



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 44 OF THE CONVENTION**

**Second periodic reports of States parties due in 1998**

**HUNGARY\***

[17 February 2004]

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\* For the initial report submitted by the Government of Hungary, see CRC/C/8/Add.34. For its consideration by the Committee, see documents CRC/C/SR.455-457 and CRC/C/15/Add.87. The annex is available for consultation at the Secretariat.

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## Introduction

1. In 1996, Hungary submitted its initial report on the Implementation of the Convention on the Rights of the Child to the Committee on the Rights of the Child, the discussion of which took place in June 1998. The Government of Hungary commissioned the Ministry of Child, Youth and Sport to draft the second-third periodic report. The Committee compiled a set of guidelines consisting of 166 points for the preparation of the periodic reports. The Ministry of Child, Youth and Sport has decided that it would present to the Committee all the relevant Hungarian legislation in force based on the points referred to above. Thereby we intend to provide the Committee with a comprehensive picture of the current legal framework in Hungary.

2. In our view Hungarian legislation is in compliance with the international agreements and meets the requirements of democracy with regard to most of the issues. At the same time, however, even today, we have a large backlog in the field of the implementation of the existing laws. Unfortunately, it is not only that those concerned are not aware of their rights, but even the institutions and authorities whose task it is to protect and enforce children's rights do not properly know the relevant laws.

3. With regard to our previous report the Committee stated that Hungary lacked a comprehensive national policy aimed at enforcing the realization of the rights of the child and that the knowledge of the Convention by the various professional circles was not satisfactory. At the same time the Committee gave voice to its concern over the living conditions of Roma children as well as over instances of discrimination against them. In order to improve awareness of the Convention on the Rights of the Child, the Committee considered it necessary that the text of the Convention be translated into the languages of the minorities.

4. Unfortunately, the proposed comprehensive national policy does not yet exist in Hungary, although the legal conditions are already in place. An important step in this direction was the establishment of the Ministry of Child, Youth and Sport in 1999, whereby matters related to the youth were elevated to ministerial level. The next major stage in this process was that as of 2002 the Ministry proceeds in matters related to children as well. It was then that the Ministry's name was changed to the Ministry of Child, Youth and Sport. Fortunately, in Hungary all the incoming Governments intend to give emphasis to the handling of child affairs, so it can be said that there is an expressed intention to create further forums in the interest of the protection of the child. In collaboration with the International Department of the Foreign Ministry, the Ministry of Child, Youth and Sport arranged for the translation of the Convention into the languages of most of the minorities living in Hungary. The text of the Convention is now available in the Polish, Greek, Slovenian, Romanian, Ukrainian, Roma, Bulgarian, Croatian, German, Serbian and Slovak languages, but not in Ruthene (Transcarpathian Ukrainian) and Armenian.

5. As for lawmaking in the period covered by this report, the adoption of Act XXXI of 1997 on the Protection of the Child and on the Management of Public Guardianship is of outstanding importance, as it meant the full-fledged incorporation of the Convention into the laws of Hungary. The experiences of the past years have shown that the Act successfully ensures the realization of the rights of the child and assists the creation of a transparent and controllable child protection system. However, to increase the efficiency of the system it became necessary to modify some of the provisions of the Act. Act IX of 2002 on the Amendment of the Child

Protection Act (Gyvt.) puts an even greater emphasis on the better regulation of the rights of the child, the improvement of preventive actions and services, the strengthening of the network of substitute and foster parents and the conditions of care for expectant and battered mothers.

6. As this report will show, current Hungarian judicial practice always takes into consideration the provisions of the Convention. Besides, the Hungarian Ombudspersons in office have on several occasions launched investigations into the realization of the rights of the child. Therefore, this report makes reference to the recommendations of the Parliamentary Commissioner for Civil Rights and those of his General Deputy, the Parliamentary Commissioner (Ombudsman) for Data Protection, and to the recommendations of the Ministerial Commissioner for Education Rights. The rights of minorities, including those of the Roma, are guaranteed by a separate law and their realization is monitored by the Parliamentary Commissioner for Ethnic and Minority Rights. In 2002, in addition to all these, a Ministerial Commissioner Responsible for the Social Integration of Disadvantaged and Roma Children was appointed, while as of July 2003 a Minister without Portfolio Responsible for Equal Opportunities also works as a Cabinet member.

7. The most comprehensive umbrella organization acting in the field of social welfare and facilitating collaboration between the Government and non-governmental organizations (NGOs) is the Social Council. Besides the representatives of the governmental bodies concerned, the members of the Social Council and its so-called social stratum councils include representatives of various non-governmental and religious organizations. The main organ of the dialogue with the organizations of people with disabilities is the Council of the Affairs of People with Disabilities. As of 2003, in the framework of the Social Council, Social Welfare Policy Councils have to be set up for the task of drafting opinions on social policy and child protection concepts, decisions or bills, and of analysing and evaluating various types, forms and systems of services. Also, there are consultation forums outside the Social Council, e.g. Drug Affairs Coordination Forums, which participate in the elaboration of local drug-prevention strategies in addition to their role of consulting.

8. The Office of the Ministerial Commissioner Responsible for the Rights of the Child is expected to be set up as of January 2004 within the Ministry of Child, Youth and Sport. Our goal is to carry out coordination comprising all sectoral activities required for the facilitation of the realization of the rights of the child. Furthermore, it is considered to be one of the most important tasks of the Ministerial Commissioner to act as the spokesman for children, calling attention to children's rights and any abuses. The Ministerial Commissioner Responsible for the Rights of the Child will perform his duties on the basis of the Convention and he will participate in drawing up the Act on the Child and Youth currently under preparation.

9. In May 2002, as part of our preparation for this report, we requested all the ministries, national institutions, three research institutes and 30 NGOs to provide us with relevant data on the matter concerned. The present report has been compiled from the materials received. The contributions received from the NGOs have been attached to this report and will be forwarded to the Committee.

10. There have been several coordination sessions in the Ministry of Child, Youth and Sport to which all parties who had sent their data were invited. At these sessions we received information from the drafters of the previous report and the members of the delegation heard by

the Committee. We hope that on the basis of the wide-ranging data collection we have succeeded in compiling a report that provides a true and fair picture of the situation of the children in Hungary. It highlights the accomplishments achieved so far and presents the existing shortcomings as well.

## I. GENERAL INFORMATION

11. Hungary has successfully overcome the most difficult phase of its economic transformation and has now become a dynamically developing open-market economy that has started to catch up with the member States of the European Union. In 2001, due to the worsening of the external economic conditions, there was a change in the economic policy. The export-orientated growth policy of the previous years was replaced by a policy of stimulating domestic consumption, raising the standards of living, developing the infrastructure and fighting inflation. Fiscal expansion - a dynamic increase in wages and pensions and large-scale State investments - managed to curb the slowdown of economic growth to some extent, but both the external and internal balance considerably worsened.

12. From the second half of 2001 the development of Hungary's economy was slowed down by falling external demand, the decrease in corporate investment and the strengthening of the Hungarian currency. Throughout 2002, gross domestic product (GDP) growth dropped to 3.3 per cent, falling short of the dynamic growth in the previous years, but still quite high by international standards. Growth was mainly stimulated by domestic consumption, which last year increased by a record figure of 8.8 per cent, mainly due to increasing wages and the successful anti-inflationary processes. As a result of the latter, the 2001 domestic consumption index of 9.2 per cent fell to 5.3 per cent by 2002.

13. There was a fast increase in real wages in 2001 and 2002. Wage increases in real terms exceeded 13 per cent in 2002 while productivity increased only by nearly 3.2 per cent. The large-scale wage increases were also due to the very low rate of increases in the previous years. As a result of the efforts aimed at boosting the income level in the civil service, the earnings in the budgetary sector increased considerably in 2002.

14. The transition to a market economy has fundamentally transformed the Hungarian labour market: at the beginning of the 1990s it was marked by a drastic decrease in the number of the employed, the increase in the number of the inactive population, a drastic increase in unemployment and the redistribution of the workforce between the economic sectors and jobs. Due to the transition the number of jobholders fell by more than a third, i.e. nearly 1.5 million. Employment levels and business activity hit rock bottom in 1997, when the employment rate in the 15-64 age group of the population fell to 52.7 per cent, and their activity fell to 57.8 per cent - far below the average EU level. From 1997, following the two-decade-long decrease, employment and business activity increased again. In 2002, the average number of people in employment was 3,884,000, with the employment rate of the 15-64 age group at 56.3 per cent. The proportion of the employed by gender has been unchanged for years, i.e. 45 per cent are women. In 2002, men's employment rate was 63.1 per cent, women's was 49.8 per cent and the rate of men was higher in all age groups. The unemployment rate reached a peak of 12.5 per cent at the beginning of 1993, then steadily decreased until 2002: by 2002 the number of the jobless fell by less than half, i.e. 239,000, and the unemployment rate dropped to 5.8 per cent. Forty-five per cent of the unemployed are those in permanent unemployment,

partly due to the shortage of jobs and partly due to their lack of skills and/or because their ability to work decreased. In 2002, the number of inactive people of employment age was 2.3 million. Of the inactive, 171,000 men and 260,000 women did not study and did not receive a pension, unemployment benefit or maternity allowance.

15. The transformation of the economy brought about major changes in the sectoral and regional structure of employment: the weight of agriculture decreased and the number of those employed in the service sector increased as a typical trend. In 2002, 3.2 per cent of the workforce worked in agriculture, 34 per cent in industry and 59.8 per cent in services. The sectoral structure of employment is also marked by quite large regional differences. The regional disparities in employment and unemployment have decreased in the past years. Despite the low level of employment and large-scale inactivity, there are regions where there is a shortage of skilled labour and insufficiencies in the qualifications and skills of the available workforce.

16. In the disadvantaged regions, besides the high level of unemployment and the large number of inactive people, their composition is also unfavourable: among the youths the proportion of those with only a primary education who are permanently jobless is higher than the Community average. The number and proportion of employment fell in the 15-24 age group: within a year, the employment rate in the 15-19 age group fell from 7.7 per cent to 5.4 per cent, whereas in the 20-24 age group it fell from 51.1 per cent to 49.3 per cent. In 2002, only 29.1 per cent of the 15- to 24-year olds had a job. Unemployment hits young people more than adults. Until 2001, youth unemployment decreased more than the average, but in 2002 youth unemployment figures indicate a worsening of the situation of the young: the unemployment rate for the 15-24 age group increased from 10.9 per cent to 12.3 per cent.

17. With regard to the labour market, the main losers in the transformation into a market economy are the Roma population. Following the change in the social-political system, more than half of the Roma population accustomed to being in employment lost their jobs and today their level of employment is roughly half, their unemployment level has increased by three to five times, and the rate of dependents per single wage earner is three times that of the non-Roma population. There are hardly any jobs in the primary labour market for unschooled and unskilled Roma people and they are also disadvantaged even in the area of temporary jobs.

18. As regards handicapped people, the gravest difficulty lies in creating equal opportunities for them in the labour market. According to a survey done in 2002 by the Central Statistical Office, of 656,000 people of employment age with a permanent health problem, fewer than 95,000 were present in the labour market and nearly 10,000 of them were unemployed. The opportunities of people with permanent health problems or disabilities are rather limited: only 1 in 10 has a job, and overall only one fifth of those concerned were employed in special (protected or subsidized) jobs.

19. In retrospect, over a 10-year period, the proportion of welfare expenditure in GDP decreased (from 30 per cent in 1993 to 24 per cent in 2002), whereas the ratio of the main budgetary items of expenditure can be described as stable. The efforts of the Hungarian budgetary policy, considerably influenced by the expectations of the main international financial institutions, have in past years been aimed at continually decreasing social redistribution. It is expected that this tendency would be halted in the coming years. Only those items of



expenditure are to be increased that are connected with key goals of the social and social welfare policy (e.g. support of families, housing support), or with the development of welfare infrastructure and institutions.

