

## NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

### HUNGARY, Situation as of 31 December 2002

#### General Overview

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

COUNTRY: HUNGARY	Constitutional provisions	Specific Legislation	Criminal Law	Civil and Administrative Law
<b>Norms concerning discrimination in general</b>	Yes	Yes Law on the Rights of National and Ethnic Minorities (no. LXXVII/1993, Section 3)	Yes	Yes
<b>Norms concerning racism</b>	Yes Art. 70/A(1) Const.	No	Yes Criminal Code Art. 155, 156, 157	Yes Art. 76 Civil code. Section 5 Labour Code.
<b>Relevant jurisprudence</b>	Yes	No	Yes	Yes

#### Constitutional law: Hungary

*Preliminary Note: this table is accompanied by an explanatory note*

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 32/B Ombudsmen	This clause provides for an Ombudsman for the Protection of Civil Rights and for an Ombudsman for the Protection of National		Law LIX/1993 on the Parliamentary Commissioner for Civil Rights Law LXXVII/1993 on National and

	and Ethnic Minority Rights. These officers are empowered to investigate any abuse of constitutional rights or any abuse of national and ethnic minority rights and are empowered to initiate measures that could provide a remedy.		Ethnic Minority Rights
Art. 54 (1) Right to human dignity	Everyone has the inherent right to life and dignity and nobody can be arbitrarily deprived of it.	Decision of the Constitutional Court: 23/1990 (X.31.)	According to the Constitutional Court, this provision must be seen not only as a general freedom and a substantive right, but also as the essential element of every provision on equality.
Art. 57(1) Equality before the law	In the Republic of Hungary everyone shall be equal before the law.		
Art. 68(1) Minorities share the power of the people	National and ethnic minorities living in the Republic of Hungary shall share the power of the people; they shall be constituent elements of the State.		Law LXXVII of 1993 on the Rights of National and Ethnic Minorities of the Republic of Hungary was enacted to implement Art 68(1).
Art. 68(2) Protection of national and ethnic minorities	The republic of Hungary shall protect national and ethnic minorities. It shall ensure their collective participation in public life, foster their culture, the use of and the instruction in their native languages, and the right to use their name in their own		

	language.		
Art. 68(3) Local political representation	The Parliament of the Republic of Hungary shall ensure the representation of the national and ethnic minorities living in the territory of the State.		
Art. 68(4) Local and national self-government of the national and ethnic minorities	The national and ethnic minorities may establish local and national self-government.		
Art. 70/A (1) The principle of equality and non-discrimination	The Republic of Hungary shall ensure human and civil rights for everyone within its territory without discrimination of any kind, whether based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or upon any other grounds.	Decisions of the Constitutional Court: 9/1990(IV.25.) 21/1990 (X.4.) 61/1992 (XI.20.) 54/1995 (IX.25.)	Similar protection is afforded by §76 of the Civil Code of 1959.
Art. 70/A(2) Punishment of discrimination	Any discrimination described in Art. 70/A(1) shall be severely punished by law.		A civil remedy is provided by § 84 (1)(e) of the Civil Code where the conditions set out in § 339 are fulfilled.

## EXPLANATORY NOTE

### HUNGARY / CONSTITUTIONAL LAW

Following the political changes that occurred in 1989, it was decided, as stated in Law XXXI/1989, not to adopt a new constitution, but to totally revise the existing one. The Constitution currently in force is thus that of 1949, with amendments. As a consequence of the total revision of the constitution and the efforts made by the government of Hungary to render the legal system euro-compatible, the catalogue of constitutional rights now reflects international human rights standards (see §§ 54-70/k of the constitution).

The Constitutional Court has played an important role in the implementation of these rights. Even if the catalogue of constitutional rights and freedoms in the Hungarian Constitution is quite voluminous, there was a need for a subsidiary explanation of the general principles involved.

Art. 54(1) of the Constitution was applied from April 1990 onwards as a general and substantive personal right of individual autonomy in every field. The central consideration was the right to human dignity. It had previously been interpreted as referring only to legal capacity, thus ensuring only formally equal opportunities for all persons. The President of the Hungarian Constitutional Court stated in decision no. 23/1990 (X.31) that "the other function of the right to human dignity is to assure equality". The Constitutional Court thus imposed a double function upon this article: it is not only a general and substantive right and freedom but also the essential basis of every legal provision concerning equality. This decision underlined the principle that other rights can be developed only in conformity with human dignity and cannot restrict it.

