

# FROM PAPER TO PRACTICE IN HUNGARY: THE PROTECTION AND INVOLVEMENT OF MINORITIES IN GOVERNANCE

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## Abstract

This chapter will discuss public policy toward minorities in Hungary and the implementation of this policy. The chapter uses a legal approach to analyse the process and impacts of various legal instruments and explain their practical relevance for accommodating multi-ethnic local communities in Hungary. The main policy issues analysed in this chapter are: (1) the revitalisation of minority groups by a system of minority self-governments (MSGs); (2) protection of minority cultures and languages through a system of minority education; (3) the lack of consistent policy for the socio-economic empowerment of the Roma minority; and (4) the lack of effective protection of the Roma from sundry discrimination. The chapter first outlines the important legal documents that influence the position of minorities in local communities, and then provides a detailed analysis of problems related to the implementation of these legal norms. Finally, the paper provides recommendations to address these problems.

## 1. Introduction

Minorities in Hungary are in a unique situation, brought about by the country's geographic and historic shifts and its decentralised system of governance. This chapter will discuss the role of government and legal structures in the protection of minorities in Hungary.

The Republic of Hungary is ethnically heterogeneous, but while it includes a number of distinct national and ethnic minorities, in most cases each of these groups is fairly small in number. Collectively, minorities account for less than 8-10%<sup>1</sup> of the total population.

Since Hungary's transition to a market economy, decentralisation through self-governance and the issues of human and minority rights have figured prominently on the political agenda. Decentralisation has resulted in a fragmented public administration system that provides the possibility of autonomy for even the smallest communities. This same

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<sup>1</sup> According to census data, minorities represent less than 2% of the population. The estimated number of persons belonging to national and ethnic minorities is between 8-10%. (See Annexes 1 and 2.)

system also complicates the implementation and financing of minority policies, because multiple layers and branches of government are often involved in the process.

Hungary has introduced various legal measures to promote individual and collective rights and cultural autonomy for minorities. Minority citizens have rights, privileges and civic responsibilities that are equal in all respects to those of citizens belonging to the majority population. The country adheres to international law and international treaties with regard to the treatment of minorities, and in many ways its standards are quite progressive and provide a useful model for other countries.

The Hungarian Parliament has created a special system of minority self-government (MSG) that functions at both the national and local levels. The law grants minorities the right to choose their own identities, to use their native language, to form organisations (including a self-government), to have a connection with their mother country and to have parliamentary representation. Minority rights in Hungary go beyond those of the European system of individual protection and extend to collective rights.

However, the successful execution of Hungary's minority policies is complicated by the fact that most minorities are widely dispersed throughout the country. Furthermore, gaps remain between policies and their effective implementation. Overlapping responsibilities require co-ordination involving Parliament, government ministries, local governments, MSGs and nongovernmental organisations (NGOs). Local authorities and MSGs, in particular, are undergoing a learning process.

Because MSGs still lack real financial autonomy, the rules of co-operation between local and minority governments require further clarification, and public officials need more extensive training in minority issues. More needs to be done in establishing and maintaining appropriate native-language schooling for minorities. In addition, adequate minority access to the media is also of great importance.

While most minorities are economically and socially well-integrated, the Roma (Gypsies)<sup>2</sup> are not. Roma remain the largest of any minorities in Hungary, and their social and economic situation is consistently worse than that of other minorities or the mainstream population. Widespread prejudice against the Roma further aggravates the issue, and discrimination takes many forms, not all of which can be realistically solved through legislation.

Still, Hungary is continuously working to reform its governmental structures and legal system with regard to the protection of minorities. The country's plans to join the European Union (EU) have encouraged the government to emphasise the minority rights system—and to work toward its improvement.

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<sup>2</sup> Hungarian Roma use both the term Roma and Gypsy for self-identification, but the term Roma will be used in the text.

## 2. Ethnic Diversity and Historic Influences

Hungary is situated in a region in which various national, ethnic and religious minorities have intermingled throughout its history. Hungary shares its borders with seven countries: Austria, Croatia, Romania, Slovakia, Slovenia, Ukraine and Yugoslavia. The Medieval Hungarian Kingdom included territories that today belong to neighbouring countries, including: Transylvania (Romania), the Upper-State (Slovakia) and Vojvodina (Yugoslavia). After the Turkish occupation in 1526, western parts of the country were incorporated into the Habsburg Empire, while a small independent Hungarian Principality existed in Transylvania. In 1686, after the recapture of Buda, the Hungarian capital, from the Turks, Hungary became part of the Habsburg Empire, and remained so until the end of World War I. As a consequence of the Treaty of Trianon in 1920, two-thirds of Hungary was appropriated to neighbouring states.<sup>3</sup>

The territory of Hungary has accommodated various national and ethnic groups throughout its history. In the past, most of these groups lived in close contact with other ethnic groups as well as Hungarians. However, in the 19<sup>TH</sup> century minority populations began to disperse and assimilate. The process of minority assimilation accelerated during the 20<sup>TH</sup> century, due to policies that discouraged diversity—enforced by the nationalist regime between the two world wars and later by the communist regime.

During World War II, about 600,000 Hungarian Jews and Roma were deported and killed. After World War II, German and Slovak minorities in the country were subjected to population exchange programmes that involved forced resettling. During communism, the state provided education for minorities in separate so-called 'national minority schools'. However, strong political pressure to eliminate national and minority identities under communism meant that the assimilation of minorities continued.

It is difficult to calculate how many people belong to national and ethnic minorities in Hungary at present. The value probably lies between the official census figures and the unofficial estimates, i.e. between 133,936 and 1,085,000 (see Annexes 1 and 2). Because the census does not allow a person to declare double identity, as in cases of mixed race or ethnicity, the data cannot provide a complete picture of the ethnic make-up of the country's inhabitants.

Today, the level of identification with specific minorities varies. Assimilation is quite advanced, and members of many nationalities no longer speak their mother tongues. According to the census, the number of citizens claiming that they are members of a minority is declining for all groups except Germans and Roma.<sup>4</sup>

Most minorities, with the clear exception of the Roma, appear socially and economically well-integrated into Hungarian society. One of the most important indicators of this integration is that the level of education among minorities is equal to the national average. However, the situation varies greatly among individual minorities: Many Germans and Serbs have university degrees, while fewer Slovenians—only half the national average—are as academically accomplished. The Roma population's indicators of equality are

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<sup>3</sup> *World Directory of Minorities* (1997) London: Minority Rights Group, p. 223.

<sup>4</sup> Most families belonging to minorities stopped passing on their native language to the next generation. Some 40-60% of the adult minority inhabitants are in ethnically mixed marriages.

well below the national average, and below that of other minorities too.<sup>5</sup> Improving the Roma's situation is one of the key challenges in Hungary's current domestic policy, and the challenge is made more difficult by widespread prejudice and discrimination against Roma. Recently, the marginalisation of the Roma population has become an issue relevant to foreign policy concerns as well.

The need to integrate the Roma has been included in Hungary's EU accession agenda, and as a result, the government has shown more willingness to initiate comprehensive policies aimed at their socio-economic empowerment.

### 3. Minority Legal Policy

European countries have two basic ways of acknowledging minorities: by definition and through taxation. When a legal definition of the term 'minority' is created, all groups fulfilling the criteria can be treated as national minorities. The country can then consider these minority groups as nationally recognised groups, which can receive any tax preferences deemed appropriate.

Hungary legally acknowledges national minorities through established criteria. The 1993 Act on the Rights of National and Ethnic Minorities (Law No. LXXVII, hereafter referred to as the Minority Act), Paragraph 1, Section 2, defines a national minority as follows:

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

This definition is equally valid for national and ethnic minorities, as the Hungarian legal system does not differentiate between the two. The definition is designed to achieve two aims: first, to ensure that all legitimate minority groups settled in Hungary are able to fulfill these criteria; and second, to ensure that no newly arrived groups or non-minorities would be able to claim national minority status—either for financial preference or any other reasons.