### **A. Social conditions**

20. Hungary's population has decreased by 500,000 in the past 20 years. The main causes of the population decrease are the low and falling birth rate (9.5 per thousand in 2001, 10.6 per thousand in the EU) as well as the mortality rate (13.0 per thousand), far exceeding the European average (9.5 per thousand). The composition by age of the population is largely similar to the European average: the rate of under-15s in 2001 was 16.6 per cent (EU 17.2 per cent), the rate of the 15-64 age group was 68.2 per cent (EU 66.4 per cent) and that of the over-64s was 15.2 per cent (EU 16.4 per cent). The worsening trend which started in the 1960s seems to be reversing. Recently, the population decrease has somewhat lessened and life expectancy has increased - 68.1 years for men and 76.5 years for women. However, the mortality rate is still far more unfavourable - almost double the EU average measured with the standard mortality rate - whereas life expectancy at birth falls six to eight years short of the EU average.

21. According to the family budget survey by the Central Statistical Office, 12.5 per cent of the population had less than 60 per cent of the national average per capita income. Poverty stood at 10 per cent, both for men and women. However, there is a marked discrepancy between the social status of poor women and poor men, basically due to the two genders' different type of participation in the labour market. Among poor women the proportion of those on maternity allowance, at home in the household, pensioners, on social benefit or supported in other ways is high. Among poor men, however, there is a high proportion of those in temporary jobs, students, and unemployed, on social benefit or depending on other types of support.

22. With regard to the family life cycle, the poverty risk continues to be high for children: 16 per cent of the under-16s live in poverty, which is double the national average. Within this group there is a high risk of poverty in single-parent families and in families having three or more children. The size of the household or the number of children is also a risk factor. The poverty rate is the lowest in three-member (one child) families, then it increases gradually and jumps high: in households with six or more children the risk is three times higher than the average.

23. All poverty surveys show that a low level of education is the major poverty risk factor. The poverty rate among those even lacking elementary education is 25 per cent and it stands at 20 per cent for those who finished primary education. Gaining a certificate of higher education minimizes the risk of poverty - the poverty rate stands at a mere 2 per cent for this group. In Hungary, the structure of the education level of the population has considerably changed in the past years.

24. The underlying role of ethnicity can be attributed to the widespread and high level of poverty among the Roma population. The lower the threshold level of poverty is set, the more people of Roma origin can be found in that group. Whereas the overwhelming majority of the poor are not Roma (and even within the group of the poorest the proportion of the non-Roma is also high), the rate of the poor in Roma households is tenfold compared to that of non-Roma. The poverty of the Roma people is further increased by discrimination and prejudice. Today,

approximately 20 per cent of the Roma population live in separation, often in segregated neighbourhoods with poor public utilities, in housing estates with minimal infrastructure or in derelict inner city colonies.

25. The regional and other differences are visible in two fields: on the one hand there is the downward trend in the level of urbanization, and on the other is the east-west geographical divide. The risk of poverty is high in the villages and virtually has not changed in past years. Life opportunities are much better in the west of the country than in the east, while it should be pointed out that the risk of poverty is less influenced by the east-west axis than by the hierarchical divisions in housing settlements: differences between villages and towns or in the size of settlements have a marked influence on the differences in life opportunities. Currently, no increase or decrease in the poverty rate can be found with regard to the differences between the regions.

26. The proportion of the Roma completing primary education improved, but there is still a considerable lag in the number of those gaining secondary or higher education compared to the non-Roma population. Of the 18-74 age group of the Roma, 86.3 per cent have only a primary education - this ratio is only 27.9 per cent of the whole population. The proportion of the Roma with higher education is only 1 per cent, while this proportion is 13.5 per cent for the whole population. Sociological surveys have revealed that there are about 700 schools where Roma children receive segregated education (placed in special classes). According to estimated data 7 per cent of all Roma children are enrolled in schools with a special curriculum (schools for children with disabilities), whereas only 1-2 per cent of the children of the majority population attend such schools. A further difficulty for the Roma in schooling and school results is the low rate of nursery school education or the delayed access to and use of nursery school education for the disadvantaged Roma families. Half of the dependent children in Roma families live in households with no active wage earners. Among children removed from their families the number of Roma children is disproportionately high; in the northern and eastern counties of the country this ratio reaches 80-90 per cent. The processes of social self-organization have increased among the Roma population as well: the number of minority self-governments and NGOs has steadily increased in the past 10 years.

27. The expansion of employment has to be assisted by encouraging the return to the labour market of the jobless and of the inactive population previously excluded from the labour market, as well as by preventing people becoming permanently unemployed. What we need is an integrated approach to assist the entry into the job market of the most disadvantaged groups of the society, i.e. the unschooled and unskilled, those with disabilities, members of the Roma minority, the homeless, people living in disadvantaged regions and those with various forms of addiction. In the field of human resources management it is a challenging task to harmonize primary education and continued vocational training with the requirements of the labour market, to strengthen the connection between schools and businesses, to increase the standard of education and to reduce the dropout rate (especially among the Roma).

28. Income shortage is the main cause of the most extreme forms of poverty. Therefore, within a relatively short space of time measures have to be taken to guarantee for everyone a nationally accepted minimal level of subsistence through a properly coordinated correction of minimum wages, social welfare services and social benefits. In this field special emphasis must be given to decreasing child poverty, the vulnerability of people with disabilities, of the

permanently unemployed, of single parents and of the elderly citizens and to the improvement of the situation of the Roma population. Through the improved coordination of the existing State support schemes the efficiency of combating all forms of exclusion can be increased, the development of the most backward regions or settlements can be accelerated, the complex rehabilitation of housing conditions in housing estates, small settlements and areas mainly inhabited by Roma people can be accomplished and the activity networks dealing with various problems can be improved. The improvement of the collaboration of the State and the self-governments requires the better harmonization of the responsibilities and the resources available.

29. The Republic of Hungary respects the human and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origin, financial situation, birth or any other grounds whatsoever. Equality before the law is also assisted by measures aimed at eliminating inequalities of opportunity. This shows that the requirement of the elimination of inequalities of opportunity is already present in law enforcement on the basis of the Constitution, and this is supplemented by a number of detailed legislation of the legal system, i.e. by sectoral regulations. For example, there are anti-discrimination provisions in the Civil Code, the Labour Code, as well as in the legislation on education, people with disabilities and other laws on special areas of law. In addition to all these, however, the Hungarian anti-discrimination laws need to be developed because the laws on the implementation of substantive law are insufficient and the country has to meet the requirements of the approximation of the laws necessitated by Hungary's accession to the European Union as well. A Lawyers' Network for Anti-Discrimination was set up under the auspices of the Ministry of Justice, which provides free legal counsel for the public. A national crime prevention strategy was elaborated in March 2003, which offers new approaches to decreasing child and juvenile delinquency; to improving security in cities; to the prevention of violence in families, of repeated crime and repeated victimization; and to the elaboration of means to assist victims.

30. The preparations for the elaboration of regulations compatible with the EU requirements have already begun. The concept of a general anti-discrimination act has been worked out and its assessment by the State administration and by the public forums has ended. In line with the EU directives and international standards, the concept provides for the definition of direct and indirect discrimination, the sanctions, as well as for the setting-up of an anti-discrimination body. The Government sponsors various media campaigns against prejudice and xenophobia so that there should be a tolerant and inclusive approach towards the most excluded groups of the society.

31. There is a variety of means to preserve and maintain the integration role of the family: ensuring financial stability and better living conditions by way of various support and tax schemes; various information, counselling and support services to prevent the break-up of families or to provide assistance if there is a divorce; the promotion of the harmonization of work and family life; home help for those in need and supporting disadvantaged families. Basic forms of social and child welfare maintenance as well as health care and mental hygiene services contribute to all these forms of assistance. Our family assistance system is internationally recognized as being of a high level and progressive. Support provisions in case of birth of a

child are provided for a shorter period and are of less value in most countries of the Organization for Economic Cooperation for Development (OECD) than in Hungary. A positive aspect of the provision of schooling support is that eligibility is very wide.

32. In Hungary, the Roma population enjoys cultural autonomy and has its minority self-government system unknown in the EU as well as a widespread network of NGOs and foundations. The network of Roma legal protection offices promoting the protection of the rights of the Roma population covers the whole country. In 1996 the Government set up the Public Foundation for the Roma Population in Hungary with the task of supporting Roma integration projects. Medium-term action plans were adopted, first in 1997 and then in 1999, to ease social inequalities and to prevent or reduce prejudice and discrimination. In 2002, the Office of Roma Affairs was set up in the Prime Minister's Office and its activity is directed by the Minister for Equal Opportunities. Under the chairmanship of the Prime Minister the Council of Roma Affairs was set up to function as the Government's advisory body. There is a ministerial commissioner or desk officer for Roma affairs in each ministry to assist the processes facilitating social integration and equal opportunities. Each government portfolio is represented by its deputy State secretary in the Interdepartmental Roma Committee, whose task is to assist cooperation within the Government.

33. Despite these steps there have been no considerable changes in the living conditions of the Roma population. Poverty and unemployment continue to be high among the Roma. The Government's goals for 2003-2006 concerning the promotion of equal opportunities for the Roma are as follows: the strengthening of equality before the law, the improvement of the quality of life and physical and mental conditions, life-long learning, incentives for the improvement of knowledge, ensuring better housing conditions, the elimination of environmental hazards, the development of marketable employment conditions in addition to the provision of temporary employment, the dissemination and nurturing of cultural values, the promotion of cultural activities, the development of Roma identity as well as the promotion of a social dialogue aimed at the acceptance of values free from prejudice and violence. The monitoring and the follow-up of implementation are also important.

34. In Hungary there is a minor in one third of the households and a dependant requiring care in 40 per cent of the households, with family responsibilities mainly falling on women. In the 1990s the company-run childcare facilities had disappeared and the capacities of childcare facilities maintained by the municipalities had decreased, especially in the case of crèches. Currently, about 8 per cent of children of 0-3 years of age can receive institutional day care (for nursery schoolchildren this ratio was 87.3 per cent in 2000). In Hungary, both the entitlement to receive benefits and the amount of most types of benefits are determined in comparison with the lowest sum of the old-age pension. However, the increase in the national minimum wage was not followed by increases in the minimum old-age provision, so the relative position of the benefits gradually worsened. In Hungary, the system of essential and specialist forms of social welfare services provided for in the legislation on social protection and child welfare has for the most part been established. Ninety per cent of the population live in settlements where access to basic forms of care is guaranteed. However, considering either the number of people requiring these services or the types of services provided, it can be stated that the system does not wholly satisfy all needs. In the field of basic forms of care it is a problem

that the large number of small settlements are not able to financially maintain these facilities (in 2001, 30 per cent of the municipalities operated all forms of facilities providing essential social welfare services), so the principle of accessibility cannot prevail in the case of those people who live in small settlements. Daytime or temporary care for children needs improvement. The specialist services, especially the various permanent or temporary boarding facilities and homes, cannot meet the increasing and changing needs. In the case of boarding facilities, problems arise from inadequate equipment and fittings whereas in the case of daytime or temporary social welfare facilities it is the incomplete nature of the entire system that causes the problems.

35. It is important that the social welfare services should contribute to the preservation of family functions by strengthening family support services, by the creation of services facilitating the compatibility of family and work, as well as by providing increased support for the child's upbringing in the family. The integrating role of social welfare services is to be strengthened by the improvement of services for people with disabilities, by facilitating the access of the Roma to social welfare services, by the systemwide development of caring for the homeless, by the provision of specialized support services as well as by the launching of model schemes to increase the integration opportunities of those having been discharged from social welfare institutions.

### **B. Health care**

36. The access of socially excluded groups of the population to essential health services is ensured, but there are still some difficulties. This can be the consequence of causes due to geographical location, infrastructural conditions, low levels of education, inadequate income conditions, disability, or discriminatory attitudes by the care-providing system itself. The National Programme in the Decade of Health devotes special attention to youth matters, the creation of equal opportunities and the creation of health-supporting conditions in various fields of life.

37. Achieving the prevalence of the principle of primary prevention is an important goal. Steps have to be taken to prevent avoidable deaths, illnesses or disabilities. It is an outstanding goal that the health conditions of cumulatively disadvantaged groups of the society - the Roma, disabled people, the homeless and children brought up by the State - should be improved and that they have the same chance of access to health care as other groups of the society. It is our task to supplement graduate and postgraduate health education with training in increasing awareness of and respect for being different and for living with disabilities.