Article 70/A of the Constitution is a general provision on equality and contains the principle of non-discrimination. There is a lot of jurisprudence concerning the application and the interpretation of this article. It was originally in decision number 9/B/1990/9 that the Constitutional Court defined the principle of non-discrimination. It stated that "the principle of non-discrimination does not mean that every distinction, even one affecting an important social activity, is forbidden. The principle of non-discrimination principle means that the law must consider everyone as equal (as a person with equal dignity). That means that the basic standard of human dignity must not be violated. Criteria for the distribution of rights and privileges must be applied in such a manner as to give the same respect, the same attention and the same importance to each individual, regardless of personal considerations". According to this decision, it is permissible to practice positive discrimination. Thus, it is not unconstitutional to realise a basic right or social aim, if guaranteed by or conforming to the Constitution, by measures which contravene the principle of equality, taken in a narrow sense. Positive discrimination is possible within the limits of respect for equal dignity and basic rights expressly stated in the Constitution.

In its decision No. 61/1992 (XI.20.), the Constitutional Court extended the principle of non-discrimination in Art. 70/A of the Constitution to the whole legal system: "the prohibition of discrimination laid down by Art. 70/A of the Constitution extends to the whole legal system and not only to basic personal rights. Any distinction which effectively denies anyone the right to human dignity thereby contravenes the interdiction laid down by Art. 70/A, although it does not necessarily affect any 'human or constitutional rights'". The Court reiterated that Art. 70/A does not forbid every kind of distinction, but only discrimination which affronts human dignity.

In the first case the Court applies the test of necessity and proportionality<sup>1</sup>, while in the latter a test defined in Constitutional Court Decision No. 35/1994 is applied: "the unconstitutionality of a measure unfavourably discriminating between persons and not concerning fundamental rights may be established if the infringement is related to one of the fundamental rights – and thus ultimately to the general right to human dignity – and the discrimination or restriction does not have an objectively reasonable ground,

i.e. it is arbitrary.” The Court refers to these key concepts (objectively reasonable ground and arbitrariness) in several subsequent decisions<sup>2</sup>.

A professional debate has been going on for some time about the necessity of creating an independent and general anti-discrimination act. During the preparation of the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority (Government Resolution 1093/1997, which contains directives for measures concerning education, employment, social and health care, housing programs, regional programs, etc.) the experts participating in the drafting of the document argued in favour of such a legislative act<sup>3</sup>. Their arguments included that the present system is rather sporadic (some legal fields have anti-discrimination provisions, some do not, some have a relatively elaborate system of sanctions, some contain no sanctions at all, etc.). In addition they argued that it does not cover all the relevant areas, the number of actual cases initiated by individuals discriminated against is low, whereas the creation of a unified code could promote the establishment of a relatively independent legal field (anti-discrimination law), a circle of legal experts specialising in this area could evolve, it would be easier for a coherent judicial practice to develop, and a unified and comprehensive system of organisations (an anti-discrimination office) and sanctions could be established. However, the government was reluctant to assume the obligation to adopt such legislation. As a result the decree only contains that “in order to promote the practical implementation of the principle, there shall be an examination of how the legal provisions containing the ban on negative discrimination may be complemented with a sufficient system of sanctions and procedural rules<sup>4</sup>.”

Recently, several Hungarian human rights organizations submitted a constitutional complaint to the Constitutional Court claiming that Parliament failed to fulfill its constitutional obligation in the field of anti-discrimination legislation, claiming that the lack of a comprehensive anti-discrimination statute in Hungarian law violates the constitution. As a secondary argument they pointed out that the lack of an anti-discrimination law is a violation of several international treaties to which Hungary is a party.

The Constitutional Court, in a decision of 8 December, 2000 (No. 45/2000) dismissed the complaints. According to the Court, the complainants did not establish that the conditions of an unconstitutional legislative omission in fact exist, viz. that there was no constitutional obligation to enact a law specified in the constitution, and, second, that such omission resulted in a situation contrary to the constitution. The second ground of the complaint was rejected on procedural grounds, since the complainants lacked standing under Art 21. (3) of the Statute on the Constitutional Court.