According to Paragraph 61, Section 1 of the Minority Act, the nationalities settled in Hungary are: Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians. These minorities fulfilled the necessary criteria at the time the law went into effect, but the list has an open nature, so further minorities can be acknowledged with the according legal status. Paragraph 61, Section 2 of the Minority Act says:

... if more minorities than those listed in section (1) wish to prove that they are eligible to fulfill the conditions of the law, then at least 1,000 voters who claim to belong to the minority can submit a nationality initiative in this matter to the Speaker of the Parliament....

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<sup>5</sup> Report No. J/3670 on the situation of the national and ethnic minorities in the Hungarian Republic, January 1997, Dr Pál Vastagh, Minister of Justice

While earlier laws and regulations contained provisions for minority protection, the legal system lacked sufficient statutory regulation. Now the minority rights system is coherent—its basic principles are stated in the Constitution and the details for implementation are contained in the Minority Act. Protections for minorities are also contained within several basic laws, especially: the fourth Law on the Penal Code, passed in 1978; Law LXXIX, passed in 1993, on Public Education; and the first Law on Radio and Television, passed in 1996. Additional legal guarantees of minority rights are contained in international treaties and other documents.

This section analyses the various legal instruments that form public policy for minorities in Hungary.

### *3.1. Hungarian law and international norms for minority protection*

Since the early 1990s, Hungary has played an active role in codifying international minority laws. According to the Constitution, international treaties take precedence and internal law must be harmonised with international treaties.

#### *3.1.1. European Charter for Regional and Minority Languages*

Although it deals only with specific rights involving languages, the European Charter for Regional or Minority Languages is a significant international treaty that defines the direction of minority rights development. Hungary was one of the eleven states that signed the Charter on 5 September 1992. The country submitted its ratification document in 1999.

The Charter leaves the state to decide which languages to protect. According to Paragraph 42 of the Hungarian Minority Act, the following languages are used by minorities in the country: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma languages (Romany and Beás), Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian. But Hungary did not include all of these languages in its documentation ratifying the Charter—the Roma language being the most significant omission.

The official argument for not giving all of Hungary's official minority tongues the full protection of the Charter on Regional or Minority Languages had to do with territorial concentration. As most minority groups are widely dispersed throughout the country, Hungary only chose to take responsibility for establishing institutional types of instruction for Croatian, German, Romanian, Serbian, Slovak and Slovenian. The lack of protection for any of the Roma dialects under the Charter may contribute to the further erosion of the Romany and Beás languages and thus promote the linguistic assimilation of the Roma minority.

#### *3.1.2. Framework Convention for the Protection of National Minorities*

The Council of Europe accepted the Framework Convention for the Protection of National Minorities (FCNM) on 10 November 1994. Unlike the Hungarian law, the FCNM does not contain the definition of a minority because it was difficult to obtain international agreement on the best way to describe the term. Omitting the definition allows more states outside of the Council of Europe to join the Convention.

The other significant difference between Hungary's laws and the Convention is the nature of the rights that are ensured. Hungarian law acknowledges the existence of collective minority rights, while the FCNM is based on individual rights. The Convention's first article states:

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

The Framework Convention does not include the right for autonomy and positive discrimination, or the right to participate in cultural, economic and social life as a collective legal entity, which the Council of Europe's Recommendation 1201 does. With these omissions, the number of clauses that could be categorised as 'shy minority protection'<sup>6</sup> increased.

The Framework Convention's control mechanism rests on the nations' periodic obligation to make progress reports to the Council of Europe's Ministry Committee. Government decision number J/1397 of June 1999 is the first report on the implementation of the FCNM in Hungary.<sup>7</sup>

### 3.1.3. *Bilateral treaties*

A bilateral system of agreements in Central Europe has proven to be an effective means for securing the protection of specific minorities. The first document of this type was the Hungarian-Ukrainian basic agreement in 1991.<sup>8</sup> Since 1991, Hungary has signed bilateral treaties with Slovenia, Croatia, Germany, Slovakia and Romania.

The process of signing and ratifying these treaties brought about the interpretation of minority rights in the form of several freedoms, including: freedom to choose identity, freedom from discrimination, freedom from forced assimilation, freedom of assembly, freedom to use minority languages, freedom to preserve culture, freedom in education and media and freedom to use the native language on settlements, street signs and in public notices.

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<sup>6</sup> Dr Péter Kovács (1996) *International Law and Minority Protection*, Budapest: Osiris, p. 114.

<sup>7</sup> The report has been published by the Office for National and Ethnic Minorities in the publication 'Minorities in Hungary' in 1999.

<sup>8</sup> After intensive talks, the following minority bilateral agreements were signed:

- 1991 Declaration of the Principles of Co-operation between the Hungarian Republic and the Ukrainian Soviet Socialist Republic in the Area of National Minority Rights.
- 1991 Agreement for Good Neighbour Policy and the Basis of Co-operation between the Hungarian Republic and Ukraine.
- 1992 Agreement for Ensuring Special Rights for the Slovenian National Minority in the Territory of the Hungarian Republic and for the Hungarian National Community in the Slovenian Republic.
- 1992 Treaty of Friendship and Co-operation between the Hungarian Republic and the Slovenian Republic.
- 1992 Treaty between the Hungarian Republic and the Croatian Republic on Friendly Ties and Co-operation.
- 1992 Treaty between the Hungarian Republic and the German Federal Republic on Friendly Co-operation and European Partnership.
- 1992 A Joint Declaration between the Hungarian Republic and the German Federal Republic on the German Minority in Hungary and Support for German to be Taught as a Foreign Language.

### 3.2. Minorities' status as constituents of the state

The Hungarian legal system acknowledges the rights of both minority individuals and minority communities. These rights are enforced through general legal institutions and through specialised institutions established expressly for this purpose. The Constitution's minority prescriptions can be categorised into two groups: those that define the constitutional rights of minorities, and those that seek to ban prejudicial discrimination.

According to the Constitution, minorities are regarded as 'constituent factors of the state',<sup>9</sup> and therefore have rights and duties equal to those of the Hungarian nation. Minorities share in the benefits accruing to the rest of the country, but they also share in the responsibility to handle statutory, social and economic tasks—and therefore must have adequate representation. This constitutional description of minorities can be regarded as granting equal rights for minorities, but minority consultants have different opinions on the matter.

A more accurate definition of minority status is contained in the Minority Act of 1993, which says that national minorities have the same rights as other citizens. Parliament has also created the MSG system of special institutions to protect minority rights and elected a Parliamentary Commissioner for Minority Rights. The Minority Act acknowledges the right to choose an identity, the right to use a native language, the right to form organisations, the right to have a connection with the mother country, the right to self-government and the right to parliamentary representation.

### 3.3. Collective rights

The Preamble of the Minority Act establishes that the individual and collective rights of national minorities are fundamental human rights, which the Republic of Hungary respects and ensures. The passage of the Minority Act was a major milestone in the process of establishing collective rights. At the Venice Session of the Human Rights Committee it was noted that the Hungarian legal system had recognised and codified the need to protect minorities' community rights at a time when international law had not even acknowledged the existence of such rights.

In the Hungarian legal system, minority communities may exercise the following rights:

- the right to exist as a minority group;

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· 1995 Treaty between the Hungarian Republic and the Slovak Republic on Good Neighbour Policy and Friendly Co-operation.

· 1996 Treaty between the Hungarian Republic and Romania on Understanding, Co-operation and Good Neighbour Policy.

<sup>9</sup> Paragraph 68, Section (1) of the Constitution: The national and ethnic minorities living in the Hungarian Republic shall share in people's power, being constituent factors of the State.

(2) The Hungarian Republic shall accord protection to national and ethnic minorities, ensuring their *collective participation in public life*, the cultivation of their own culture, the use of their mother tongue, education in their mother tongue and the right to use names in their own language.

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

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

- the right to protect and develop their own culture and language;
- the right to political representation;
- the right to form local self-governments;
- the right to exist without discrimination;
- the right of access to electronic media.