### **C. Education**

38. The dropout-rate among the disadvantaged Roma schoolchildren of school-age is high. One way of returning them to the education system is to provide them with a levelling system of education that helps them to catch up. The main goal is that disadvantaged/cumulatively disadvantaged schoolchildren who until school-leaving age have not successfully completed their primary education should be given special education helping them to catch up so that they can enter into vocational training and eventually access the labour market. The aim of the

introduction of the integration-assisting normative support is to facilitate the social integration of Roma children. With regard to Roma schoolchildren, special educational programmes have been introduced to provide them with equal opportunities in education. It is a remarkable achievement of the education policy of the past years that a system of grants provided by public foundations has been created, mainly with State support, to help Roma youths to participate in secondary and higher education in the framework of which their education in boarding facilities can also be financed. By assuming the costs of education the Government helps Roma youths to engage in higher education. In the case of young people with disabilities, legal provisions providing for positive discrimination support the successful completion of their education. These include solutions that already help them in compulsory public education, e.g. the use of sign language interpreters or the acceptance of an oral examination instead of a written one.

39. It is our task to assist the access of the children of disadvantaged families to placement in nursery schools, and in respect of the conditions of going to school. In future, the possibilities of receiving grants should be enhanced and better targeted. Young people dropping out of the education system before they comply with their obligation of schooling should be brought back to school. The quality of compulsory public education, higher education and vocational training systems has to be improved through the introduction of unified measuring and evaluation systems. Equal opportunities for schoolchildren with disabilities should be created by involving them in integrated education and vocational training, which will facilitate their social integration and entry into the labour market.

## **II. INFORMATION ON THE SPECIFIC PARAGRAPHS OF THE REPORTING GUIDELINES\***

### **A. General measures of implementation**

#### **Paragraph 12**

40. In the course of ratification of the Convention on the Rights of the Child all organs of the Government examined ex officio whether there were any instances of incompatibility with Hungarian legislation. Currently, the Hungarian laws include no provisions that are contrary to the provisions of the Convention.

#### **Paragraph 13**

41. With regard to lawmaking in the period concerned, the adoption of Act XXXI of 1997 on the Protection of the Child and on the Management of Public Guardianship (Child Protection Act - Gyvt.) is of outstanding importance, meaning the full-fledged incorporation of the Convention into the laws of Hungary. In conformity with the Constitution, the Convention, as well as the provisions of the Act on Family Law, the Child Protection Act (Gyvt.) provides for the enforcement of the rights of the child as well as the rights and obligations of the parent. The Child Protection Act (Gyvt.) determines the children's fundamental rights and the guarantees of

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\* HRI/GEN/2/Rev.2, chap. VII, sect. B.

their enforcement; certain forms of basic or specialized care and maintenance provided in money or in kind to protect the child; the conditions of entitlement; the principles of financing and its institutional background; certain forms and rules of child protection and the organizational structure of public guardianship. It is the fundamental principle of the Child Protection Act (Gyvt.) that the child's parents have the fundamental responsibility for the upbringing and development of the child and that the State and the municipalities have to render appropriate assistance to them in performing their responsibilities. Any interference in the life of the family by the authorities is only admissible if it is unavoidable in the true interest of the child. Children removed from their family environment have in the first place to be placed with adoptive parents, foster parents or, if these are not possible, in children's homes. As for the whole of the law, the definition of childcare and support, child welfare, children's rights, vulnerability and relatives of the child is of utmost importance. The care and maintenance of the child is provided within a unified system of care and maintenance, which includes various forms provided either voluntarily or as a result of measures ordered to be taken by the authorities.

42. The experiences of the past years have proven that the Child Protection Act (Gyvt.) successfully ensures the effectuation of the rights of the child and assists the creation of a transparent and controllable child protection system. However, to increase the efficiency of the system it became necessary to modify some of the provisions of the Act. Act IX of 2002 on the Amendment of the Child Protection Act (Gyvt.) puts an even greater emphasis on the better regulation of the rights of the child, the improvement of preventive actions and services, the strengthening of the network of foster parents and the conditions of the care for expectant and battered mothers. The setting up of expert committees of child protection will provide guarantees that the forms of care and support - foster parent, children's home, special children's home - will truly be determined to meet the needs of the child. The Act gives greater emphasis to adoption, the conditions of which will be fine-tuned so that suitability can be judged more realistically. In the sphere of basic child welfare services it will be of great importance that the activity of crèches, the provisional homes of children and families as well as the operation of child welfare centres will be defined taking into consideration the number of the population of the settlements concerned.

43. In addition to the above, the harmonization of child support legislation with the relevant EU legislation was started in recent years. In order to coordinate the aims and activities, the National Family Policy Concept was drawn up in 2000, the fundamental elements of which are the strengthening of family life, the improvement of the conditions of having children and the halting of the decline of the population of the country. This programme is in line with the principles of the Convention and the Child Protection Act (Gyvt.), i.e. families need to be supported in their tasks related to the child's upbringing so it sets out to reinforce the institution of the family in the first place. To accomplish the programme's goals, it makes use of the various forms of family policy: social welfare policy, employment policy, health policy, housing policy, women policy and other means.

44. In the recent period, the adoption by Parliament of Act XXVII of 2001 on the promulgation in Hungary of Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour adopted at the eighty-seventh session in 1999 of the International Labour Organization was an outstanding piece of legislation. In Hungary, the Convention entered into force on 2 April 2001.

**Paragraph 14**

45. The Republic of Hungary is an independent democratic State where the rule of law prevails. As regards the realization of the principles set forth in the Convention, the legal framework is provided by the Constitution. Under article 15 of the Constitution the Republic of Hungary protects the institutions of marriage and the family and parents are entitled to choose the type of education they want to give to their children. The Constitution states that the Republic of Hungary makes special efforts to ensure secure standards of living, instruction and education for the young and protects the interests of the young. In the Republic of Hungary every child is entitled to receive the extent of care and support from their parents, the State and the society that is necessary for the evolving of their physical, intellectual and moral capacities. Furthermore, the Constitution prohibits any form of discrimination, i.e. discrimination on the basis of age as well.

46. The Convention serves as a reference at all levels of lawmaking and law enforcement against any provisions or regulations violating or suppressing the rights of the child. In the event of legal dispute the Hungarian courts regularly apply the provisions of the Convention, often as directly applicable source of law or as governing source of interpretation.

47. The Convention, promulgated by Act LXIV of 1991, has become part of Hungarian law. This means that the lawmaker is obliged to adopt laws that are in full conformity with the provisions of the Convention, and to review all domestic legislation to see if it is in compliance with the Convention. In making their decisions lawmakers have to consider the provisions of the Convention and in cases of legal dispute reference can be made to the provisions of the Convention. All requirements invoked by the Convention have to be applied in all branches of law and in all fields of the society.

48. Article 7 of the Constitution provides that the legal system of the Republic of Hungary accepts the generally recognized principles of international law and ensures harmony between domestic law and the obligations assumed under international law.

49. Pursuant to the Act on the Constitution Court, it falls into the competence of the Constitution Court to examine whether legislation or other means of State authority are in full conformity with international agreements. Once the Constitution Court finds that a promulgating legislation or a lower-level legal instrument of State control is in conflict with an international agreement, it will annul it in part or in full. If the Constitution Court states that a legislative body has failed to perform its duties deriving from an international agreement, it will call upon that body, setting a deadline, to duly perform its legislative duties within the time limit set.

50. Act LXXXIV of 1998 on the Support Provided for Families introduced and systemized the form of educational care and support (maternity support, childcare-sickness benefit, childcare aid, childcare support, child-raising support, family allowance). This meant the beginning of the elaboration of a support system based on principles that differed from those of previous years. Under this principle entitlement to support no longer depends on the family's income as it is a civic right, which means that each child is equally important for the society. This law meant the elaboration of the first pillar of a wider, more unified and more efficient system of support.



51. The second pillar of the support for families with children is the system of income tax allowances, the restoration of which took place from 1999. The third pillar of family support is the regular child welfare support set forth in the Child Protection Act (Gyvt.).

### **Paragraph 15**

52. As was mentioned earlier, the Hungarian courts regularly apply the Convention, both as a source of law and as a guide for the interpretation of the law. This is proven by the publication of court rulings referring to the Convention adopted in the period covered and published in the official journal of the Supreme Court entitled *Court Decisions*. (Among others, see BH 1997.12, BH 1997.231, BH 1998.154, BH 2000.451, BH 2001.230, BH 2002.401.)

### **Paragraph 16**

53. Entitlement to legal remedy is set forth by the Constitution as a basic principle: in the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions that infringe on his/her rights or justified interests.

54. Under the provisions of the Child Protection Act (Gyvt.) the child has the right to lodge a complaint before forums determined by the Act in matters that concern him/her, or to resort to courts or other institutions specified in the Act to initiate proceedings in the event of the infringement of his/her rights.

55. In the event of the infringement of rights recognized in the Convention, there is a wide range of guarantees to ensure the possibilities of seeking legal remedies (e.g. complaint, appeal, compensation, initiation of disciplinary or penal proceedings; resorting to the prosecutor, the courts, the parliamentary commissioner for citizen's rights, international human rights forums).

56. Under the Child Protection Act (Gyvt.) the protection of children's rights is the responsibility of all natural and legal persons who deal with the education, instruction, care/maintenance and the affairs of the child.

57. The protection of the constitutional rights of the child is assisted, among others, by the Parliamentary Commissioner for Civil Rights. The Parliamentary Commissioner and his deputy investigate the abuses infringing the constitutional rights of the child, initiate measures, and, on the basis of Act LIX of 1993, report annually to Parliament on their findings, on their general assessment of the realization of constitutional rights as well as on their recommendations, how they were received and what results they brought about. The Parliamentary Commissioner and his deputy have made several recommendations in the field of child protection and public guardianship, most of which have been incorporated in the Child Protection Act (Gyvt.) and its amendments.

58. All child welfare and child protection institutions have to set up a special interest forum to protect the interest of those receiving support. These forums may express their opinion on matters concerning children. The parent of the child as well as the children's self-government may make complaints to the various institutions to remedy the complaints about the forms of

care or in the event of the abuse of children's rights. If within a specified time limit the forum does not notify the complainant of the result of the investigation, the child's parent or the children's self-government may turn to the county-level public guardianship authority.

59. The Act on the Amendment of the Child Protection Act (Gyvt.) introduced new legal institutions to serve the protection of children's rights: the representative of children's rights (child protection) and, pursuant to the Act on Social Administration, the representative of the sick and those receiving benefits. The representative of children's rights (child protection) performs the task of protecting the rights of children receiving child protection care as set forth in the Child Protection Act (Gyvt.) and helps children to be informed about their rights and to enforce them. Those performing child welfare and child protection activities have to ensure that the child and his/her relatives can get to know the person of the representative of children's rights and that they are informed about how they may get into contact with him.

60. The representative of children's rights is expected to start work in 2004 in the Ministry of the Child, Youth and Sport. The representative will first of all try to remedy problems incurred with regard to children's rights by way of mediation and in the case of failure he will use the measure of making recommendations.

61. The Office of the Ministerial Commissioner Responsible for the Rights of the Child will commence its operation within the Ministry of the Child, Youth and Sport in 2004. The Office of the Ministerial Commissioner will be assisted by regional representatives.

62. As a general rule, the provisions of the Act on Public Administration Procedure have to be applied in respect of child protection proceedings, which provides for the possibility of appeal or court review of the decision made by a public administration body.

63. Government Decree No. 149/1997 on child protection and public guardianship procedure ensures that if the child is for some reason hindered in handling his/her own affairs, a guardian, an ad hoc guardian, a guardian ad litem or a provisional guardian may be appointed. The guardianship authority will provide for a provisional guardian if there is a conflict of interest between the incapable or partially incapable person and his/her legal representative.