The reasoning of the Court is not without interest, however. The Court made a rather detailed survey of the anti-discriminatory provisions of the Hungarian sub-constitutional law, including the procedural laws (civil, criminal, administrative), private law (i.e. Art 76 of the Civil Code), the criminal offences penalizing acts of discrimination; moreover, the Court examined in detail the very sensitive field of employment legislation, pointing out that it satisfies the constitutional requirements. The general conclusion of the Court is that Hungarian law, as it is, might be regarded as a multi-level system of protection against discrimination. Accordingly, in the opinion of the Court, Parliament has fulfilled its constitutional obligation to enact

laws for the elimination of discrimination and to promote social equality through creating equal opportunity, including (within limits) positive discrimination.

It is important to note that the Court explicitly states that the dismissal of the complaint does not imply that Hungarian legal order, as it stands, has already exhausted all the possibilities at the disposal of the legislator to implement the constitutional provision prohibiting discrimination. In the view of the Court, however, it is the task of the legislator to decide what further measures and laws are needed to prevent discrimination and to promote social equality through fostering equal opportunities.

The Hungarian representative at a recent sitting of the UN Human Rights Committee stated that the Hungarian government intends to submit to Parliament a comprehensive anti-discrimination law soon, and no later than the end of 2003.

### **Criminal law: Hungary**

*Preliminary Note: this table is accompanied by an explanatory note*

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Genocide	Criminal Code - Art. 155, paras. (1) & (2)	(1) Whoever aims at the total or partial extermination of any national, racial or religious group (2) Whoever prepares to commit the crime of Genocide	(1) Imprisonment for life or for between 10 and 15 years (2) Imprisonment for between 2 and 8 years.		
Apartheid	Criminal Code - Art. 157	(1) Whoever, with the aim of obtaining and maintaining control by a certain race of people over another racial group, or of the systematic oppression of the other racial group, either : a) kills a member of the target group or	(1) Imprisonment for life or between 10 and 15 years (2) Imprisonment for between 5 and 10 years (3) Imprisonment for life or between 10 and 15 years.		

groups, or  
 b) forces a racial group or groups into circumstances that threaten to physically exterminate it partially or totally  
 (2) Whoever prepares to commit acts of Apartheid  
 (3) Cases in which the acts falling within (2) actually produce serious consequences

<p>Violence against any member of a national, ethnic, racial or religious group</p>	<p>Criminal Code - Art. 174/B</p>	<p>(1)Whoever uses violence against another because that other person belongs to a national, ethnic, racial or religious group, or forces that person by violence or threats to do or not to do something or to tolerate any conduct        (2) Whoever commits an act falling within (1), aggravated by :-        conspiracy ;        torture ;        proceeding with arms or as a gang ;        causation of serious injury</p>	<p>(1) Imprisonment up to five years        (2) Imprisonment for between 2 and 8 years</p>		
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		to the victim.	
Public Sedition	Criminal Code - Art. 269	Whoever, intending publicity, arouses hatred or commits any act likely to arouse hatred against either :- a) the Hungarian nation, or b) any national, ethnic, racial, religious or other group within the population	Imprisonment up to 3 years

## EXPLANATORY NOTE

### HUNGARY / CRIMINAL LAW

Hungary has ratified international treaties that prohibit acts of aggression, sedition and the arousal of animosity against national, ethnic or religious groups. According to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (“Genocide Convention”), the International Convention on the Elimination of all Form of Racial Discrimination of 1965 (“Discrimination Convention”) and the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 (“Apartheid Convention”), Hungary is obliged to develop an institutional framework apt to prevent or punish such activities. Several violations of Hungarian law have attracted attention in recent years, leading to the conclusion that the Penal Code presently does not fulfil the State’s international commitments. By modifying certain provisions of the Penal Code, the legislature subsequently moved to ensure that Hungarian domestic law corresponds to international anti-discrimination law and tried to ensure more efficient protection of minorities. The XVIIth Penal Code modification law in 1996 has changed. The following criminal offences were affected by Modification Law No. 17 of 1996, modifying the Penal Code:

- According to § 155 of the Penal Code, genocide is punishable in Hungary as defined by the Genocide Convention. The Law introduced a statutory definition of genocide, for which the Penal Code had previously simply made reference to the Genocide Convention, and renders that conduct punishable. According to the Modification Law, even acts of physical or mental cruelty against members of national, ethnic or religious groups on the basis of their belonging to such a group can be treated as genocide, if they aim at the partial or total extermination of the group. The former provisions treated the killing of a member of such a group as automatically falling within the offence of genocide. This has been changed to reflect the Convention,



which encompasses such a killing of a member of a group only if committed with the requisite genocidal intention ;