The Minority Act ensures rights which may, by their nature, be exercised by entities other than individuals—such as minority communities. These rights include:

- the right to identity;
- protection against discrimination;
- the right to education, culture and traditions.

The provision of collective rights is an important development that will surely have an impact on future public policy regarding minorities in Hungary.

### 3.4. *Statutory guarantees*

The guarantee of minority rights appears in the laws regarding self-government, but the enforcement of those rights is the task of the state government. This enforcement is accomplished through the following special minority rights organisations and general government institutions.

#### 3.4.1. *Parliament's Human Rights, Minority and Religious Committee*

The Human Rights, Minority and Religious Committee deals with minority issues at the top level of state power. The role of the Committee is to prepare legislation for the protection of human rights, including the rights of national and ethnic minorities.

#### 3.4.2. *Parliamentary Commissioner for the Protection of National and Ethnic Minority Rights*

Article 32/B of the Constitution provides for the institution of a Commissioner for the Protection of National and Ethnic Minority Rights. The Commissioner provides a constitutional check on public administration and has the right to investigate any abuse of minority rights that come to his attention. Moreover, the Commissioner can initiate measures to redress abuses, and he can initiate procedures to investigate the enforcement of minority rights.

Since the creation of the office, the Commissioner has investigated a number of cases. Most of these cases involved discrimination on the grounds of national and ethnic origin, and the majority of the cases involved the Roma community. More than half of the cases investigated by the Commissioner related to local governments.

#### 3.4.3. *Office for National and Ethnic Minorities*

Since 1990, the Office for National and Ethnic Minorities has carried out state tasks related to the accommodation of minorities in Hungary. This Office is part of the central public administration and operates under the auspices of the Ministry of Justice, which is responsible for preparing and enforcing statutory decisions about minorities.

#### 3.4.4. *Action Plan for the Roma*

In 1997, the government introduced a medium-term action plan to improve the situation of the Roma minority. This plan touched on a broad range of policy issues, including education, socio-economic empowerment, prevention of discrimination, protection of culture and access to the mass media. In spite of its ambitious goals, the action plan has achieved almost no tangible results to date. Although the new government in 1998 continued planning a major policy initiative under the medium-term action plan, the package is still in the development phase. Thus far, it has generated virtually no efforts to design or implement concrete policies.

#### 3.4.5. *Central public administration*

The Ministry of Education and the Ministry of Internal Affairs are two general government bodies that deal with cultural autonomy. The Ministry of Education is involved in educational issues in connection with MSGs. The Ministry of Internal Affairs is the central supervisory authority for local governments, which means that it is ultimately responsible for legal supervision of MSGs.

#### 3.4.6. *Local public administration*

The local governments' duties include minority protection and enforcement of minority rights in their respective settlements and at the county level. As most public services are delivered at the local level, local public administrations play a major role in distributing resources and providing equal access to public services. Furthermore, local governments are responsible for co-operating with MSGs. The rules for this co-operation are clearly spelled out in the Law on Local Government and the Minority Act. However, due to the unequal distribution of power and financial dependence of MSGs, the level of participation of minorities in local policy-making really depends on the good-will of the local governments (see Section 4).

According to the Act on Local Governments, candidates can run as minority representatives for seats in the local governments. A total of 1,055 minority deputies were elected in 1998. Most of them belong to the two largest minority groups, the Roma and the German minority.

### 3.5. *Territorial autonomy*

The Hungarian system of minority protection is often praised in the international community as one of the most generous systems. The Minority Act of 1993 guarantees national and ethnic minorities a special community right to establish their own local governments.

The main reason behind this generous provision of cultural autonomy for minorities in Hungary was to provide Hungary's neighbours, who accommodate large Hungarian minorities, with a powerful model of minority protection.

The Hungarian legal system ensures cultural autonomy through a two-tier local government system: Minorities are allowed to form their own self-governments (MSGs)—either in connection with local government elections or in independently organised elections.

According to the Minority Act, MSGs regulate or administer jurisdiction over cultural autonomy of their community. However, by their legal nature, MSGs can only affect a

public law through another public legal entity, mainly the local and central governmental bodies. This means that MSGs can have an impact on laws through participation in the decision-making process.

The Minority Act allows for another special form of territorial autonomy—it is possible to declare a MSG after local government elections if more than half of the elected board belongs to the same minority group. This right is very rarely applied in practice, however, because of the dispersed geographical nature of most minority groups.

### 3.6. *Cultural autonomy of minorities: The system of minority self-governments*

Because Hungary's minorities live scattered throughout the country, it was sensible to create a system connected to the local government system. Hungary's minorities established their first self-governments in 1994-95.

According to the Minority Act, each individual can claim to belong to any national or ethnic group, but they are not required to do so, and there is no minority registration in Hungary. This free choice of identity is the basis of the MSG model. Minority citizens vote locally for their MSG candidates according to the idea of free choice of identity.<sup>10</sup> The MSG representatives have created—through electors—the national MSG.

The local MSGs can make certain key decisions within their jurisdictions, including: their own organisational regulations; signs and names; and the establishment of institutions, especially in the area of local public education and local media.

The MSG system is set up to work closely with the local government system, and the Minority Act outlines the local governments' responsibilities to the MSG system. For example, according to Paragraph 29, Section 1, in questions that have an impact on the minority population—such as local public education, local media, the patronising of local traditions and culture and collective language use—the local government's board can only decide in accordance with the local MSG. According to Section 2, the relevant MSG's agreement is required when appointing leaders of minority institutions or making local government decisions that have an impact on minority education.

The situation is similar with the national MSGs. They must be allowed to declare an opinion about proposed laws affecting their minorities, and they have the right of approval in the creation of the basic material for minority education. They also have the right of approval in the creation of rules pertaining to the preservation and maintenance of historic settlements and architectural monuments.

The local government is also required to consider the interest of the minorities living in the settlement, to create rules for communal living and to maintain the regulations of the Minority Act. For their part, MSGs must learn the technique and rules for representing and enforcing their own interests. These are the new tasks for both types of governments, and fulfilling them sometimes causes difficulty.

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<sup>10</sup> There are 3,200 settlements in Hungary. Some 679 minority self-governments were created in the 1994 local government elections and 138 were created in 1995. On 18 October 1998, 1,375 minority self-governments were elected.

### 3.6.1 *Practical problems*

The law requires that municipalities and MSGs conclude co-operative agreements, which prescribe the extent and utilisation of assets separated for use by the MSGs. Budgeting is often a bone of contention, because there is frequent disagreement about the utilisation of funds.

Paragraph 102/C of the Act on Local Governments makes it possible for a local government to transfer—if it so wishes—a number of its functions to the local MSG. In practical terms, such a transfer runs into two major hurdles: First, there is sure to be debate over how much funding is sufficient to handle the duties being transferred. The second problem is that the law *does not* allow the local government to transfer powers connected to its scope of authority or to public utilities.

## 4. The Role of Local Government

During the past ten years, the local level of government has become a major actor in public policy formulation and service delivery. Local governments also play a key role in implementation of minority policy. This section discusses major issues of local management of multi-ethnic communities.

### 4.1. *Decentralisation and public services*

The former system of local public administration followed the Soviet scheme of councils, undemocratic due to their centralised character and the absolute domination of the Communist Party. After the adoption of Act No. LXIV of 1990 on Local Elections, a new system of local democracy was established, based upon the principles of Hungarian tradition and the European Charter of Local Self-Governments of the Council of Europe.

The Constitution and the Act on Local Governments recognised the rights of local communities, including the smallest of settlements, to manage their own local affairs. The number of local units has increased to 3,149. All of these elect their own representatives and executive bodies.

Local government in Hungary exists at two levels: the municipality and the county. Municipalities are settlements, which in Hungary includes villages, cities and cities with county rights. The middle-tier of local government, also referred to as 'regional' government, consists of 19 counties. The capital city, Budapest, has special legal status. There are no hierarchical relations between the two levels of local government. Municipalities provide local public services to their settlements while counties provide public services that settlements are not capable of performing, as well as services that have a regional character.