64. Order No. 11/1987 of the General Prosecutor contains measures on the performance of child and youth protection tasks by the prosecutors. Under his competence of legal supervision the prosecutor for juvenile affairs examines the realization of children's rights set forth in the laws of the Republic of Hungary in public administration proceedings, in the activities of educational and training institutions as well as in those of child and youth protection institutions. In the event of finding any indication of vulnerability, the task of the prosecutors is to take measures within their sphere of competence in order to put an end to the conditions infringing children's rights. Such tasks include: monitoring the activities of State administrative (guardianship) organs, taking action against decisions infringing the law (protesting or complaining) or proposing the child's placement in an orphanage if immediate help is required. It is also their task to monitor the operation of the probation officers' system from the point of view of legality.

**Paragraphs 17 and 18**

65. Parliament adopted Act IX of 2002 on the Amendment of the Child Protection Act (Gyvt.), thereby ensuring complete harmony with the provisions of the Convention on the Rights of the Child. The amended law entered into force on 1 January 2003, while certain provisions are to take effect by 1 January 2006. This report already makes reference to the new legal institutions.

66. In meeting its obligation set forth in Parliamentary Decision No. 106/1995, the Government annually prepares a report on the general situation of children and young people, their living conditions and the relevant measures taken by the Government in these fields. In preparing this report the Government always takes into consideration the provisions of the Convention. The aim of the report is to provide a general picture of the situation of children and young people and give an account of the most important government measures taken in various fields that concern the situation of the young. The preparation of the analyses of specific areas was facilitated by a large-scale survey in 2002 under the title "Youth 2000". The report on the findings of the survey was compiled by the Ministry of the Child, Youth and Sport in cooperation with the National Institute for Youth Research based on the documents provided by the ministries.

67. The Amendment of the Child Protection Act (Gyvt.) provides for the creation of the post of a representative of children's rights (child protection). The representative of children's rights performs the task of the protection of the rights of children receiving child protection care as set forth in the Child Protection Act (Gyvt.) and helps children to be informed about their rights and to enforce them. He is entitled to request information from institutions performing child welfare and child protection activities, he may carry out on-the-spot inspections and monitor child protection activities in educational establishments and facilitate the realization of children's rights in this field as well. Therefore, he may, in justified cases, initiate proceedings with the authority maintaining the institution or with the guardianship authority.

68. Upon complaint about the possible occurrence of discrimination or incorrect education organization practices in the field of public education, the Ministerial Commissioner for Education Rights will investigate the case and submit recommendations for remedying the complaint. Under Education Ministry Order No. 40/1999, the actions of the education commissioner may be targeted at decisions made or measures taken in individual cases - or their omission - if they violate the constitutional or other rights of children, schoolchildren, parents, teachers, students, researchers or lecturers, or if the grievance leads to immediate harm.

69. The supervision of the management of guardianship is performed by the Minister for Health, Social Welfare and Family Affairs. To perform the tasks related to professional methodology, training and in-service training, the Child Protection Act (Gyvt.) created the National Family and Social Welfare Policy Institute. The functions of the Family and Child Protection Council are to provide assistance, opinions and proposals for the Minister for Health, Social Welfare and Family Affairs. The county guardianship authority is responsible for the professional direction and supervision of the activity of the notary of the local municipality and

of the city guardianship authority within his territorial competence, and exercises second-instance scope of authority in child protection or guardianship cases in respect of the local notary and the guardianship authority. Upon the advice of the National Family and Social Welfare Policy Institute and of the experts on the Official Experts' List, the county guardianship authority makes a selection of child protection-providing institutions which perform the tasks of providing professional methodological guidance. It supervises child welfare and child protection services provided by the State and non-State sectors. It appoints the members of the child protection-expert committees in the county and in the towns. The framework for data collection with regard to child protection services and the management of guardianship has taken shape. In addition, in exercising their State administration tasks, the county guardianship authorities perform an inspection at least once every four years of the legality of the activities of the guardianship and child protection authorities as well as on the realization of the rights of the child in the area of their competence. The supervisory activity of the county guardianship authority is exercised according to an annual supervision programme, which specifies the authorities affected and the topics to be dealt with as part of the supervision. Due to the amendment of the Child Protection Act (Gyvt.), there was an expansion of the scope of authority of the county guardianship authorities because with the licensing obligation of all child welfare and child protection activities, professional supervision is obligatory for the activities of all participants in the child protection system.

### **Paragraph 19**

70. There are a number of non-governmental organizations involved in child welfare activities, such as the associations or foundations supporting people discharged from State care institutions and those providing specialist care and maintenance, or children's interest groups or professional associations involved in education, training and publishing, as well as various religious organizations. Their work on behalf of children is supported by various ministries through their contribution to the costs of training, children's programmes and publications.

71. In 1997, the Family and Child Protection College of Experts was set up with the task of providing expert advice and opinions in matters related to family and child protection. The College has 17 members and they include the National Association of District Nurses, the Association of Large Families, the Hungarian Maltese Charity, the Hungarian Guardianship Society and the Awakening Foundation. With the amended Child Protection Act (Gyvt.), the College's name was changed to the Family and Child Protection Council.

### **Paragraph 20**

72. Under Act CXXXIII of 2000 on the National Budget of the Republic of Hungary for the years 2001-2002, the forms of support for children were as described in the following table showing the normative share of contributions by the State and the normative share of income taxes allocated by the State to self-governments:

No.	Title	Appropriations for 2001 (million HUF)	Appropriations for 2002 (million HUF)
1.	Primary social welfare and child welfare tasks: (a) primary contribution (b) supplementary contributions (c) operation of family assistance and/or child welfare services	15 419.5 (HUF 1 100 per capita) (HUF 380 per capita)	16 389.3 (HUF 1 160 per capita) (HUF 410 per capita)
2.	Child protection specialist care: (a) provision of home (b) care at children's home (c) follow-up care (d) operation of regional child protection specialist services	13 164.7 (HUF 576 100 per capita) (HUF 664 800/recipient) (HUF 576 100/recipient) (HUF 49 700 per capita)	14 628.9 (HUF 640 590 per capita) (HUF 714 400/recipient) (HUF 640 590/recipient) (HUF 62 200 per capita)
3.	Crèche care	3 059.9 (HUF 177 600/recipient)	3 602.0 (HUF 208 800/recipient)
4.	Social welfare institution methodology tasks: (a) family support methodology tasks (b) boarding facility methodology tasks (c) child welfare methodology tasks	264.2	285.7
5.	Nursery school education	38 675.8	42 954.5
6.	Education in schools: (a) primary education (b) vocational education, trade school education, remedial education (c) secondary education (d) vocational training	105 605.0 (HUF 120 300 per capita) (HUF 120 300 per capita)  54 153.9 (HUF 143 700 per capita) 4 653.5 (HUF 66 000 per capita)	119 066.6 (HUF 135 300 per capita) (HUF 135 300 per capita)  61 701.4 (HUF 161 200 per capita) 6 049.2 (HUF 74 000 per capita)
7.	Special care provided in the form of: (a) special educational care of disabled children (b) early development and care (c) development training	13 111.5 (HUF 250 000 per capita) 278.9 (HUF 127 000 per capita) 521.7 (HUF 174 300 per capita)	15 983.5 (HUF 300 300 per capita) 372.3 (HUF 163 300 per capita) 678.0 (HUF 218 000 per capita)

No.	Title	Appropriations for 2001 (million HUF)	Appropriations for 2002 (million HUF)
8.	Basic art education - music  Fine arts, applied arts, dance, acting, puppeteering	5 437.9 (HUF 65 000 per capita) 1 865.5 (HUF 48 500 per capita)	5 895.8 (HUF 69 000 per capita) 2 047.2 (HUF 50 000 per capita)
9.	Public education in boarding schools Care/support at school dormitories Dormitory care/support of schoolchildren with disabilities	13 263.4 (HUF 215 000 per capita)  2 851.3 (HUF 430 000 per capita)	14 932.8 (HUF 237 300 per capita)  3 220.2 (HUF 474 600 per capita)
10.	Supplementary contribution to other public education tasks: (a) development and remedial instruction (b) primary school day-care education to facilitate the learning process of disadvantaged children (c) education in non-Hungarian languages, education of the Roma minority (d) institutional provision of meals in nursery schools, dormitories and schools (e) care/support of commuting schoolchildren (f) support for children attending nursery schools and primary schools maintained by the association of several institutions (g) support for small-size settlements	603.5 (HUF 27 500 per capita) 6 096.8 (HUF 15 000 per capita)  4 737.8 (HUF 29 000 per capita)  18 995.4 (HUF 21 800 per capita)  1 322.8 (HUF 14 000 per capita) 2 276.9 (HUF 20 000 per capita)  10 053.8 (HUF 12 000 per capita)	752.4 (32 000 per capita) 6 984.3 (HUF 17 000 per capita)  5 604.7 (HUF 33 000 per capita)  20 924.2 (HUF 24 000 per capita)  1 289.5 (HUF 14 000 per capita) 2 295.0 (HUF 20 000 per capita)  10 053.8 (HUF 12 000 per capita)
11.	Contribution to sports activities at settlements	1 032.9 (HUF 100 per capita)	1 032.9 (HUF 100 per capita)
12.	Care/maintenance of psychiatric and addiction patients provided at boarding facilities (Note: both children and adults are included because there are no separate data)	11 656.6 (HUF 537 900 per capita)	13 147.6 (HUF 606 380 per capita)

73. The following table shows central budgetary appropriations available for the municipalities:

No.	Title	Appropriations for 2001 (million HUF)	Appropriations for 2002 (million HUF)
1.	Tasks related to the child and youth	160	5 170
2.	Supplementary support for the maintenance of the nursery schools and schools of ethnic minorities	320	340

74. The following table shows the predetermined normative share forms of support:

No.	Title	Appropriations for 2001 (million HUF)	Appropriations for 2002 (million HUF)
1.	School textbooks purchased by schoolchildren	3 324.8 (HUF 2 390 per capita)	3 344.6 (HUF 2 390 per capita)
2.	Supplementary support for the "János Arany Talent Nurturing Programme"	348.8 (HUF 200 000 per capita)	780.8 (HUF 225 000 per capita)
3.	Support for tasks related to schoolchildren's sports activities	1 639.4 (HUF 1 200 per capita)	1 667.2 (HUF 1 200 per capita)

### Paragraph 21

75. The Republic of Hungary is continuously ratifying conventions fostering the improvement of the situation of the child. Hungary is a State party to the major relevant cooperation schemes and programmes. As regards the enforcement of the rights of the child, special attention is paid, inter alia, to the project "Programme on Education for Democratic Citizenship", the purpose of which is to educate active citizens and support education on the protection of democratic values. The first phase of the project (1997-2000) involved mainly theoretical research, drafting the concept of democratic citizenship, evaluating experiences and innovative approaches, and preparing the directives to integrate the education on democratic citizenship into public education. Phase 2 of the project is aimed at implementing the results of phase 1 in practice and in the educational policies of the member States. Every year 30-40 Hungarian teachers participate in the Council of Europe's in-service training programme for teachers. Within this programme an international teacher further training seminar, with the title "Democracy at School", was organized in the fall of 2000 with participants from Hungary, as well as teachers, school inspectors and headmasters from 21 European countries. The participants were informed about the legislation governing school life and the implementation of the laws in practice.

76. Hungary is participating in the work of the Council of Europe's European Centre for Modern Languages. The Centre's responsibility is to disseminate the Council's language policy, modernize teacher training and in-service training, and manage the research in language teaching.

**Paragraph 22**

77. Non-governmental organizations and government institutions prepared information material for children on the Convention, the rights of the child, and the means and opportunities of implementing such rights. Compulsory in-service training for social and child welfare staff was introduced in 2000 pursuant to Decree No. 9/2000 of the Minister for Social and Family Affairs. It is the responsibility of the National Committee for In-Service Training and Specialists Exams in the Field of Social and Child Welfare to accredit in-service training courses, determine their credit value and specify the amount of funding. The standards of specialists' exams were published; child welfare workers may now take specialists exams in the following subjects: family welfare, family assistance, basic childcare and specialized childcare. In-service training courses are launched during the in-service training period of seven years. A standardized national education plan for foster parents was prepared with regular further training programmes in addition to a one-off preparation course. A preparation course of 60 classes, called the "FIKSZ" programme for normal foster parents, and a course of 300 classes qualifying professional foster parents were designed and registered in the National Training List.