- § 157 of the Penal Code introduces apartheid as a new criminal. According to the former § 157, the crime of “ethnic discrimination” consisted of the commission of a criminal offence under international law while intending to obtain and maintain control by one ethnic group over another, or intending systematic discrimination by one ethnic group against another. This attempt to implement the Apartheid Convention was not very successful, because of the difficulties involved in establishing the scope and contents of crimes under international law, which had to be proved in addition to the requisite intent to control or discriminate. The Penal Code now defines the offending behaviour in the terms used in the Apartheid Convention ;

- Violence against any national, ethnic or religious group is a new criminal offence in § 174/B of the Penal Code. This provision is intended to complement the offence of genocide. The requisite conduct in both cases is the perpetration of a crime against a particular group based on hatred towards that group. Where the perpetrator also has the intention of exterminating the group, that conduct corresponds to the offence of genocide. Where that intention is lacking, the relevant criminal offence is known as violence against any member of a national, ethnic, racial or religious group. That offence may be established by acts of violence, cruelty or coercion by threats, perpetrated because of the victim’s membership or probable membership of the target group. The offence is deemed to be aggravated if committed while armed, or by a gang, or as a result of a conspiracy, or if violence is employed or the victim is seriously injured. This offence mainly threatens physical integrity and freedom and is therefore placed in Chapter XII of the Penal Code and not classed as a crime against humanity ;

- The offence of public sedition in § 269 of the Penal Code is no longer predicated upon nationality as such, but refers to national, ethnic, racial or religious groups in accordance with the Law on National and Ethnic Minority Rights (LXXVII/1993). Any activity that arouses hatred is deemed to fall within this new offence. Its constitutionality was challenged on the basis of the guarantees of the freedom to express one’s opinion and the freedom of the press. The Constitutional Court pointed out in its decision 30/1992 (V. 26) that to afford constitutional protection to the arousal of hatred against given groups would contradict the political system and political values underlying the Constitution. The action of arousing hatred against minorities can therefore be subjected to a criminal prosecution and penalty.

An increase in violent crimes against minorities in recent years is connected with the emergence of the Hungarian skinhead movement, which can be traced back to the formation of the first skinhead band in 1983. Two classes of crimes are characteristically targeted against minorities: crimes against life, physical integrity and health and crimes against freedom and human dignity. Amongst minorities in Hungary, Gypsies are the most frequent targets of crimes with racist motives.

Despite the fact that assaults on Gypsies and Arabs residing in Hungary have been occurring since 1985-86, the authorities initially did not pay enough attention to this phenomena. The first crime that resulted in public outrage occurred in 1988, when a group of 50-60 skinheads attacked a group of Cuban guest workers. Many of the

perpetrators of the crime have been sentenced to terms of imprisonment that were not suspended.

On 25 January 1991, a group of 46 juvenile skinheads assaulted several non-Europeans in Budapest. Following thereon, they attacked a bar where 4-5 individuals of Gypsy origin were staying. One of the assaulted Gypsies suffered a bleeding wound to the face, as well as bruises on his arms and legs. The Public Prosecutor's office charged the perpetrators with the crime of violence against a national, ethnic, racial or religious group, as defined by § 156 of the Penal Code as it then stood (causing harm to a member of a national, racial or religious group). Rejecting those charges, the court of first instance found some of the defendants guilty of several counts of malicious assault and convicted others as accessories and accomplices as well as of attempted malicious assault. The prosecution lodged an appeal against the verdict on the basis that the offences tried differed from those charged, but the classification of offence tried was approved by the court of second instance. That determination was upheld on appeal to the Supreme Court of Justice in its decree No. 299 of 1994, holding that it was appropriate to apply the offence of malicious assault, as opposed to the offence of violence against national, ethnic, racial or religious groups. The Court departed from the premise that the defendant skinheads had physically assaulted individuals of Gypsy, Arab and other non-European origins because of their national, ethnic, racial or religious appartenance. It noted that there was no established judicial practice of dealing with crimes committed against members of national, ethnic, racial, or religious groups and that legal scholars had not considered the practical enforceability of this offence. The Genocide Convention was cited as the basis of § 156 of the Penal Code. The purpose of that Convention, felt the Court, was to prevent and punish attacks upon the whole of certain human communities, namely persons bound together by common national, ethnic, racial or religious relations, meaning upon "the group itself as such". Here, the defendants' actions did not in any way strive to eliminate a part or the whole of any target group and did not threaten the group itself. The decision of the trial court to exclude such violence from the scope of the former § 156 was therefore legally correct, despite the fact that the defendants showed some level of organisation.