Municipal governments have broad responsibilities in providing local services. While some local services are optional, the Parliament determines mandatory functions and powers of local governments. Parliament must simultaneously ensure the financial means necessary for the fulfillment of these tasks. The Act on Local Governments further requires that municipalities provide: healthy drinking water, kindergarten education, primary school education, basic health and welfare services, public lighting, local public roads and public cemeteries, and the protection of the rights of ethnic and national minorities.

Despite the fact that the scope of duties to be performed by MSGs differs from that of local governments, legislation has provided MSGs with a similar legal status. Local and minority elections are based on the same principles of voting rights and the same regulatory framework.

As minority rights apply to a specific group of people within society, a constitutional question worth considering is whether the MSG system is best served by an election system based on equality and universal voting rights, like the one used for local governments. It could be a cause of concern that non-minority members can participate in MSG elections. But, because the descriptive value of the term 'minority community' is not absolute, and because every citizen is granted the right to vote in MSG elections, the foundations of the current system cannot be questioned on formal, constitutional grounds.

Nonetheless, under the current system it is constitutionally crucial that all minority members be ensured their rights to vote, as well as easy access to MSG elections, so that voters identifying with a particular minority can vote for candidates of the MSG. For example, MSG elections should perhaps be held separately from regular local elections, to make sure that voters have a clear understanding of the issues in the minority election. And voters should be granted the chance of getting to know minority candidates and their programmes, thus making a real choice between individual candidates possible.

#### *4.2. Local governments and minority self-governments*

The MSG system—due to its nature—works in close connection with the local government system, which is why the Minority Act gives local governments certain commitments to the MSGs and attempts to establish co-operative decision-making. The MSGs' strongest power is their 'right of veto' in questions impacting on minorities, such as local public education, local media, collective language use, etc. Another, weaker power grants local and/or national MSGs the opportunity to express an opinion in cases where either the law on minorities or another statute of law provides this right.

Unfortunately, in many cases, these rights only exist on paper. Practical experience indicates that disregarding the rights of agreement and of expressing opinions entails no real legal consequence. As we have indicated above, the Act on Local Governments allows the body of representatives of a municipality to transfer some of its duties and tasks to the local MSG. But there are some special regulations included in this act that prevent minority governments from exercising the powers of an authority.

Although the Act on Local Governments excludes any means for an MSG to allocate support for the needy under social welfare legislation, there have been efforts to transfer some of this responsibility as a means of helping underprivileged Roma populations. In recent years local governments have tried to give MSGs representing the interests of Roma communities certain social functions—and appropriate funds—without formal transfer of the responsibility or direct access to the budget.

The attitude of local governments is crucial to the successful implementation of minority rights and the operation of the MSG system for several reasons:

- The overwhelming majority of public affairs affecting citizens are local affairs, and hence in the domain of and the responsibility of local governments. The average

person's perception of public affairs is mostly determined by his/her opinion of local government.

- Local governments operate the most important public service systems, the largest two being education and health care, both of which are entwined with the issue of minority rights.
- Minority communities may be defined locally, and local tensions are typically the main concern in minority affairs.
- Approximately one-third of the central budget is channelled through local governments.

According to the statistics prepared by the Office of the Parliamentary Commissioner for Minorities, every prominent case of minority rights violation in 1999 concerned municipal governments. It would be a simplification to claim that officials in municipalities are more inclined to commit legal offences. It is more likely that their frequent involvement in minority issues, and heavy caseloads, make municipal governments more prone to committing rights violations.

The current MSG system grants large discretion to local governments, which means MSGs are often at the mercy of the local 'big brother' financially, professionally and in terms of local policy. A great deal depends on the attitude of the mayor as well as the local council. While a good relationship with the local government is always important to the MSG, the reverse is not necessarily true. Local mayors or councils may prefer not to share power, and there has been a definite trend towards the significant politicisation of minority problems. This is also true of minority affairs in general. Irregularities in benefits, housing and education are at once charged with political content if the clients are minorities, especially Roma.

A genuinely dangerous occurrence that gives reason for real concern is that some mayors and municipal boards, aware of the backing of local public opinion, consciously ignore laws protecting minorities, or construe and apply them in their own particular way.

### *4.3. MSG checks on local government*

Despite initial difficulties, including local hostility and inconsistencies in legal regulation, the system of MSG is on the way to consolidating its status and role in Hungary. Nevertheless, the Hungarian system, which gives wide responsibility and autonomy to local authorities, lacks adequate controls on the local level. A small, or insufficiently organised, community is vulnerable to rigid oligarchies, due to the lack of division and distribution of local power. The risk of a local 'one-party regime' becomes more likely if the local government does not receive sufficient financial and professional support from the national government.

MSGs do have some checks on local governments, including participatory rights in minority matters at the local level. In addition, the chairman of the MSG, or other minority representatives, are allowed to take part in meetings of the municipal council. The MSGs can also address any requests to local government organisations and the organisations are obliged to reply to the request. And, as mentioned above, MSGs have co-operative decision-making rights and definite regulative and administration rights on the local level.

#### 4.4. *Financial guarantees for cultural autonomy*

Serious concerns have been raised, however, about the autonomy of MSGs when it comes to financing. MSGs are often dependent on relations with local authorities and must compete with them at the local level for allocation of scarce funds. This competition has been known to create hostility between majority and minority members.

Roma MSGs frequently have the greatest difficulties due to their communities' socio-economic position. At the local level in particular, Roma representatives feel squeezed by the reluctance of municipalities to help, compounded by increased responsibility to address problems that their MSG is incapable of handling—such as distributing social aid, fighting discrimination and racism and organising measures against unemployment.

Co-ordinating the financing of MSGs and minority organisations is difficult because minorities are administered by many bodies, including Parliament, the Ministry of Internal Affairs and the Prime Minister's Office, as well as local governments. Parliament has jurisdiction over an amount defined in the annual central budget (HUF 87.8 million in 1999), which is provided to the NGOs of national and ethnic minorities, based on the tenders received.

MSGs receive subsidies, distributed through local governments, from the Ministry of Internal Affairs. The maintenance of minority and majority school facilities is covered by the local governments, and they receive national government grants for this purpose, equal to about 65-70% of the total costs. In addition, minority education institutes receive further subsidies because the government has acknowledged that minority education involves additional costs.

The present financing system is wasteful, for as long as MSGs receive money in equal proportions, irrespective of the kind of activities they perform, MSG officials will have less impetus to do more locally. It would be more efficient to subsidise MSGs based on the services they provide that directly reduce the burden of the local and national government. An MSG that assumes more governmental tasks that are beneficial to minorities should receive a correspondingly larger subsidy.

Hungary's principle of free choice of minority identity makes it impossible to give MSGs financing on the basis of the local minority population. But there are ways to measure the number of people an MSG serves. For instance, it is possible to count the number of students enrolled in a minority education programme, or the number of people visiting a minority library. It is also possible to measure the exact cost of other services, such as upkeep of a minority museum. Unfortunately, the Ministry of Finance seems to find it simpler to distribute funding evenly, and simply claim that it is too hard to estimate the exact costs of MSG work.

#### 4.5. *Parliamentary representation*

Although the Constitution requires that minorities be represented in Parliament, the legislation necessary to implement this requirement has not yet been passed. The Constitutional Court has ruled that Parliament's failure to create this law is in violation of the Constitution, but still no progress has been made.

The issue of minority representation was raised in 1990, when Article 68 of the Constitution was supplemented with Paragraph (c): 'Representation of national and language minorities living in the Republic of Hungary shall be ensured. Irrespective of the elections for Parliament as per Article 71(1) the Parliament shall elect members of Parliament for the representation of minorities—of a number and in a way to be specified by a separate law'.

Parliament never passed the separate law necessary to define the system for minority representation, however. In 1991 the Constitutional Court was petitioned to rule on the legislature's inaction on the matter. Because a law on the rights of minorities was expected soon, the court suspended the case until 1 January 1992. But the Parliament still did not act by that date, so the Court ruled in the case.