78. Among the rights of the student the Public Education Act states: "It is the student's right in particular to obtain information necessary to exercise his/her rights and be informed on the procedures to enforce such rights." In the framework curricula of schools within the subjects of history and citizenship studies, "the rights of the child" were included as a compulsory element.

79. The general principles and provisions of the Convention have been incorporated into the administrative (legislative) regulations governing education.

80. Unfortunately, we have to note in general that children's rights issues are not tackled with the appropriate emphasis in the above in-service training programmes. The accreditation of seminars and training courses aimed at making the Convention and children's rights widely known would be essential. An obstacle to this is that although formal training courses already exist, the change in mentality has not fully taken place yet. Making the publications widely available for children and making them known is a task of special importance.

**Paragraph 23**

81. The Convention has been translated into the languages of every minority living in the territory of Hungary. Every competent ministry was requested to participate in the compilation of the report and also non-governmental organizations have prepared their views, which are attached.\* The Ministry of the Child, Youths and Sport organized consultations on the draft report. On these occasions the authors of the previous report and the members of the former delegation were interviewed. Government agencies and non-governmental organizations were informed on the issues covered during the consultations. The report and the remarks of the Committee will be published and sent to the staff of institutions concerned with the education of children. In addition, we plan to launch a nationwide awareness campaign for children about their rights.

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\* Available for consultation with the Secretariat.



## **B. Definition of the child**

### **Paragraph 24**

82. Pursuant to Hungarian legislation persons under the age of 18 are minors, unless they are married. A child under the age of 14 has no legal capacity, while a child of 14 has limited capacity.
83. Compulsory schooling commences in the year in which the child reaches the age of 6, provided that he/she is mature enough to attend school. Compulsory schooling ends in the year in which the student is 18 years old. Compulsory education until the age of 18 applies to students who started the first grade of primary school on 1 September 1998. For pupils who had started school earlier, compulsory education lasts until the age of 16. Compulsory education of children with physical, sensory or mental disabilities or impaired speech may be extended by two years.
84. Pursuant to the provision of the Labour Code, persons having attained the age of 16 may be employed in regular employment. Pupils attending the regular day session of primary schools, vocational schools or secondary schools may be employed in regular jobs during the holidays provided they are 15 years old.
85. In accordance with the Family Welfare Act, only males and females of (legal) age may marry. Minors may marry only with the preliminary approval of the guardianship authorities. The guardianship authorities shall grant the approval only in well-founded cases and only if the intending spouses are at least 16 years old.
86. Pursuant to the provisions of the Penal Code (Btk.) the main rule is that sexual relations based on the free consent of persons having attained the age of 14 are not punishable.
87. An official ruling suspending, or in a serious case terminating - upon court ruling - the parent's right of supervision shall be adopted after hearing the child and upon his/her consent provided he or she has reached the age of 14.
88. The National Defence Act provides that conscription into the armed forces commences at the age of 17.
89. Under the Criminal Code (Btk.) childhood excludes punishability, i.e. persons who are under 14 when committing a crime are not punishable. Hungarian law does not apply capital punishment and there is no possibility to sentence juvenile delinquents to life imprisonment.
90. The Criminal Procedures Act (Be.) provides that minors may be heard as witnesses only if it is most probable that their testimony contains evidence that cannot be obtained otherwise. According to the special provisions of Criminal Procedures Act (Be.), if the afflicted party to a criminal proceeding or the person to be heard as a witness is under the age of 14, it is the duty of the chairman of the judicial board to ensure that he/she stays in the courtroom only as long as is absolutely necessary to exercise his/her rights of procedure.

91. Based on the above, children are entitled to launch complaints and initiate judicial proceedings on issues related to them.
92. The legal guarantee for children under guardianship to express their opinion freely is under section 105 of the Family Act (Csjt.), which states that the guardianship authorities, before making decisions shall, in important matters related to the minor, hear any child over the age of 12.
93. In an adoption procedure the guardianship authorities shall hear the child to be adopted if he/she is 14 years of age, and the child under 14 if he/she has the capacity of judgement.
94. Guaranteeing the fundamental right of the child to be acquainted with the conditions of his/her birth, his/her biological family, as well as the right to maintain contacts with the family, the Child Protection Act (Gyvt.) provides that any adopted child having reached the age of 14 may, without the consent of his/her legal guardian, lodge a claim in person to obtain information on his/her biological parents.
95. The rules pertaining to inheritance are defined in the Civil Code (Ptk.). By and through intestate succession the legal heirs are, first of all, the children of the testator; if there is more than one child, they shall inherit in equal shares. Should the parent, within his/her legal capacity, being the legal representative of the child, in respect of a right or obligation to which the child is entitled by virtue of inheritance, or in respect of a waiver of any inheritance due to the child, make any statement on behalf of the child, such statement shall be valid only upon the approval of the guardianship authorities.
96. Under Hungarian law the right of association is a fundamental right to which everyone is entitled, and the law does not specify any age limit to this right. However, we have to note that although the law provides for the right of association, we have no exact information on whether it is really exercised. In our opinion, a survey and evaluation of the results should be conducted on how far the right of complaint ensured to children is exercised.
97. Act XLII of 1999 on the Protection of Non-Smokers and Particular Rules of Consumption and Distribution of Tobacco Products prohibits persons under the age of 18 to smoke in public institutions, at events organized in closed areas and means of public transport, even in areas marked for smoking.
98. Government Decree No. 4/1997 on the Operation of Shops and the Conditions of Pursuing Domestic Trade Activities prohibits selling or lending sexual goods to persons under 18 years. The Decree prohibits the serving and/or sale of alcoholic drinks to persons under 18 in hospitality establishments and retail shops. Government Decree No. 218/1999 on Particular Law Infringements states that persons serving alcoholic drinks to persons under 18 in hospitality establishments may be fined up to HUF 50,000. According to the Decree on the Operation of Shops, persons having attained the age of 18 may participate in card games or use gambling machines, persons having attained the age of 16 may use gaming machines, and persons having attained 14 years may participate in other entertainment games.

## C. General principles

### 1. Non-discrimination (art. 2)

#### Paragraph 25

99. The Constitution states that the Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origin, financial situation, birth or on any other grounds. The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.

100. Protecting the child's interests, the Child Protection Act (Gyvt.) prohibits any negative discrimination on the basis of gender, affiliation with a nation, ethnic group, religious, political or other conviction, origin, property, incompetence or diminished legal capacity, or the placement in childcare institutions.

101. Act LXXIX of 1993 on Public Education prohibits any negative discrimination for any reason, in particular on the basis of the child's or his/her relative's colour, gender, religion, affiliation with a nation or ethnic group, political or other opinion, national, ethnic or social origin, property and financial situation, age, incompetence or diminished legal capacity, birth or other status, or on the basis of the maintainer of the educational institution. Those who infringe these provisions commit an offence and in a less serious case can be fined HUF 100,000 in a misdemeanour procedure. Pursuant to the Act, non-Hungarian citizens applying for refugee status/asylum, refugees, persons authorized to stay, immigrants, resident persons, persons with humanitarian permission to stay, unaccompanied minors, or children and their parents who are permitted to stay shall be subject to compulsory schooling, and are, just as Hungarian citizens, entitled to all services provided in the Public Education Act. The amendments to the Public Education Act submitted by the Government to the Parliament contain further specifications and stricter rules against negative discrimination in education.

102. In accordance with Act LXXVII of 1993 on Minority Rights, the Public Education Act ensures equal rights in the field of education for all minorities living in Hungary. The Act stipulates that students belonging to any minority shall have the right to learn, foster, contribute to or pass on their native language, history, culture and traditions, participate in education and foster their culture in their native language.

103. It is a cause for concern that in the last decades, according to statistics, the proportion of Roma children in special schools rose to an extent that is far beyond their proportion in the whole education system. Based on the Parliamentary Commissioner for Minority Rights report on a survey conducted in this field, there is cause for concern because some schools being asked about the reasons of vulnerability indicated simply "Gypsy origin":

“The system of education in auxiliary schools for special needs is nothing else but a kind of impasse. Sadly enough, a rather high number of Roma youth are confined to it. In other words, the system of auxiliary schools for special needs is a particular form of discrimination against Gypsy youth by which, in this case, we mean beyond doubt, segregation, artificial exclusion, separation. ... The evaluation of the applications also

shows that among the data related to the vulnerability of children, 'Gypsy origin' appears in the middle of the list set up on the basis of the frequency of occurrences. It is obvious that the group of vulnerable children includes children of Gypsy origin as well, but to our mind, the view of some teachers, namely that Gypsy origin alone is an endangering factor, cannot be accepted" (Report of the Parliamentary Commissioner for National and Ethnic Minority Rights 2000).

104. The number of Roma children receiving services provided to individuals with special needs is in fact increasing: according to data, while in the school year 1974/75 roughly every fourth pupil in special needs schools was a Roma child, this rate has continuously increased in the last decades and the latest school statistics from 1992/93 (the last year before the Data Protection Act entered into force prohibiting the gathering of similar statistics) show that their rate reached 42 per cent.

105. There is reason for concern indeed because the proportion of pupils attending special schools is very high in general compared with other countries and is continuously increasing. While the proportion of disabled children attending primary schools is normally about 2.5-3 per cent in Europe, this rate, according to statistical data, was 5.3 per cent in Hungary in 2002. While in 2000 the total number of pupils attending primary schools for children with slight mental disabilities had been 31,891, this number went up to 49,931 in 2002. The increase of the per capita normative sum to be spent on the education of the disabled and the increase in the number of disabled children show a similar trend in Hungary. Expert opinions differ regarding the reasons (e.g. the modernization of diagnostic instruments). The authority responsible for education will initiate an evaluation of this interrelationship as well as the expedient utilization of such normative sums and stricter measurements.

106. Pursuant to the Health Care Act every patient, without distinction, is entitled to health care. Rendering health-care services without discrimination means no negative distinction is made among patients on the grounds of their social status, political views, origin, nationality, religion, gender, sexual orientation, age, marital status, physical or mental disabilities, qualifications, or any other reason not relevant to their state of health.

107. The Labour Code also provides for non-discrimination. In respect of employment, no distinction shall be made among employees on the grounds of their gender, age, marital or disabled status, nationality, race, origin, religion, political conviction, membership in employees' organizations, their activities in such organizations, or for any other circumstances which are not relevant to their employment. The Act also defines indirect negative discrimination.

108. The Act on Social Administration and Social Benefits provides for rendering social services and prohibits negative discrimination for any reason, in particular, gender, religion, membership of any national or ethnic group, political or other opinion, age, incompetence or diminished capacity, disability, birth or other status.

## **Paragraph 26**

109. The non-discrimination clause of the Constitution stipulates that any negative discrimination against human beings shall be strictly punished.

110. Both the Constitution Court and judicial practice prohibit negative discrimination. This is demonstrated in case No. BH2002.90, which formulates the principle that negative distinction based on the origin of the student is an offence to civil rights. According to the facts of the case, the plaintiffs were prohibited from going to the school gym for eight years due to their occasional infection with lice, and in spite of the former traditions of the school the graduation ceremony of the so-called Gypsy class was held separate from that of the Hungarian class. The binding ruling stated correctly that separating the plaintiffs from the other pupils of the school was an act of negative discrimination based on the origin and nationality of the plaintiffs and the occasional infection of certain Roma children was no justification. The preparation of a bill on equal treatment aimed at more effective actions against discrimination started at the end of the current reporting period.

### **Paragraph 27**

111. Under the Child Protection Act (Gyvt.) the local governments of every settlement are obliged to render child welfare services. Thus, all children and their families in need may receive assistance and support or protection, if needed, throughout the whole country. Providing child welfare services means the use of the instruments and methods of social work to promote the physical and mental health of children, their upbringing in a family, the prevention of vulnerability, the termination of vulnerability if it is already present, and returning children to their families in case they had been removed. The Act amending the Child Protection Act (Gyvt.) obliges bigger communities (over 40,000 inhabitants) to implement the (so-called) "street children" programme, which involves social work in the streets and housing estates, in children's wards of hospitals (neglected, ill-treated children) and at maternity wards (mothers in social crisis, young mothers). In the so-called child welfare centres a standby emergency service must be organized and also an on-duty standby for weekends should be established to facilitate contacts between children of divorced parents and their separated parent, and between children living with foster parents and their biological parents.