Following upon that decision, the practice of the lower Hungarian courts was to avoid the special offences enacted for the protection of minority rights and dispose of cases by applying other, more general crimes. At the political level, it was thought that this practice failed to show Hungary's compliance with international anti-discrimination law. Modification Law No. 17 of 1996 was thus enacted to provide a more effective defence of minorities. § 174/B of the Penal Code sanctions actions motivated by the victim's alleged membership of a group as well as those motivated by actual appartenance, which clarification will make it easier to prove the real motive behind criminal conduct. It is hoped that the new, more concretely defined offence will result in the separate characterisation and punishment of crimes with racist motives.

The use of insulting and derogatory terms in respect of individuals belonging to a minority group is characteristic of the class of criminal offences involving an affront to human dignity. A perhaps typical case arose on 18 September 1995, when a man belonging to the Gypsy minority asked for a soda and coffee in a bar in the city of Pécs. His request was refused by the waitress on the ground that her employer did not allow her to serve Gypsies. The bar's operator then confirmed what the waitress had

said, adding that "Gypsies may not eat, drink or have fun here". The offended party instituted a private prosecution for the misdemeanour of libel and the court imposed a fine on the bar's operator for that offence. The court stated in judgment that the use of the term "Gypsy" does not in itself have a defamatory character. In the context of the facts of this case however, it expressed the perpetrator's contemptuous and degrading view of the defendant. That statement and the act of refusing service had humiliated the complainant and could therefore be said to have damaged his reputation. Under the given circumstances, the statement regarding the complainant's ethnic status had an unambiguously pejorative meaning and amounted to an intolerable form of discrimination between citizens with equal rights.

For the recently reported cases on racially motivated crimes see following tables:

<b>1998 Type of offence</b>	<b>Cases reported</b>	<b>Investigation refused</b>	<b>Investigation terminated</b>	<b>Charges pressed</b>
genocide (Article 155)	0	0	0	0
apartheid (Article 157)	0	0	0	0
violence against a member of a national, ethnic, racial or religious group (Article 174/B)	5	0	2	3
incitement to hatred (Article 269)	14	0	11	3
<b>1999 Type of offence</b>	<b>Cases reported</b>	<b>Investigation refused</b>	<b>Investigation terminated</b>	<b>Charges pressed</b>
genocide (Article 155)	0	0	0	0
apartheid (Article 157)	0	0	0	0
violence against a member of a national, ethnic, racial or religious group (Article 174/B)	3	0	1	2
incitement to hatred (Article 269)	9	0	6	3

269)				
2000 Type of offence	Cases reported	Investigation refused	Investigation terminated	Charges pressed
genocide (Article 155)	0	0	0	0
apartheid (Article 157)	0	0	0	0
violence against a member of a national, ethnic, racial or religious group (Article 174/B)	8	0	5	3
incitement to hatred (Article 269)	5	0	4	1

Source: Public Prosecutor's Office as cited in Kádár, A., Farkas, L., Pardavi M., Legal analysis of national and European ant-discrimination legislation, A comparison of the EU Racial Equality Directive & Protocol No 12 with antidiscrimination legislation in Hungary, Hungarian Helsinki Committee, September 2001, p. 30.

### Civil and Administrative Law: Hungary

*Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note*

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Civil Code of 1959, § 8	(1) In the Republic of Hungary, everyone has legal capacity. Everyone can have rights and duties. (2) Each person shall be accorded equal legal capacity without taking into account age, sex, race, nationality or religious affiliation.	(3) Any contract or unilateral agreement that purports to restrict legal capacity is void.  § 76 notes that breaches of § 8(2) may amount to discrimination and may therefore attract the remedies which it makes	BH 1995, 698	§ 8(1) & (2) correspond to Article 56 of the Constitution, which states that in Hungary, "everyone has legal capacity".