In its resolution No. 35/1992 (VI.10.) AB, the Constitutional Court declared that: 'The statement by the Constitution that it recognises national and ethnic minorities as part of the state of Hungary renders the statutory regulation of the rights of national and ethnic minorities extremely important ... Representation is a necessary prerequisite for national and ethnic minorities to fulfil their roles as constituents of the state'. The resolution also stated that 'the Parliament failed to carry out its task as per Article 68 of the Constitution whereby it created an unconstitutional situation'. Consequently, the Constitutional Court called on the Parliament to fulfill its legislative task, but the Court noted that it is up to the legislators to decide whether they will carry out the task by adopting one or several acts of law.

On 7 July 1993, the Parliament adopted the Minority Act, which says in Article 20 (1) that: 'minorities have a right to parliamentary representation—to be specified in a separate act of law'. Thus, instead of resolving the question of representation, the Minority Act transferred the issue to the scope of another law. It did not specify, however, whether it was necessary to create a separate law specifically on elections by minorities or whether the task can be performed by an appropriate modification of the act on general elections.

After the Minority Act's passage, another petition to the Constitutional Court sought to declare the Elections Act unconstitutional because it did not have an appropriate provision to treat minorities as a 'constituent of the state'.

The Constitutional Court rejected this motion without substantive discussion, arguing that it sought to terminate an unconstitutional status in the form of failure to carry out an action and is therefore a judged fact. But in resolution No. 24/1994 (V.6.) AB, the Court ruled that: 'The No. 35/1992 (VI.10.) resolution by the Constitutional Court had already established the fact of the violation of the Constitution in respect of the parliamentary representation of national and ethnic minorities'.

The 1994 resolution by the Constitutional Court clarified the fact that the Parliament remained in violation of the Constitution. Furthermore, by failing to create the necessary provisions for minority representation outlined in Article 20 (1) of the Minority Act, the Parliament failed to carry out its own promise.

Even though adequate representation is a necessary precondition for minorities to fulfill their role as constituents of the state, the law to provide this representation has yet to be passed, and Parliament has been in breach of the Constitution by failing to act for almost a decade. This failure deprives minority communities living in Hungary from exercising their constitutional rights and weakens trust in the Parliament.

#### 4.6. Education

For individuals in minority groups, familiarity with the group's language and culture can be a great help in freely choosing and preserving minority identity. Generations of minorities have lost their language due to assimilation, but kindergartens and schools can help children—and their parents—preserve their identities and stop the assimilation process. The education of ethnic nationalities is therefore a high-priority area of minority rights.

Hungary provides for native-tongue education for members of national and ethnic minorities in Article 68, Paragraph 2 of the Constitution. Paragraph 43 of the Minority Act leaves the decision of whether the child is to be educated in Hungarian or in the language of a different nationality up to the child's parent or ward.

There is no separate minority education system in Hungary. Minority education is conducted as an integral part of the Hungarian public education system. The education of national minorities has a well-established structure of schools, education programmes and qualified teachers belonging to the specific national minorities. There are two major types of minority education systems—larger minorities have their own educational network within the framework of the public education system, while smaller groups have no autonomous network but have separate classes to host their children. The Roma are poorly served and do not enjoy an adequate version of either of these two minority education systems.

##### *Case Study 1. Changes in Minority Education*

In 1996 the amendment of Law No. 1993/LXXIX on Public Education brought significant changes to legislative regulations concerning minority education. The rules of the previous public education law did not take the regulations of the Minority Act into account. The old law was ambiguous about which institutions might be considered minority institutions, and as a result the MSGs have not always been able to practice their rights to consent and opinion on the subject. The financing system for public education did not provide for small schools for nationalities, and the regulations ignored the fact that the per capita costs of small nationality schools are higher than those of schools with more students. In seeking a solution to the problem, the Parliamentary Commissioner on the Rights of Ethnic and National Minorities has had meetings with the president of the Human Rights, Minorities and Religious Affairs Committee and leaders of the National and Ethnic Minorities Office.

In striving to create cultural autonomy, the Minority Act gives great importance to autonomy over minority education. The current form of ensuring educational autonomy is the right to consent and opinion—exercised through the MSGs—in local decisions that concern the education of minorities.

Small national minority schools often face serious financial constraints. Financial short-falls have been temporarily averted thanks to co-ordinated government intervention, but a permanent solution is still required.

The Minority Act makes minority education possible, even for classes of lower-than-average size, by transferring the additional expense to the national and local governments. Since these regulations ensure the upholding of constitutional rights, executing them inadequately can lead to legal and constitutional controversies.

The Law on Public Education strives to reform the education system as a whole. A new national basic curricula was passed, leaving room for locally maintained public schools to make a range of choices in setting their curricula. This reform, which has increased the independence of schools, also affects minority education. But it is too early to tell what impact the law will have on minority institutions.

There are *three types of settings* for providing minority education:

- minority language taught as a foreign language;
- so-called 'bilingual schools', where some subjects are taught in the mother tongue;
- schools where all subjects are taught in the mother tongue.

Special programmes/schools for Roma children are also considered as part of the system of minority education. However, due to the lack of trained teachers specialised in Roma language and culture, these institutions often address the disadvantages of the Roma children rather than building their identity.

The creation and operation of a minority class or student group is mandatory if requested by eight parents belonging to the same minority, or by their legal representative. Paragraphs 86 and 87 of the Law on Public Education regulate the tasks the local government has to perform in providing education. For example, the local government must ensure compulsory attendance by all children, regardless of ethnicity, at kindergarten, elementary school and junior high school.

The amendment to the Public Education Law has made it clear that the official languages of education are Hungarian as well as the language of the national minority in question. Examinations may be in the language of the national minority, while the grade certificate must be written in both Hungarian and the minority language.

Local and national MSGs may maintain educational institutes, and often also have the right to consent and opinion on a range of educational matters. For example, local governments must obtain the consent of the local and national MSG in order to establish public education institutions, to extend the scope of an existing institution's responsibilities or to discontinue the operation of an institution or certain services.

This version of educational autonomy is probably well suited to most MSGs, because most minority schools are so-called mother-tongue schools in settlements with a population of less than 5,000. In these communities, MSGs do not have the professional and financial capacity for maintaining schools by themselves.

The amended Public Education Law provides for a gradual transfer of minority institutions from local governments to MSGs. Paragraph 88, Section 7 regulates the conditions under which the local government may transfer the ownership or operating rights of educational institutions. Because transferring an institution to MSG control only involves a change in maintenance, such a transfer does not have a dramatic impact on public education.

#### 4.6.1. *Financing minority education*

The Minority Act acknowledges that minority education involves higher costs than standard education. To offset these costs, the government has established the Earmarked State Grant to Support Minority Education. The amendment to the Public Education Law states

that the grant cannot be used for other purposes,<sup>11</sup> but the legislation does not spell out exactly what counts as a 'minority education' cost. It is not clear, for example, whether the grant can be used to pay operating costs at a school building where both minority and regular classes take place. The Parliamentary Commissioner has ordered a nationwide investigation to examine this controversial situation.

It is understandable that it may cause a conflict in smaller settlements if the minority institute receives more grants than a majority school or kindergarten, but nationality education clearly involves higher costs, and the failure to cover these costs can constitute a breach of national and ethnic minority rights. It falls to Parliament to find a solution for financing minority education.

Financial constraints have led to problems, such as the poor supply of textbooks for nationality education. Nationality education can only become an integral part of the public education system if appropriate teaching materials are published in accordance with the basic national curricula.

More funding and facilities are also needed for nationality teacher training. Minority education can only live up to the new challenges and growing demand if an appropriate number of properly trained teachers are available to train each nationality. Since the amendment to the public education law applies higher standards when employing faculty for these nationalities, the government must elaborate appropriate measures to assist in their professional development.