112. The deadline set by law for establishing the child welfare centres is 1 January 2004, but calls for tenders for leisure programmes and preventive actions or to assist special target groups are continuously being issued jointly by the Ministry for Health, Social Welfare and Family Affairs and the Ministry for the Child, Youth and Sports.

113. In respect to implementation, we regret to state that child welfare services do not by any means cover the entire country, and the quality of the services does not always reflect the provisions of the Child Protection Act (Gyvt.). Implementation is hindered by the fact that the establishment of child welfare services is not in line with the needs, the qualification of the staff is often inadequate, their professional skills are insufficient, and the lack of infrastructure, especially in small communities, is of great concern. There is no study material available for further training, there are no professional standards, and no code of conduct to support the work. Quality control, monitoring, setting up and developing an evaluation system, better functioning of the early warning system and particular emphasis on prevention are important tasks to be carried out so as to avoid just "fire-fighting".

**Paragraph 28**

114. In 1982 Hungary ratified the Convention on the Elimination of All Forms of Discrimination against Women adopted on 18 December 1979 in New York. Till now Hungary has prepared four government reports: in 1982, 1986, 1991 and 2000. The Hungarian National Mechanism for Ensuring Equal Status to Women was set up in 1995. The Government Resolution of 1997 includes the action plan and provides for the implementation of the tasks set forth in the Beijing Declaration adopted at the Fourth World Conference on Women. In 1999 a government resolution was adopted on the establishment of a Council for Women to accelerate action plans and the legislative process ensuring equal opportunities for women. In Hungarian legislation the general prohibition of negative discrimination on the basis of gender is provided by the Constitution, which stipulates that the Republic of Hungary shall ensure the equality of men and women in respect of all civil, political, economic, social and cultural rights. Further provisions related to women are set forth in the section “Fundamental Rights and Duties” of the Constitution. Based on the examination of the constitutional rules, it can be stated that they are in accordance with the spirit and the requirements of the Convention.

115. The Hungarian public education system consists of coeducated schools, i.e. there are no separate classes for girls or boys.

116. To protect minors, in particular girls, the amendment to the Penal Code (Btk.) of 1997 contains a new legal concept: the “wrongful act of taking pornographic pictures”.

117. Measures were taken to reduce smoking among women, including in the framework of the Public Health Programme for a Healthy Nation, the priority of which is to help women under 18, as well as expectant and breastfeeding mothers, to stop smoking.

**Paragraph 29**

118. A statistical survey is prepared annually on the professional activities, personnel and material conditions of organizations concerned with the welfare of children and the number of children they care for. Negative discrimination as a separate factor of vulnerability is not currently being assessed. The causes of vulnerability are recorded within the number of problems tackled. The number of children receiving child welfare services in 2000 was 155,904, the number of problems addressed while providing care to children and their families was 355,541. The breakdown of the types of problems is as follows:

Child welfare services, by type of problems tackled (year 2000)	No. of problems tackled
Financial (related to subsistence, housing, etc.)	102 370
Child upbringing	60 775
Integration difficulties	16 603
Disturbances in behaviour and performance	32 764
Family conflicts (between parents, between parents and children)	40 895
Way of life of the parents or of the family	51 093
Parental neglect	21 954
Family violence/abuse (physical, sexual)	4 857
Disability, retardation	8 972
Addictions	15 258
Total number of problems	355 541

**Paragraph 30**

119. The Hungarian State, just as any other State, endeavours to enable young people to acquire qualifications that are valuable in the labour market so that they may become regular taxpayers instead of needing social care and welfare support. Consequently, the most important task is to reduce disparities and promote the progress of Gypsy children at school. According to most surveys, due to coordinated measures taken to that end, the rate of Gypsy students finishing primary school exceeds 90 per cent, 85.1 per cent of whom attend the second level of education too. The majority of them (56.5 per cent) go to vocational schools, and the proportion of students studying in secondary vocational schools providing matriculation and professional certificates and secondary schools (19 per cent) is also increasing. In addition, continuous care is taken to ban any kind of negative discrimination from the public education system by the due enforcement of the law. This practice is reflected in a letter written to 900 maintainers of institutions by the Ministry for Education in 2001 concerning the education of the Roma minority, special needs programmes and programmes for talented pupils, referring to Act LXV of 1990 on Local Governments, section 97 (b), requesting the local governments to monitor the implementation and observance of the provisions prescribed by law. The county administration authorities responsible for legal supervision were informed about this measure. The maintainers of institutions submitted their summaries to the competent administration authority and the National Centre for Public Education, Evaluation and Examination. Following the evaluation of the material we shall have a review of the fields showing inadequate organization of education, and find solutions to eliminate the existing problems.

120. One of our most important duties is to create awareness of the opportunities available to children with various disabilities. Unfortunately, hidden discriminatory practices still exist, e.g. often Roma children or children with so-called different disabilities (hyperactivity, learning disorders or irregular behaviour) are rated “private students”, or their status is maintained without any justification.

**Paragraphs 31, 32**

121. The provisions related to non-discrimination prohibit all kinds of discrimination based on status, activity of the parents, guardians, family members, religion, or ideological engagement. Under the Public Education Act the State and the local governments shall, in meeting their tasks in education, respect the right of parents or guardians to provide education to the child in accordance with their religious and ideological convictions. Parents shall exercise this right in accordance with the interest of the child and in a manner respecting the right of the child to the freedoms of thought, conscience and religion. Pursuant to the law, the child shall have the right, inter alia, to receive religious education. The judicial practice shall consequently bar discrimination against parents based on their ideological views. This is reflected in the case No. 132 BH1998, which states that in a child custody hearing the difference of ideological views of the parents shall be assessed neither in favour nor against either of the parents. This is confirmed by case No. 479 BH2001 according to which the ideological views of the parents, the doctrines of their religion and their beliefs shall not be addressed in a child custody hearing, and shall not be taken into consideration by the court upon the ruling in any legal dispute. Related to this matter, we refer to report No. 2471/2002 of the General Deputy of the Parliamentary Commissioner for Civil Rights. The report states that any measure taken by the school aimed at

urging parents to accept any political view is a definite infringement of the freedoms of expression, opinion, conviction and thought. The Minister of Education committed malpractice by infringing the principle of security in law, indirectly connected with the youth's right to protection, freedom of expression, freedom of conscience and non-discrimination by not applying the relevant legal instruments when, during the parliamentary election campaign, certain schools participating in the campaign infringed the constitutional rights and the provisions set forth in the Public Education Act by influencing parents and children.

122. Article 1 (41) of the Public Education Act provides that nursery and boarding schools shall be organized in accordance with the principle of freedom of conscience, and tolerance of individuals with different ideological opinions. Children's, students', parents' and employees' freedom of conscience and religion shall be respected in educational institutions. Children, students, parents or employees shall not be compelled to confess or deny their ideological conviction. Children, students, parents or teachers shall not suffer negative consequences on the grounds of their conviction.

## **2. Best interests of the child (art. 3)**

### **Paragraph 33**

123. The provisions of the Constitution, Hungarian penal law, civil procedure and the Child Protection Act (Gyvt.) emphasize particularly the best interest of the child. The Child Protection Act (Gyvt.) states that local governments, guardianship authorities, courts, police, the Prosecutor's Office, other organizations and persons concerned with the protection of children shall, when applying the law, take into consideration in their procedure the best interest of the child and ensure their rights. In carrying out their activities these organizations and persons shall cooperate with the family and strive for children to be brought up in their families.

124. The Family Act includes the best interest of the child in several provisions:

(a) In case of divorce the interest of the minor born to the couple shall be taken into consideration;

(b) No permission for adoption shall be granted if it is against the interests of the minor;

(c) Any adoptee may lodge a claim for information on his/her biological parents;

(d) Parents shall exercise supervision over the child in accordance with the interests of the child;

(e) Sisters and brothers shall have the same guardian appointed to them; however, this rule may be disregarded if it is in the interests of the minor.

125. According to the Government Decree on Guardianship Authorities and Child Welfare Procedure, maintaining relations shall be regulated by the guardianship authorities and/or the court in the first instance by reaching a settlement in a hearing. If no settlement can be reached,



the guardianship authorities and/or the court shall rule, in accordance with the purpose of maintaining the relationship, in the interest of the child. Any adoptee having reached the age of 14 may, without the consent of his/her legal guardian, lodge a claim in person to obtain information on his/her biological parents.

#### **Paragraph 34**

126. Directive No. 17 of the Supreme Court, laying down the guidelines for the courts, provides for the aspects of child custody. The Directive emphasizes that the child's interest shall be a fundamental aspect. Therefore, the court shall make decisions on disclosing and comprehensively considering all circumstances affecting the child's life. Overemphasis on certain circumstances, irrespective of their context, paying no attention to other relevant aspects interferes with the child's interest in determining custody. Safeguarding the best interest of the child involved in a procedure, e.g. in custody proceedings, in procedures related to the child's status within the family or in divorce proceedings, has been a consistent and fundamental principle of the Hungarian Family Welfare Act, and consequently the courts' practice upon judging the cases.

#### **Paragraph 35**

127. Under the Child Protection Act (Gyvt.) children shall be supported to be brought up in their own families, to be protected against any abuse or exploitation, to be separated from their parents only if it is in the best interest of the children, and to be prevented from being deprived of their family merely for financial reasons. The Child Protection Act (Gyvt.) provides for several kinds of allowances for families with children facing financial difficulties. The regular childcare allowance (hereinafter: regular allowance), supplementary family allowance from 1 January 2002, shall be allocated to families with children where the per capita income does not reach the current minimum amount of old-age pension. This regular allowance shall be allocated as long as the persons entitled to it meet the requirements provided by law. The purpose of the regular allowance is to promote the care and education of children within the family and prevent the child from being removed from his/her family. The General Assembly of the local government shall allocate regular allowance to the child if the family's per capita income does not exceed the current minimum amount of the old-age pension and the child's upbringing in the family is not against his/her interest, provided that the examination of the assets of the family, ordered according to the regulations of the local government, finds that the per capita value of the assets does not exceed, separately or jointly, the value prescribed by law.

128. The monthly average number of individuals receiving regular allowance in 1999 was 834,154. The amount paid to them was a total of HUF 28,032,049,832. A total of 37.9 per cent of minors received regular allowance. The monthly average number of individuals receiving regular allowance in 2000 was 808,135. The amount paid to them amounted to HUF 33,699,310,944. A total of 37.4 per cent of minors received regular childcare allowance. The monthly average number of individuals receiving regular allowance in 2001 was 794,955. The amount paid to them amounted to HUF 39,645,673,827. A total of 37.1 per cent of minors received regular allowance.

129. Special childcare allowance shall be granted to families with children having temporary livelihood difficulties. The child shall be granted special childcare allowance, the amount of which is specified in the order issued by the General Assembly of the local government, if the family taking care of the child has temporary livelihood problems or gets into an extraordinary situation endangering its survival.

130. The following persons received special childcare allowance in 1999:

Number of individuals receiving financial aid in 1999	267,783 persons
Number of individuals receiving aid in kind in 1999	129,132 persons
The average one-time financial aid paid to one person	HUF 3,370
The average one-time aid in kind paid to one person	HUF 2,006

131. The special childcare allowance is paid from the budget of the local governments. Aid in kind involved generally the funding of meals provided by schools, buying schoolbooks and school supplies. Another allowance allocated under the Child Protection Act (Gyvt.) is the reduction or cancellation of meal expenses for children in nursery school or school. In the case of families with three or more children, 50 per cent of the institution fees and, in the case of a disabled child or disabled student, 30 per cent of the institution fees per child shall be allocated as a meal allowance. The competent local government in the domicile of the child may, based on the individual needs of the child, provide further benefits per child, in particular if the per capita income of the child's family does not exceed the minimum amount of the old-age pension. Eligible persons shall be provided free care if the person obliged to pay for the costs has no income at all. The law amending the Child Protection Act (Gyvt.) extended the normative amount of the child meal allowance to children receiving supplementary family allowance, stipulating that 50 per cent of the institution fees shall be provided as normative benefit to all three target groups.