		available (refer below).	
Civil Code of 1959, § 76	Two kinds of infringements of personal rights are specified: (1) discrimination against individuals on the basis of nationality, race, or religious affiliation, and (2) violations of physical integrity, honour, or human dignity. § 76 deems any discrimination mentioned above to constitute an injury to personal rights. However, § 75(3) provides that, where the person affected consents to injurious behaviour and the behaviour does not harm or endanger any social interest, there is no injury to personal rights.	Substantive remedies are to be found in § 84(1)(e), predicated upon an injury to personal rights. The victim can apply for compensatory damages, restitution, an injunction or a declaration of his rights.  Any contract or unilateral agreement that restricts the personal right to be free from discrimination is void.	This provision does not list every possible manner of infringement. It states only the most typical ones ("especially"). § 76 protects only individuals, in contrast to § 75, which applies to individuals and legal entities alike.
Labour Code of 1992. As amended by Law XVI/2001 Article 5	Article 5 (1) In connection with an employment relationship, no employee shall be discriminated against on the basis of sex, age, nationality, race, social origin, religion, political views or membership in organisations representing	§ 8(1) of the Labour Code provides that contracts of employment concluded in contravention of any law relating to employment shall be null and void. Under § 9 however, if only one or some of the clauses of a contract of	There are administrative sanctions too against discriminating employers. Under Article 3 of Act LXXV of 1996 on the Supervision of Labour Affairs (hereinafter: Labour Supervision Act) labour

employees or activities connected therewith, as well as any other circumstances that have no relation to employment.

(2) Under this Act indirect discrimination shall be taken to occur if the employees concerned may – on the basis of the characteristics enlisted under Paragraph (1) – be regarded as a mostly unified group and the measure, instruction or condition related to the employment relationship and formally setting the same requirements for everyone or guaranteeing the same rights to everyone is disproportionately detrimental to them, unless it is justifiable with appropriate, necessary and objective reasons.

(3) During the course of applying Paragraphs (1) and (2) any measure, instruction, condition or practice preceding and promoting the establishment of

employment violate employment law, then only those clauses shall be null and void and the remaining provisions of the contract shall be interpreted to comply with the law.

supervision authorities shall examine whether the rules concerning the prohibition of discrimination have been adhered to. If the labour authority discovers discriminatory practices, the employer shall be punished with a so-called “labour-law fine”. The amount of this fine shall be between HUF 50.000 (USD 175) and HUF 100.000 (USD 350). If the same employer commits the same violation within three years, the upper limit of the fine shall be HUF 3.000.000 (USD 10.500). As a rule, the labour authority launches its investigations ex officio, however, Paragraph (2) of Article 3 of the Labour Supervision Act enumerates those investigations

an employment relationship shall be regarded as being in connection with the employment relationship.

which may only be conducted upon the request of the concerned person(s): these are issues concerning trade unions and the prohibition of negative discrimination.

(4) Employers shall provide the opportunity to employees for advancement to higher positions without discrimination and solely on the basis of the length of employment, professional skills, experience and performance.

(5) Any differentiation clearly and directly required by the character or nature of the work shall not be construed as discrimination.

(6) In respect of a specific group of employees the obligation of priority may be prescribed in employment-related regulations, in connection with an employment relationship and under the same

conditions.

(7) The consequences of discrimination shall be appropriately remedied. The remedy of the violation suffered by the employee discriminated against shall not imply the violation or infringement of the rights of other employees.

(8) In the event of any dispute concerning the employer's action, the employer shall be required to prove that his actions did not violate the provisions on the ban of discrimination.

Act on the Entry and Stay of Foreign Nationals No XXXIX of 2001

§ 22/2 No authorization for residence shall be granted if this threatens the interest of the Republic of Hungary.  
§ 22/3 In accordance with the principle of non-discrimination the nationality, race, sex, mother tongue, religion, age, political conviction, ethnic and other social affiliation of the



applicant foreign national shall not justify grounds for refusal under the pretext of threatening the interest of the Republic of Hungary.

Act on the Protection of Children No XXXI of 1997

§ 3/2. In the legal process taken to protect the interests of children, discriminatory prejudice is forbidden on all grounds, especially those of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, incapacity or limited capacity, birth or other status.

Act on Health Care No. CLIV of 1997

According to § 7 of the Act every patient is entitled — within the boundaries defined by law — to health care services, that is warranted by the state of health, appropriate, accessible continuously and without any discrimination. Health care services are without any discrimination if,

in the course of providing health care services, patients are not discriminated against on grounds of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health.