#### 4.6.2. Provisions for Roma education

The education of the Roma is clearly insufficient in Hungary. Roma students perform statistically poorer than the countrywide average, and they lack appropriate minority classes and special educational programmes. In many cases, educational policy aimed at improving the

#### *Facts and Figures. Provisions for National Minority Education*

- According to the Ministry for Education and Culture, the present network of national minority institutions contains 298 kindergartens and 370 regular schools.<sup>12</sup> Some 56% of kindergartens teach German, 23% Slovak and 11% Croatian. Other minority languages are each taught in under 5% of the kindergartens. Similar figures apply to schools for older children.
- More than 60% of the institutions are in settlements of less than 5,000, and all Serbian, Romanian and Slovenian educational institutes are in small townships and towns.
- German schools and kindergartens are represented in all types of settlements.
- 60% of the nationality schools have less than 200 students, and 25% have less than 100 students.
- Bulgarians have one educational institution, which contains grades K-12 and was previously financed by the Bulgarian government. It is now supported by both Hungary and Bulgaria. The institution has 100-120 students per year.
- Greeks have only elementary and junior high schools, and it is provided in approximately six settlements.

<sup>11</sup> Normative Grant For Minority Education: See Annex 3, Budgetary Support for the Education of National and Ethnic Minorities.

<sup>12</sup> These figures do not include those institutions that provide education for Roma students, but do include institutions training two nationalities at once.

- Croatian-language education is carried out in 40 kindergartens and 41 elementary and junior high schools, seven of which are bilingual. There are two high schools that have Croatian-language education. There is no Croatian university education, but there are undergraduate four-year teacher training courses in Pécs and Szombathely.
- Poles have one educational institute, which incorporates elementary, junior high and high school classes and uses the current Polish curricula.
- There are 198 German-language kindergartens and 198 German schools. Nine of the latter are high schools that are either independent or have nationality branches. German teaching degrees may be acquired in eight institutions of higher education in Hungary. University-level training in German is carried out at the University of Sciences in Pécs, and there is a four-year teacher training course in Szeged.
- During the 1995-96 academic year, Romanian-language education was carried out in twelve kindergartens, eleven elementary and junior high schools—five of which are independent Romanian nationality schools—and one high school. Romanian-language kindergarten teacher training is carried out in Szarvas, grade school teacher training in Békéscsaba and general Romanian teacher training is available in Szeged and Budapest.
- Also during the 1995-96 academic year, an experimental Ruthenian-language education programme commenced in a Ruthenian settlement with eighteen elementary and junior high school students.
- There are currently four Serbian kindergartens and eleven Serbian schools, one of which is a Serbian-language high school in Budapest. Teachers are trained at the University of Sciences in Szeged, and in Budapest.
- There are 74 Slovakian kindergartens, 67 elementary and junior high schools and two high schools. Kindergarten teachers are trained in Szarvas and Esztergom. Slovak-speakers may acquire grade school teaching degrees in Esztergom and Békéscsaba and general teaching degrees in Szeged and Budapest.
- Slovenian-language education is present in five kindergartens and four schools; teachers are trained in Szombathely.

situation of Roma schooling can only be successful if conducted as part of co-ordinated government efforts to mitigate the economic and social disadvantages of Roma communities.

Even though 7.12% of students in Hungary are of Roma origin, there is only one Roma educational institute, the Gandhi High School in Pécs. Although the number of Roma who have finished junior high school has increased since 1990, the ratio of those continuing through secondary education is still very low. While more than half of non-Roma students continue their studies in high school, only 3% of Roma students are admitted to high schools and only 0.1% of these students continue on to higher-level education.

Roma students' lack of success is not only due to their very poor social and economic situation. There are clear patterns of discrimination in the public education system, and the government has not made any real effort to remedy the current situation or to prevent discriminatory practices.

The Hungarian public education system has no tolerance for the Roma's different cultural background, and the emphasis on uniformity characteristic of governmental education systems is so strong that Roma students either drop out or are forced into so-called auxiliary schools. Some new programmes have focused on helping Roma students to catch up. The pedagogical methods of these programmes, however, are not yet clear. Research has proven that auxiliary and special education can actually constitute a form of institutionalised segregation.

*Case Study 2. Discrimination in School*

Perhaps Hungary's most notable case concerning discrimination in education was the separate graduation ceremony for Roma pupils in Tiszavasvári.\*

The leaders of three Roma community organisations appealed to the President of the Republic to take measures concerning the case of a primary school in Tiszavasvári that decided to organise a separate graduation ceremony for Roma pupils. According to information published in the local press, Roma pupils were not allowed to use either the school gymnasium or the school shop. The Parliamentary Commissioner for Human Rights (Ombudsman) ordered the case to be investigated *ex officio*, and the President of the Republic also began an inquiry.

One of the housing estates in Tiszavasvári is significantly populated by Vlach (Romanian) Roma, whose children have always studied at Ferenc Pethe Primary School. The school has a tradition stretching back 40 years.

On 23 April 1997, on the basis of a resolution adopted by the majority of the faculty, the school decided to organise a separate graduation ceremony for Roma students. The reason given for the decision, was that, at that time, a high percentage of children were infected with various contagious conditions ranging from lice to skin conditions, and the faculty meant to protect parents and guests attending the ceremony from the risk of infection. The use of the gym was denied to Roma pupils for the same reason, although no formal decision was made on the issue. Parents were informed about the separate ceremonies at a parents' meeting and during individual discussions.

The teachers' reason for a separate ceremony—a high rate of infection among Roma students—is placed under question by the fact that there was never any such measure taken earlier, though there was a similar rate of infection. Due to the collective nature of the decision, the result affected the infected and the uninfected alike. Although discriminatory intent as a motive for the faculty's decision cannot be proven, the incidents, including the lack of preparation and the method of administering the ceremony, clearly appear to have led to discrimination.

The separate graduation ceremony for Roma students prevented others at the ceremony from becoming infected, but the fundamental problem, i.e. the infection of most Roma children, remained unresolved.

In one sense, the events described above could be regarded as the consequence of grave social and sanitary conditions that cannot be dealt with in isolation, without also addressing the root causes of the problem. As long as there is no change in the living conditions at the housing estate, sanitary risk may be used as an excuse for discriminatory educational measures.

The problem can only be solved through co-operation among Roma and non-Roma residents of the estate, the mayor, representatives of the local government, teachers, community organisations, and various institutions and authorities. There is apparently a desire for such co-operation in Tiszavasvári. The local board of representatives has urged constant co-operation and mutual assistance between the institutions and organisations concerned.

Teachers agreed to take part in a training course in which they sought to widen their knowledge of Roma culture. At a reconciliation meeting, town administrators presented a package of measures to be used to improve the living conditions of the estate's Roma population, as far as the municipality's resources allow. It is to be hoped that as a result of these measures and continued co-operation the issue of the segregation of the Roma minority in the community life of the estate can be resolved over time.

The Parliamentary Commissioner for Minority Rights significantly contributed to the final outcome and solution of the issue by making recommendations to the municipality and to senior officials respon-

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\* Primary and secondary schools in Hungary traditionally organise a ceremonial farewell for graduating students, who walk along the school corridors singing graduation songs.

sible for solving constitutional anomalies. The local board of representatives accepted provisions from these recommendations, and used them to elaborate a detailed package of measures put together in the form of a resolution. Both the Minister of Culture and Education and the Minister of Welfare welcomed the Ombudsman's proposals and specifically pledged to implement them in practice.

Thus, auxiliary schools fail to promote equal opportunities for the Roma.<sup>13</sup> At the same time, any kind of special programmes for Roma face difficulties in the increasingly competitive environment of Hungarian public education, because they require further budget resources.

These specialised programmes can only be successful if the economic and social disadvantages of regions inhabited by Roma are addressed through co-ordinated, overall government efforts.

The key to the Roma population's ability to integrate, without forced assimilation, is a breakthrough in the field of education. Hungary's pending accession to the European Union means that language, computer skills and overall education are more important than ever. If the Roma are excluded from the opportunity to acquire these skills, then the huge gap between Roma and the majority could widen further—creating tensions that are difficult or impossible to resolve.