132. The guardianship authorities may decide to advance child support from public funds if the parent obliged to pay the support (in most cases the father) is temporarily unable to pay it and as a result, the parent having custody of the child cannot provide appropriate care. Child support shall be advanced by the guardianship authorities if the collection of such child support is temporarily impossible and the person having custody of the child is unable to care for the child appropriately, providing that the per capita income of the family having custody of the child does not reach three times the minimum amount of the old-age pension. The number of persons having received child support on 31 December 1999 was 4,241, on 31 December 2000, 4,187, on 31 December 2001, 4,751. The amount paid as an advance was in 1999 HUF 149,625,000, in 2000 HUF 229,591,000, and in 2001 HUF 304,016,000.

### **Paragraph 36**

133. The Child Protection Act (Gyvt.) provides for financial allowances, allowances in kind and certain forms of personal care. Numerous statutory provisions support the social security of children. In case the family does not have custody of the child, the State shall extend care to

minors, e.g. by the advance payment of child support, or the system of social and childcare allowances and aid. If in spite of granting such allowances the family cannot support the child, the minors in State custody shall be fully cared for by the State.

134. Public education contributes to taking over institutional costs. The payment of child meals and/or the costs of buying schoolbooks is supported by separate normative contributions.

### **Paragraph 37**

135. The personnel, material and other conditions for the operation of the specific institutions, facilities and services providing individual care, i.e. childcare service activities under the Child Protection Act (Gyvt.), are regulated by a separate ministerial decree. The qualification requirements of the professionals working in and controlling the specific services, as well as the minimum number of professional staff, are regulated under the decree. Carrying out childcare service activities is linked to obtaining an operating licence since 1998 under the government decree on licensing the operation of childcare institutions providing individual care.

136. The existence of the conditions set forth in the related ministerial decree and the legality of operation shall be annually controlled by the authorities (the chief administrator and/or the county guardianship authorities) issuing the operational licence. In case of serious failure infringing the interests of the individuals cared for, the authority licensing the operation may initiate the closing down of the institution.

137. The rules for setting up nursery school classes and school classes are specified in annex No. 3 to the Public Education Act. The number of children in nursery school groups or school classes was determined with regard to educational principles. The Act on the Operation of Education institutions defines the institutional tasks related to the prevention of accidents involving students and children. The individual institutions shall set up the detailed rules.

### **Paragraph 38**

138. It is a general provision of the Family Act (Csjt.) that, upon decision-making, the parent and/or the officers implementing the law shall always proceed in the best interest of and ensure the rights of the child. However, the definition of the best interest of the child is interpreted in a different way by Hungarian legislators and by those enforcing the law. According to certain approaches such enforcement is merely the task of enacting legislation and the legal procedures regarding the child, while others with a different approach want to enforce the best interest of the child in all relevant sectors of the State and the society.

### **Paragraph 39**

139. Under the government decree on teachers' qualification standards, the curriculum objectives of education providing teaching diplomas shall involve children's rights studies, preparing teachers for tasks to be carried out with families, vocational guidance, social and educational counselling, and child and youth protection at school.

140. The faculties for nursery school and primary schoolteachers are regulated under a separate government decree. According to the curriculum objective, the teacher shall respect the universal and national human values and ethical norms, and assume individual and community responsibility and tasks.

141. Training of special education teachers is a separate field of education; the qualification standards are also set forth in a government decree. This training prepares for the education of children with special needs.

142. In the framework of in-service teacher training the following preparatory courses for specialist exams have been launched: preparation for family and child welfare work; theoretical and practical questions of preserving and promoting mental and physical health at school; preventive and corrective pedagogical-psychological studies; child and youth welfare studies; studies in counselling provided for students in public education; education of socially vulnerable youth; studies in Gypsy society and pedagogy for teachers; knowledge required for work with the Roma minority for nursery school teachers and primary school teachers; pedagogy for children in need of individual treatment; preparation for special educational work with Gypsy children.

### **3. The right to life, survival and development (art. 6)**

#### **Paragraph 40**

143. The spirit of the principles of the Convention is reflected in the provisions of the Constitution recognizing the inalienable and inviolable human rights and the inherent right to life. The child's right to life is expressed in article 66 (2), according to which mothers in the Republic of Hungary shall be provided support and protection before and after the birth of the child under separate regulations. Under article 70/D (1) of the Constitution citizens living in the territory of the Republic of Hungary shall have the right to the highest possible level of physical and mental health, and pursuant to article 70/E (1) to social security.

144. As a result of regular health screening ensured to children until the age of 18, treatment of irregularities and, if required, rehabilitation may begin in time. Special health care is provided in specialists' consulting rooms, surgeries and in-patient medical facilities. The institutions of the Ministry of Education and the Ministry for Social Welfare and Family Affairs, i.e. nursery schools, schools, day-nurseries and health-care facilities for children ensure care and development for every child according to his/her capability. Children vulnerable for any reason shall receive increased care.

145. The main objectives of Act CLIV of 1997 on Health Care include the control of the healthy development of the foetus and the protection of the expectant mother's health. The control of the healthy development of the foetus, prevention of endangerment and complications and/or detecting them in time, the preparation for childbirth, breastfeeding and caring for infants shall be carried out within the frameworks of family and women's health care. Maternity care

includes monitoring the family and health status, social circumstances and conditions at the workplace of the expectant women, and examinations are carried out as provided by separate regulations.

146. Under Act IX of 2002 amending the Child Protection Act (Gyvt.) battered mothers or expectant women in a crisis situation or mothers in a similar situation after leaving the obstetric ward shall be received in temporary family homes.

147. Under the Child Protection Act (Gyvt.) the child shall have the right to be brought up in a family that ensures his/her physical, intellectual, emotional and moral development, healthy growth and welfare. Children's rights also involve the right to help in evolving their personalities, being kept away from situations that endanger their development, assistance with integration into society and the creation of an independent life. Disabled children shall have the right to special care in order to promote their development and evolve their personalities.

148. Act LXXIX of 1992 on the Protection of the Foetus, guaranteed by the implementation orders, provides in particular, through Ministerial Decree No. 33/1992 (XII.23.)NM, for maternity care and the earliest possible specialist care required to survive, without distinction based on age, gender, or ethnic or social background. The majority of children are born in health-care facilities in Hungary. On average, there are annually 250-300 planned childbirths outside hospitals. After childbirth women are provided childbed care for six weeks.

149. It is fundamental that care and control necessary for the healthy development of the child, being component parts of ensuring the right to healthy development, are guaranteed by childcare workers and paediatricians (5,000 childcare workers and 3,200 doctors, 50 per cent of whom are paediatricians).

150. The basic responsibility of the Family Welfare Service (CSVSZ) is the dissemination of information on family planning and providing counselling outside schools. Women in a crisis situation and expectant women considering abortion are compelled by law to attend CSVSZ counselling. It is the responsibility of CSVSZ to represent the interest of the foetus. The aim of the counselling is to examine the crisis situation and the facts under undisturbed circumstances and find possible solutions. Another aim is to provide the necessary information on governmental and non-governmental organizations that provide support, on allowances and benefits in kind, and on the care to which families raising children are entitled depending on their need. An important aspect is to show the positive perspectives for keeping the baby. CSVSZ provides assistance to prevent unwanted pregnancy (contraception) by individual counselling. In Hungary everybody is entitled to medical care regardless of age, gender, or ethnic or social background.

151. The right to survival is reflected in the fact that over 90 per cent of the children in Hungary are immunized.

152. In order to reduce the mortality due to the high number of premature births, a network of perinatal and neonatal intensive care centres was created. The nationwide network of emergency transport of newborn and premature infants was recently completed with government support.

**Paragraph 41**

153. The State of Hungary has made significant achievements to protect the health of children. Among others, the support provided to pregnant women in a social crisis situation or the services of district nurses are ensured in law. When a child is born, a district nurse will continuously monitor the healthy development of the child and the process of mandatory immunization. If necessary, she can advise the mother or can indicate to the authorities if the maternal obligations have not been met. The education of children under healthy conditions and their health care can be ensured via the State health-care services.

154. The health of youth in puberty is threatened by the consumption of drugs and the resulting damage to health, which has been growing recently. Under a national drug prevention programme, coordinated activity has been going on with participation from government and non-governmental organizations and the Churches. In addition to preventive information and the treatment of minors affected by drugs, penal law regulations have been made significantly more stringent in order to improve the drug situation. In addition to tightening criminal regulations, the option of diversion was introduced and took effect as of March 2003. The latter differentiates the treatment of groups of youth using drugs and their problems.

155. The so-called "blue line" is well known; it is a free-of-charge telephone help service for children facing different problems.

156. The following table shows the number of children and youth who died because of criminal acts:

	1997	1998	1999	2000	2001
Children	34	44	33	20	30
Youth	7	8	7	9	4
Total	41	52	40	29	34

157. During the reporting period, the Parliamentary Commissioner for Civil Rights considered investigating the right of children to life a priority duty, and ex officio investigated all cases ending in the death of a child or children. Among others, he dealt with the enforcement of that right in the following cases:

(a) OBH 400/1999. The number of infanticides would probably drop if pregnant women who were unwilling or unable to bring up their babies and who wished to remain anonymous could deliver in hospital - rather than at home - while preserving their anonymity. A central or appointed authority could keep a record of such births and the legislation relating to adoption could permit such a procedure. In this way, the mother's right to human dignity and proper support is maintained, and the child's right to protection, and ultimately its right to life, is preserved;

(b) OBH 750/1999. A two-year-old boy died because of negligence. The agencies and people acting on behalf of the State did not fully meet their responsibilities to step in for the parents who had been negligent in looking after their children. That negligence led to the situation that the rights of the surviving children were infringed, while the deceased child's right

to life was infringed. The tragedy could probably have been avoided if the local government had taken notice that the family visitor social worker was overworked and if the agencies and people in the system had cooperated more effectively, and also if the social worker had received proper professional assistance.

#### **4. Respect for the views of the child (art. 12)**

##### **Paragraph 42**

158. The principle that children must be heard in any court case or administrative procedure affecting them prevails in Hungarian law. The Constitution guarantees equality before the court and also the right of everybody to receive a fair and public trial by an impartial, legally set-up court in any criminal procedure or legal action against him/her to judge his/her rights and obligations.

159. The Public Education Act lists freedom of speech and people's right to expression among individual and group rights. Freedom of speech can be manifested as an individual right or in the way students' representative groups use it. Freedom of speech can be divided into two parts: students and their communities have a general right to express an opinion on all issues; on the other hand, no decision can be made in certain cases stipulated by law without obtaining the opinion of the students' representative groups involved. Under the Public Education Act, students have the right to express an opinion, observing human dignity, on all issues, including the work of their teachers and the operation of their schools or dormitories. They also have the right to be informed about issues affecting their persons or studies. They can make proposals related to all the above issues and raise questions with the heads and teachers of their school, the school board or board of the dormitory, and should receive an answer to their question within 30 days. In line with the Public Education Act, a general assembly of students must be organized in schools and dormitories at least once a year, where issues related to the functioning of students' self-government and the enforcement of students' rights are discussed.

##### **Paragraph 43**

160. According to the Family Act (Csjt.), parents must ensure that children capable of making a sound judgement can express their opinion when decisions affecting them are prepared. Children's opinion must be taken into consideration taking into account the child's age and maturity. The amended Family Act has stipulated, as a new provision, that the court or the guardianship authorities must hear the child in any procedure related to custody or parental control in all justified cases, including the case if a child him/herself requests to be heard, either directly or via an expert. If the child is older than 14 years of age, any decision related to his/her custody can only be made with his/her agreement, except if the custody selected by the child would endanger his/her development. Under the Civil Code, the court shall appoint a case guardian if it is necessary to hear a child in court, but the court can also decide to hear a child in the absence of the child's parents. The obligation of the authorities to warn the accused about his/her right to refuse testimony, as well as his/her right to a detailed hearing and making coherent testimony before the hearing, also covers juveniles.

