guilty of an offence punishable by imprisonment between two to eight years."

Apartheid was promulgated in 1996, by the Act XVII. of 1996, and entered into force on the 15. June 1996. Accordingly:

„Apartheid

Section 157.

(1) Any person who - with the aim to establish dominion and maintain rule of a racial group of people over another racial group of people or with the aim of the regular oppression of the other racial group:

- a) kills the members of a racial group or groups;*
 - b) constrains the racial group or groups into living conditions threatening the physical annihilation of the group or groups on the whole or to any extent;*
- is guilty of an offence punishable by imprisonment between ten to twenty years or life imprisonment.*

(2) Any person who commits another crime of apartheid is guilty of an offence punishable by imprisonment between five to ten years.

(3) The punishment shall be imprisonment between ten to twenty years or life imprisonment, if the criminal act of apartheid described in Subsection (2) has given rise to serious consequences.

(4) For the purposes of Subsections (2) and (3), 'apartheid' shall mean the crimes of apartheid defined in Article II a)/(ii), a)/(iii), c), d), e), and f) of the International Convention on the Suppression and Punishment of the Crime of Apartheid adopted on 30 November 1973 by the General Assembly of the United Nations Organization in New York, promulgated by Law-Decree No. 27 of 1976."

Violence against a member of the community was promulgated in 1996, by the Act XVII. of 1996, and entered into force on the 15th June 1996. Accordingly:

„Violence Against a Member of the Community

Section 174/B.

(1) Any person who assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of certain groups of the population, or compels him by applying coercion or duress to do, not to do, or to endure something, is guilty of an offence punishable by imprisonment for up to five years.

(2) *The punishment shall be imprisonment between two to eight years if the act of crime is committed:*

- a) in firearms;*
- b) in arms;*
- c) causing a considerable injury of interest;*
- d) with the torment of the injured party;*
- e) within a group;*
- f) in criminal conspiracy.*

(3) *Any person who engages in the preparation for the violence against a member of the community is guilty of a misdemeanour punishable by imprisonment for up to two years.*”

Incitement against a community was promulgated in 1989, by the Act XXV. of 1989, and entered into force on the 15th October 1989. Accordingly:

„Incitement Against a Community

Section 269.

Any person who incites to hatred before great publicity against:

- a) the Hungarian nation;*
 - b) any national, ethnic, racial, religious group or certain groups of the population;*
- is guilty of an offence, punishable by imprisonment for up to three years.*”

Additionally, on the 22nd February 2010. the Parliament of the Hungarian Republic adopted a new amendment of the Criminal Code, which introduced the denial of holocaust as a new offence into the Criminal Code. The act entered into force on the 10th April. But the Constitutional Court of the Hungarian Republic has already not examined the new offence. As for the new legislation:

“Denial of Holocaust before publicity

Section 269/C.

Who hurts the dignity of the victim of Holocaust by denying the fact of Holocaust, casting doubt on it or trivialising it before great publicity, is guilty of an offence punishable by imprisonment up to three years.”

According to Art. 10 (1) of the Act on Equal Treatment, harassment is a conduct of sexual or other nature violating human dignity related to the relevant person’s characteristics defined in Article 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around the particular person.

In 2009 the Authority adopted a landmark decision by condemning a mayor for harassment who made a statement against Roma women at a local government council meeting. The mayor claimed that Roma women living in two nearby villages had deliberately harmed their unborn children in order to receive higher state benefits. After his defamatory remarks, some 400 Roma women protested against the mayor. The Authority found that the allegation which became known to the wide public was capable to form hostile, attacking and humiliating atmosphere among the people who live at the villages which has had a negative influence on the life of the Roma community, their judgment and increased the prejudices against them.

In this condemning decision the Authority banned the mayor from the continuation of this unlawful practice furthermore, as regards the application of sanctions the decision

has been made public on the websites of the Authority and the local government for 90 days. The decision is final.

The Hungarian Helsinki Committee submitted a complaint against another mayor in 2009 as *actio popularis* who made several anti-Roma statements after a young local girl had been raped and murdered in November 2008. The mayor organized a local demonstration 'for life against violence' where despite knowing that prevailing anti-Roma sentiment was growing after the incident, he made anti-Roma statements during the event, suggesting that the murderers were Roma. The Authority found that the statements of the mayor were suitable to create a hostile and attacking atmosphere among the Roma inhabitants. The decision is not final.

Principle of equality and non-discrimination, protection of the family and the child (arts. 2, 17, 23, 24)

21. In its present wording Article 110 of the Act LXXIX of 1993 on Public Education offers the following formula regarding the categories of *non-Hungarian minors* (between the age of 5 to 18) falling under the *scope of compulsory education: minors, non-Hungarian citizens are under the scope of compulsory education in Hungary if they applied for asylum, have received asylum or temporary asylum, are recognised refugees*, or fall under the scope of the provisions of the Act on the entry and residence of foreign nationals, they exercise the right of free movement and residence in Hungary, and have the status of immigrant or settler. The above conditions shall be attested at the time of the enrolment of the student at an educational institution. The above provisions apply, when the duration of the stay

- a) does not exceed one year, upon request of the parents,
- b) exceeds one year, by effect of this Act. Foreign national complying with the above provisions is entitled to take benefit of all public education services on equal footing with the Hungarian citizens.

Concerning the *acquisition of Hungarian citizenship*, children of refugees may be naturalized on preferential terms provided that they have resided in Hungary continuously for a period of at least three years prior to the submission of the petition and satisfy the conditions specified in Paragraphs b)-e) of Subsection (1) of the Act LV of 1993 on Hungarian Citizenship. The criteria of continuous residence in Hungary may be waived in the case of *minors*, if the minor's petition for naturalization is submitted together with that of the parent's or if the minor's parent was granted Hungarian citizenship.

In accordance with Act No. LXXIX of 1993 on Public Education, under age asylants, refugees and asylum seekers become entitled to kindergarten care or become children of school age when they are applying for protection status.

Children living together with their family in the Refugee Reception Camp in Debrecen and in Bicske are all entitled to school education. After completing a preparation course in Hungarian language they may continue their studies in a class suitable for their abilities. In the school year 2009/2010 32 children were registered in kindergarten and 67 children were registered in primary schools.

Unaccompanied asylum seeker minors in school age living in the Shelter for Unaccompanied Minors in Bicske are immediately reported after their arrival to a primary school in Bicske. From 2010 they continue their studies in the Home for Young Adults located inside the Refugee Reception Camp in Bicske. In the school year 2009/2010 56 unaccompanied minors were registered in the primary school.

Right to take part in political affairs and minority rights (arts. 25, 27)

23. It is possible to monitor the minorities' representation in political and public life also in the absence of register of data on the ethnic background. The person of minority self-government leaders is well-known, their activity in public life is open, and the political activity of other persons relating to a minority group can be researched by sociological methods.

24. After the last election of minority self-governments there were no significant steps to eliminate the shortcomings in the election system of minority self-governments.

The reason for that is that belonging to a minority is bound above all to self-determination, and the reality of that can not be monitored in all detail without restricting the right of self-determination. Therefore no conception of regulation could be formed that would be appropriate to establish a new balance between the constitutional rights of individuals and minority communities.

The formal reason is that a two-third majority of Parliament is required by the Constitution to amend the act on national and ethnic minorities and to carry out the necessary, related amendment of the act on electoral procedure, and this majority was not available.