#### *4.7. Regulations to promote minorities in the media*

The right to choose an identity is a key principle of Hungarian minority legislation. But this choice can only be considered voluntary if it is based on conscious decisions by autonomous individuals. In order to increase individuals' understanding of what it means to belong to a minority, it is essential that the minority's distinctive language, culture and traditions are made clear to a wider audience.

Paragraph 18 of the Minority Act says, 'public radio and television—according to the regulations of a separate law—has to provide for the creation and broadcast of national or ethnic programmes'. The Constitution and the Minority Act both promote equal rights to participation in public life and access to the media. Financial, procedural and organisational regulations of the 1996/I Law on Radio and Television—referred to as the RTV law—should help in creating a balanced and realistic picture of minorities.

The RTV Law implements a wide range of guarantees for minority rights by putting most minority programming in the special category of a public service broadcast. Information conveying the culture, life and viewpoints of minorities is classified as public service broadcasting, and can be subsidised within the framework of the system.

One of the RTV Law's basic principles is that public or private broadcasters may not breach human rights or serve to incite hatred against minorities. Public broadcasters are expected to be particularly vigilant in portraying minorities with respect and fairness. Violations of these regulations can be sanctioned by the National Radio and Television Public Board, with the most severe punishment being revocation of a broadcaster's license.

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<sup>13</sup> See the works of Ladányi and Csanádi and Havas and Kertesi.

It is the duty of public broadcast providers to help maintain the cultures and languages of minorities and to offer regular information in their native tongues. Regulations enforce this duty by insisting that the ratios of air time allotted to different minorities cannot be less than they were before the law came into effect, and may not be changed arbitrarily.

National MSGs have significant rights in the public service media, such as determining how the broadcast time allotted to minorities is used. Their decision must be respected by the public service broadcaster. National self-governments may jointly delegate one person to the advisory boards of Hungarian Radio, Hungarian Television and the Hungarian Television Public Foundation.

The RTV Law's regulations are appropriate for shaping the depiction of minorities in electronic media. The Law's greatest merit is that it does not declare the rights of minorities, but rather provides an appropriate order of procedures and sanctions against those who breach those rights. It may also pave the way to for practical enforcement of previously established minority laws.

## 5. Forms of Minority Rights Protection

The Hungarian Constitution makes the protection of minority rights a fundamental element of the entire legal system. Every governmental organisation is bound to protect minority rights, and every citizen is bound to respect minority rights in the Republic of Hungary. The breach of these rights may be remedied in court.

MSGs are the cornerstones of the system of institutions upholding minority rights. The Parliamentary Commissioner for Minority Rights plays a key role in applying the Constitutional protection of those rights to administrative issues.

NGOs and legal consulting offices dealing with minority rights protection help enforce the practical implementation of those rights. These organisations are relatively well trusted by citizens belonging to minorities and consequently have the opportunity to perform certain forms of minority rights protection that governmental organisations cannot practice. Unfortunately, these institutions do not have sufficient government funding. They maintain themselves through funds from domestic and international organisations, and professionals working for them often volunteer for these tasks, receiving no financial compensation.

The attitude toward international human rights watchdogs and other monitoring organisations in Hungary has changed in recent years. Government organisations are now helping these agencies, largely thanks to the Euro-Atlantic integration process, as reports from these NGOs and international agencies can strongly influence how Hungary is viewed abroad.

The Hungarian Constitution prohibits discrimination in general, and specific legal regulations take concrete steps against it. The 1996 amendment of the Penal Code has special significance, because it provides an opportunity for authorities to use increased rigour when dealing with violent actions committed against a group or an individual for reasons of nationality, ethnicity, race or religion.

### 5.1. *Protection against discrimination*

Ethnic conflicts appear to be growing in frequency and seriousness in Hungary, and discrimination against the Roma population is particularly evident. Legislation to remedy this discrimination can follow two courses: either 'positive discrimination' (affirmative action) to reform the social circumstances that form the basis of discrimination; or 'anti-discrimination' legislation, which effectively prohibits discrimination and punishes those responsible for breaches of rights. A Draft Anti-Discrimination Law was submitted to the Human Rights Committee of the Hungarian Parliament in October 2000.

Although Hungary has not had a specific anti-discrimination law, anti-discrimination regulations are contained within the paragraphs of laws dealing with other scopes of interest. The highest level of law, Paragraph 70/A, Section 1 of the Constitution states that: 'The Hungarian Republic ensures human and citizen rights for all individuals within its borders without distinguishing between any race, colour, gender, language, creed, political or other opinion, national or social origin, wealth, birth or other position'.

According to Judicial Decree 61/1992 (XI.20) AB, this section of the Constitution covers more than human rights and basic citizens' rights. The prohibition of discrimination covers the whole legal system. Hungary has accepted the obligation to prohibit and eliminate all racial discrimination against any person, group or organisation using all available tools—even legislation if necessary—in accordance with the international treaty on the elimination of all forms of racial discrimination published in the Eighth Executive Order of 1969. According to the 1993 Law on the Rights of National and Ethnic Minorities, all kinds of discrimination against minorities are prohibited.

These laws, and the existing Constitutional protections, represent sufficient guarantees for the elimination of direct legal discrimination against minorities. However, the administrative aspect of the legal system can only be enforced in practice if it contains other guarantees. There must be an appropriate system of regulations created for:

- exposure of discriminatory legislation;
- the control of potentially discriminatory legal relations;
- the resolution of existing breaches of rights;
- a system of compensation.

Minority protection and anti-discrimination legal regulations passed during recent years have created the basis for this system, but this does not mean that the process of administrative legislation can be considered complete.

### 5.2. *Employment*

Employment discrimination is especially significant, because unemployment poses a serious social problem in Hungary. Examples of discrimination in the field of employment include the illegal, discriminatory refusal to establish an employment relationship and discrimination in the rights and obligations of the employment relationship based on the employee's national or ethnic background.

Paragraph 5, Section 1 of the 1992/XII Law on the Labour Code states:

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

*Case Study 3. Remedy for Discrimination in a Pub*

A Roma MSG complained that Roma individuals were not admitted into a pub in the centre of their town.

The county-level consumer protection authority, together with the Roma MSG, organised a test purchase involving Roma customers in order to prove the act of discrimination. Subsequently, the authority made a precedent-setting decision:

- it obliged the business to serve every customer regardless of ethnicity;
- it demanded the business to report on the relevant actions within 15 days; and
- it warned the business that failure to meet these obligations would result in the initiation of temporary closure by the district administrator.

In legal terms, the decision was important because it was not only based on the Act on Protection of Consumers but also on the discrimination prohibition contained in the Law on the Rights of National and Ethnic Minorities.

The procedure of the consumer protection authority creates a precedent as well, because it used an effective method—test purchase by Roma customers—to reveal a case of discrimination for the first time in Hungary.

The law transfers insurance obligations and burdens to the employer in the event of an argument concerning discrimination. The trial date has to be set within fifteen days of the labour court receiving the petition if no other measures are necessary. If the discrimination takes the form of an illegal termination of the employment relationship, the employee has to be employed in his/her previous position upon request, and the arrears of pay as well as other damages must be compensated. According to the 1996/LXXV Law on the Control of Work Affairs, a fine of HUF 50,000-1,000,000 may be imposed on the employer.

Paragraph 75, Section 1 of the 17/1968 (IV.14.) Governmental Decree on Transgressions also regulates discrimination against the employee:

The employer, who

- (a) illegally refuses employment based on gender, age, nationality, race, origin, creed, political views, membership of employee's federation or activities related as well as all other circumstances not related to the employment relationship;
- (b) implements discrimination of employees according to section (a) may be punished with a fine of up to fifty thousand forints.