Act on Asylum No. CXXXIX of 1997

The purpose of this Act is to define the rights and obligations associated with asylum status granted in the territory of the Republic of Hungary, to ensure the protection of human rights and fundamental freedoms by establishing the legal framework and background for official proceedings related to asylum, and to guarantee enforcement of the prohibition of discrimination on the grounds of race, religion, nationality or political opinion

	(§ 1).		
Act on Atomic Energy No CXVI of 1996	The provisions of this Act concerning liability for damages and compensation of damages related to the application of atomic energy shall be applied without any discrimination based upon nationality, domicile, or residence (§ 61).		
Act IV of 1991, § 2	In matters concerning employment and assistance to the unemployed, distinctions between employees or unemployed individuals on the basis of sex, age, race, origin, religion, political conviction, or appurtenance to an organisation representing employees' interests are not permitted.		
Act LXXIX of 1993	§ 4(7) Discriminatory prejudice in public education is forbidden on all grounds, especially those of colour, gender, religion, nationality, ethnic origin, political or	However, there is no system of sanctions that could be relied upon in order to secure the implementation of this Article. A positive sign in this respect is that in 1999 the	

any other opinion, national, ethnic or social appurtenance, financial or income status, age, incapacity or limitation of abilities, birth or any other situation of the students or their relatives or based on the teaching institution in which a student is being educated.  
 § 5 The teaching languages in kindergarten and at school shall be Hungarian and the languages of national and ethnic minorities.

institution of the Ministerial Commissioner for Educational Affairs (within the Ministry of Education) was established.

Act on Radio and Television Broadcasting No. 1 of 1996 (Media Act)

According to Paragraph (2) of Article 3 of the Media Act the broadcaster shall respect the constitutional order of the Republic of Hungary, broadcasting activity may not violate human rights nor be capable of inciting hatred against individuals, genders, peoples, nations, national, ethnic, linguistic and other minorities, denominational or religious groups.

The Media Act sets up a not very coherent system of sanctions. The system is operated by the National Radio and Television Board (ORTT), which is one of the most important bodies of the Hungarian media world. The legal consequences that may be applied by the ORTT “if the broadcaster fails to meet or violates the

The ORTT for instance, condemned a ‘Radio Cabaret’ for portraying the Roma in an unfavourable manner. In 1999 it established that certain jokes in the show “New Year ‘98” violated the provisions of the Media Act and failed to meet the ethical and professional requirements of public service broadcasting.

If the broadcaster fails to meet or violates the conditions and regulations prescribed in the Media Act, the Board shall:  
 a) call upon the broadcaster to terminate the injurious conduct,  
 b) establish the violation of the law in a written warning, and shall call upon the broadcaster to terminate the violation of the law, and to abstain from

Paragraph (3) of the same Article declares that broadcasting may not aim, explicitly or implicitly, at insulting or excluding any minority or majority, or at presenting these or discriminating against them on the basis of racial considerations.	conditions and regulations prescribed in the Act” (a wording that may also refer to the violation of the basic principles set forth under Article 3) are enumerated by Article 112 of the Media Act. (see remarks).	The body argued that the show “contained in large numbers jokes that may be injurious for the feelings of this [Roma] ethnic group”.	the violation of the law in future, c) suspend the exercise of the broadcasting rights for a set period of time but for a maximum period of thirty days, d) enforce the penalty defined in the contract, e) impose a fine in the case of a public service broadcaster f) terminate the contract with immediate effect.
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**Note**

<sup>1</sup> See Constitutional Court Decision No. 30/1997

**Note**

<sup>2</sup> E.g. Decision No. 857/B/1994; Decision No. 30/1997

**Note**

<sup>3</sup> See Judit Sándor: ‘*A szabályozás csapdái és dilemmái.* (The traps and dilemmas of regulation) In: *A hátrányos megkülönböztetés tilalmától a pozitív diszkriminációig* (From the ban on negative discrimination to affirmative action), AduPrint – INDOK, Budapest, 1998,

**Note**

<sup>4</sup> For more arguments see Kádár, A., Farkas, L., Pardavi M., Legal analysis of national and European ant-discrimination legislation, A comparison of the EU Racial Equality Directive & Protocol No 12 with antidiscrimination legislation in Hungary, Hungarian Helsinki Committee, September 2001