Pursuant to the provisions of Act III of 1952 on Civil Practice, effective 1 January 1999, claims against unlawful discrimination by an employer may now be filed not only as a

civil case; legal remedy can also be sought under the Labour Law. An amendment to the Act extended the meaning of a 'case under labour law' to include cases arising during negotiations preceding the actual conclusion of the labour contract. As a result, legislation that defends prospective employees—such as the reversal of their obligation to provide evidence, and the rule on the relevant court procedure to start within 15 days—now also applies to labour cases initiated during employment.

This amendment is intended to provide job-seekers with a more effective means of defence against potentially discriminative employers, though it is clear such negative discrimination will not be eradicated by legal means alone. It is crucial that legislators gather ever-more-accurate information on the extent of this important—though elusive and subtle—social problem. A more profound knowledge of the situation can facilitate the preparation of structural-organisational measures to fight job discrimination—and even further amendments to the law, if necessary.

### 5.3. *Police violence against Roma*

The most serious forms of discrimination in practice are violent acts committed against minorities. Among such acts, crimes committed against Roma by members of the police force bear separate mention. Acts perpetrated against Roma by individual members of the police force may not lead to the conclusion that the police as such are prejudiced against minorities, but they do draw attention to the fact that training with respect to ethnic minority issues and the screening of prejudiced candidates during police training.

Since it is legally possible to limit basic rights during police procedures, the use of police powers in a prejudicial and abusive way may cause significant grievances. Measures have to be taken to ensure a lawful state of affairs and to have those responsible answer for their actions when any kind of discrimination is perpetrated by police.

Violent crimes committed by members of the police force are severely punished by law. The penalty for assault during an official procedure is imprisonment for up to two years, and this may be as much as five years in the case of forced interrogation. An officer found guilty of detaining someone illegally may be subject to five years imprisonment, or up to eight years in an aggravated case. A fiduciary relationship between the police and minorities, especially the Roma minority, can not be created solely by remedying breaches of rights—it requires a deeper change in attitudes.

## 6. Conclusions

The policy of protecting minority rights is new to the Hungarian legal system, so it may seem surprising that that it already needs improvement. It should be understood, however, that the 'experimental' nature of the current legal system was apparent the minute it was formed.

The unique Hungarian system that offers 'half-municipal autonomy' is a legislative response to the question of whether minority communities that are in a state of advanced assimilation are capable of independent, autonomous action.

It has become evident after a few years of observation that it is not only possible to revitalise minority communities, but the process has started spontaneously—especially among groups with relatively large numbers, like Roma, Germans, Slovaks, Croats and Romanians. The creation of the system of minority rights protection has merely helped in this process.

The legal framework must be further expanded, in part through the creation of institutions that were ‘promised’ earlier and, in part, by making the existing system more coherent. The best example of the former is the creation of the minorities’ representatives in Parliament. An example of the latter is the need to make the theoretical aspects of autonomy real.

The minority right to parliamentary representation was first regulated through a 1990 amendment of the Constitution and later reaffirmed by the Constitutional Court. Yet, no formula has been found that is acceptable both to political parties and minorities. The common feature in the plans elaborated so far—including a proposal that was turned down by Parliament in 1993—is that they make it easier for minority organisations to nominate candidates, and minority candidates would not need the 5% of the vote required for a typical Parliamentary mandate. According to the current plan, the least preferential mandates would require 10,000 votes. This would offer a real chance of representation to the ‘bigger’ minorities, like the Roma, Germans, Slovaks and Croats, but, unsurprisingly, the smaller minorities object to the plan.

The creation of cultural autonomy for minority groups has already begun to some degree. The Parliamentary Commissioner for Minority Rights suggested directions for development in his 1996 annual report, which says that mechanisms for functional and financial autonomy for MSGs should be gradually developed. Thus far, however, these mechanisms have not been created. The local, and in some cases national, aspects of public education and cultural services that relate to minorities should be delegated to the MSGs, along with sufficient budgetary resources.

The true test of the viability of the MSG system will be whether Hungary is ready to take this next step forward toward MSG autonomy.

## 7. Recommendations

1. The regulation of the competencies of MSGs must be as precise as possible, to avoid unnecessary conflicts with local councils.
2. Special training programmes on minority law and conflict prevention should be provided for local policy-makers and representatives of minority groups.
3. There should be well-organised, regular contact among the different actors in local communities.
4. Two of the key issues in managing multi-ethnic communities are, on the one hand, delegating power to the minority community in issues where it can decide autonomously and, on the other, (re)integrating the community by allowing minorities to participate in decisions on ‘common’ issues.

5. The fundamental fields of local policy-making in multi-ethnic communities are education and cultural issues. The education system and cultural services must reflect the multi-cultural nature of the relevant community.
6. Although the issue of social welfare payments should not be devolved entirely to MSGs, self-governments of the Roma minority should be allowed to comment on the allocation of social aid for Roma.
7. Due to its broad social impacts, a nationwide investigation into the issue of education for Roma is needed. The goal of this investigation should be to shed light on controversial practices and arrangements in public education, and to devise regulations to remedy them.

Only a properly functioning control system can efficiently diminish the vulnerability of citizens, especially weaker groups in society that are less capable of defending their own interests. The creation of such a control system is the constitutional duty of the state.

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## ANNEX 1

### 1980 AND 1990 CENSUS DATA ON MINORITY GROUPS

*Table A.1. Census Data According to Native Language*

Minority groups	Number of people		Per cent of the total population in 1990
	1980	1990	
Slovaks	16,054	12,745	0.1228
Romanians	10,141	8,730	0.0841
Croats	20,484	17,577	0.1694
Serbs	3,426	2,953	0.0285
Slovenians	3,142	2,627	0.0253
Germans	31,231	37,511	0.3616
Roma	27,915	48,072	0.4634
Armenians	-	37	0.0004
Bulgarians	-	1,640	0.0158
Poles	-	1,370	0.0132
Ukrainians, Ruthenians	-	674	0.0065
Total	112,393	133,936	1.291

*Note:* National population:

in 1980     10,709,463 inhabitants

in 1990     10,374,823 inhabitants

*Source:* MAPSTAT Central Statistics Office (1992) Budapest.

## ANNEX 2

### ESTIMATED MINORITIES IN HUNGARY

*Table A.2. Estimated Population of Minorities in Hungary*

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

*Source:* Ombudman's Office.

### ANNEX 3

## MINORITY EDUCATION IN HUNGARY

*Table A.3. Budgetary Support for the Education of National and Ethnic Minorities*

	1980-81.	1990-91.	1997-98.	1997-1998.	
Minority Education	School year	School year	School year	institution	teachers
	Pupils number				
Kindergartens	11,082	14,009	20,470	386	993
Elementary Schools	35,482	44,545	53021	390	1,357
Secondary Schools	790	1,301	2310	27	179
Total:	47,354	59,855	75801	803	2,529
				1998	1999
Earmarked state grant for one pupil:				75,000	86,000
Earmarked state grant allocated on the basis of quotas					
	1998.	1999.	Number	Grant	
	HUF/pers.		person	HUF (in millions)	
Kindergarten	23,000	25,000	33,000	825	
School	24,500	26,000	48,000	1,568	
National minority school	27,000	32,000	10,000	320	
Total:			91,000	2,713	= 30,000 HUF/pers.
Earmarked state grant for Education of Roma:					
'Closing Up' Roma education	24,000	27,000	53,000	1,431	
Grant for Roma students, living in student-hostels	10,000	20,000	1,710	34	
				1,465	= 27,600 HUF/pers.

*Source:* Hungarian Ministry of Education.

## ANNEX 4

HUNGARY'S COMMITMENTS IN THE THIRD PART OF THE  
REGULATIONS IN THE EUROPEAN CHARTER ON REGIONAL AND  
MINORITY LANGUAGES

## Article 8

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

2

## Article 9

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

## Article 10

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

## Article 11

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

3

## Article 12

- |   |    |    |    |    |    |
|---|----|----|----|----|----|
| 1 | a) | b) | c) | f) | g) |
| 2 |    |    |    |    |    |
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## Article 13

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|---|----|
| 1 | a) |
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## Article 14

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|---|----|----|
| 1 | a) | b) |
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