161. The Public Education Act also ensures a wide range of rights for students to express their opinion and to have them taken into account regarding issues related to the life of their school.

162. Under the Child Protection Act (Gyvt.) children have the right to express their opinion freely, to be given information about their rights and the opportunity to enforce their rights, as well as to be heard directly regarding any issue affecting their person or property. Their opinion is to be taken into account as corresponds to their age, health status and level of maturity. Children have the right to lodge a complaint with the different forums identified in the Act regarding issues affecting them, and, in case their basic rights are infringed, to start legal action in court or at other bodies identified in the Act - children's self-government, interest representation forum, representative of children's rights or the Commissioner for family and children's rights.

163. In child welfare proceedings an important part of fact-finding is that a child with a capacity to discern is heard. A direct hearing of a child, provided that a child with a capacity to discern is able to understand the facts and decisions related to him/her in accordance with his/her age, cannot be avoided if the child requests it or if it is provided for by law. The guardianship authorities can carry out a hearing in the interest of the child without the presence of the child's legal representative; this is, in effect, an option to be considered by the guardianship authorities in any given case.

164. In accordance with the decree on the operation of educational institutions, the order and form of students' rights to expression and to be regularly informed shall be regulated in the organizational and operational manuals of schools and dormitories. Under the ministerial decree, the students' general meeting is a form of information for the students of a school or a dormitory, and it shall be convened at least once a year. At the students' general meeting the head of the school or dormitory will report about the work carried out in the period since the last general meeting with particular attention to the situation and enforcement of children's and students' rights, and about the experience in the execution of the provisions of the house rules. At the students' general meeting, students can put questions regarding the issues of the school or dormitory to the students' self-government or to the head of the institution. Disciplinary procedures can be launched against a student in a school or dormitory if the student does not comply with his/her obligations with reference to his/her legal status as a student or as a member of the dormitory.

#### **Paragraph 44**

165. Legislation guarantees, with reference to measures of child protection, that a declaration of a minor who is able to express an opinion shall be obtained in every case. Similarly, the opinion of a minor involved in a case shall be obtained in a child custody hearing. Minutes shall be prepared of the proceedings preparing a decision (for instance, taking a child into custody), which shall include the declaration of the minor as well.

166. In order to ensure a long-term, family-like environment for children, the regional child welfare service shall prepare a custody plan at the time the temporary or long-term custody takes place, but not later than 30 days after a child is taken into temporary or long-term custody, and the guardianship authorities shall approve the plan, in which the opinion of the child involved must be taken into account. The guardian, together with the child, shall draw up a career for the



child, taking into account the opinion of the parent of the child in temporary custody, the child's abilities and other circumstances. The guardianship authorities will decide in any dispute regarding the selection of the caregiver. In child welfare proceedings persons with a diminished capacity or an incompetent child with an ability to discern shall be heard. The hearing can be omitted if the delay caused by the hearing leads to inevitable danger or damage.

167. In line with the Decree of the Ministry of Justice on marriage, the family and guardianship, the court must take into consideration the child's age and the child's maturity, provided they can be determined from the data of the proceedings, when making a decision whether to hear a child.

168. The Government Decree on the guardianship authorities, child welfare and guardianship stipulates that individual plans of care and education of children shall be prepared together with the parents, if possible. The notary public shall, in every case, inform the parents and the children about such plans of care and education. The fact of presenting the plan shall be recorded in the minutes. The individual care and education plans identify the different responsibilities of social workers, parents and children to eliminate the child's vulnerability. Before taking a child into temporary custody, the guardianship authorities shall obtain a professional opinion from the child welfare service to identify the place of custody and possibly with reference to the individual plan of custody. On identifying the place of custody, the child and the parent can also request that the child be placed with foster parents, professional foster parents, in a children's ward or another boarding institution. A decision that is different from the requested custody is possible only if the original request is contrary to the interest of the child or if the conditions cannot be met.

169. The Civil Code stipulates that the opinion of persons with diminished capacity or of an incompetent minor with an ability to discern shall be taken into consideration by the legal representative when making a legal statement related to the person and property of a minor.

170. The Decree on the institutions of child welfare and other institutions of child protection as well as on people providing personal care and on their professional duties and operating conditions stipulates that the service provider shall create an opportunity for children under its care to express an opinion about the care and education provided for them as well as on other issues related to their person; furthermore, it shall ensure that the opinion of the child is taken into consideration during care and education, as appropriate to the child's age and maturity.

#### **Paragraph 45**

171. A school board must be established if a representative of the students' self-government or, in its absence, at least 20 per cent of the students of the school initiate its establishment. An equal number of parents, teachers and representatives of the school self-government participate in the work of the board of the school or boarding school, in line with the Public Education Act. This school board has the right to comment on or to agree to a number of school-related issues. For instance, the school board exercises its right of agreement regarding the approval of the school's organizational and operational manual or the house rules. Pursuant to the Act, the students of the school or the boarding school can establish student groups to organize joint activities in line with the provisions of the house rules. Students are authorized to set up a

student self-government of their own. The student self-government will decide on its own operation, on using the funds provided for its operation and on setting up and operating an information system for the school or boarding school student self-government. The student self-government will approve its own organizational and operational rules and will operate accordingly. The student self-government can express its opinion and can make proposals regarding all issues related to the operation of the school or boarding school and to the students themselves. The student self-government can use, free of charge, the premises and facilities of the school or boarding school to meet its obligations. The student self-government of the school or boarding school exercises the right to agree to several issues affecting students, for instance, the approval of the organizational and operational rules, the approval of the school's or boarding school's house rules, identifying the principles of allocating social benefits to the students and using the funds provided for youth policy issues.

172. The documents defining the internal operation of institutions play an outstanding role in the operation of nursery schools, schools and boarding schools, thus in the freedom of expression. Such documents include the educational programmes of nursery schools, the pedagogical programmes of schools and boarding schools, different house rules and the organizational and operational manuals. The Decree on the operation of educational institutions stipulates that such documents shall be made available for the parents and students. The Decree also provides that the head of school or boarding school or a teacher appointed by him/her shall inform the students and the parents about the contents of those programmes.

#### **Paragraphs 46 and 47**

173. The Public Education Act identifies job profiles linked to special teaching qualifications. Knowledge of the Constitution is part of the mandatory content of training. The staff of children's institutions shall be continuously trained regarding issues of the development of children and their specific implications.

174. With regard to the vocational training of health-care workers, no measures have been taken which could have promoted the importance and necessity of children's right to freedom of expression. Health-care workers, however, study children's development under different training programmes with a different number of training sessions:

#### **Vocational training for nurses (3-year training based on secondary school education)**

Total number of classes:	4 622
of these:	
Development and care of healthy babies, infants and young children	112
General psychology	32
Developmental psychology	96
Pedagogy	96
Psychology of personality development	16
Mental hygiene	16

**Vocational school for infants' and children's nurses  
(3-year training based on secondary school qualification)**

Total number of classes:	4 612
of these:	
Development of care of healthy babies, infants and young children	160
General psychology	32
Developmental psychology	96
Special nursing psychology	32
Pedagogy	192
Psychology of personality development	16
Mental hygiene	16

**Training for crèche nurses**

Total number of classes:	374
of these:	
Pedagogy	61
Developmental psychology	65

**Vocational training for social workers/district nurses (4-year college training)**

Total number of classes:	3 820 + 960 practical training
Development of the healthy child	45
Developmental psychology	60
Nursing (methodology for district nurses for 8 terms)	45

**Paragraph 48**

175. In line with article 95 (3) of the Public Education Act, the Minister of Education shall convene, with participation by the National Council of Students' Rights, the Students' Parliament elected by the student self-governments of schools and boarding schools, or, if no student self-government operates in an educational institution, a delegation elected by the students' general meeting held with the participation of a minimum of 20 per cent of the students. The Students' Parliament is a national information forum of students related to public education, which, on a proposal by the National Council of Students' Rights, reviews the enforcement of students' rights and can adopt recommendations incorporating their comments and suggestions.

176. The Constitution, the Child Protection Act (Gyvt.) and the International Covenant on Civil and Political Rights all guarantee the civil rights of children. The Public Education Act guarantees the enforcement of the civil rights and liberties of children in education and training institutions. Pursuant to article 10 (3) (e) of the Act, nursery schools, schools and boarding schools shall respect children's and students' rights, including their personality rights, with particular reference to their right to evolve their personality without restriction, their right to self-determination, their freedom of action and their right to family life and private life.

## D. Civil rights and freedoms

### 1. Name and nationality (art. 7) and preservation of identity (art. 8)

#### Paragraphs 50-55

177. Under the Family Act, children take their father's or mother's surname as their parents had agreed. If there is no person to be considered as the father of the child, the child will take his/her mother's surname. After his or her third birthday, however, an imaginary father will be registered for him/her in the register of births and from then on the surname of that imaginary father will be the child's surname as a general rule. If the child is adopted, pursuant to the Family Act an adopted child can request information from the guardianship authorities about his/her biological parents.

178. In line with the Law-Decree on the register of births, marriages and deaths, the marriage procedure and the selection of names (At.), the birth of all persons born on the territory of the Republic of Hungary shall be registered irrespective of the nationality of the parents or the capacity in which they stay on the territory of the country. Births are registered by the Registrar of the place where the birth took place. Births shall be reported to the relevant Registrar. In order to have births registered, there is an obligation for the registration of births on the part of the head of medical institutions where the delivery took place in a hospital or, in case of delivery not in a hospital, on the part of the parents and the physician assisting at the delivery. The obligation of registration must be complied with on the first working day after the event, at the latest. The persons obliged to register shall report within eight days a delivery not in a medical institution, provided no physician was present at the delivery. Births shall be registered ex officio if there is no person obliged to register or if the person obliged to register has failed to do so. A birth will be registered immediately after it is reported; it can be delayed for not longer than 30 days in specific cases under the above Law-Decree.

179. In line with the Government Decree on minor offences, a person can be fined for failing to comply with the obligation to register. The Resolution of the Constitution Court No. 58/2001 provides that the right to a name is a fundamental right that can be derived from the right to human dignity as stipulated in the Constitution, article 54 (1). Every person has an inalienable right to have a name of his/her own expressing his/her identity and to bear that name. That right cannot be restricted by the State. The other components of the right to a name, particularly the selection of names, changing of a name or modifying a name, can be constitutionally limited by legislators.

180. The issues of names and citizenship were dealt with on several occasions by the courts during the reporting period. Some major court resolutions related to the above are the following:

(a) BH2002.288. Hungarian citizenship can be obtained by birth. Adoption will not result in obtaining Hungarian citizenship, but it lays the foundations for preferential naturalization;

(b) BH1999.411. If a putative father denies paternity, the court shall decide whether the child should be entitled to continue to bear his surname. The first instance court took the right position when it decided that a 14-year-old child losing his/her surname because of

incompliance with the paternal legal status, when he/she had become known by that name would result in a break in the community life of the child and that this would be a major disadvantage for the child that would outweigh the interest of the plaintiff. Therefore, the interest of the minor had to be given preference when contradictory interests were compared;

(c) BH2001.529. Court ruling on a lawsuit brought by a parent who had filed a fully effective declaration of acknowledgement of paternity to change the child's surname. The court was right to point out that changing the surname of the 8-year-old child was not in the interest of the child. The acknowledgement of paternity by the father made the child's family situation unambiguous; therefore, the decision was not in breach of article 8 (1) of the Convention on the Right of the Child.

181. Furthermore, the Parliamentary Commissioner for Civil Rights also investigated the above issues. According to the report OBH 483/2000, the plaintiff complained that his child born in the United States of America was not registered by the Hungarian authorities. It is obviously unfair to oblige the complainant's child to bear more than one name because of his dual citizenship, foreign place of birth, or because his parents' citizenships are different. There are no constitutional rights to be enforced here so that the complainant's child would be obliged to live under two names, in possession of two public documents with different content, both of which are certified. The legal situation revealed by his investigations caused a constitutional anomaly in connection with the right to the protection of fundamental rights guaranteed in the Constitution. The Commissioner proposed to submit a proposal to the Minister of Justice to initiate an insertion in Act 13/1973, article 71 on international private law, to allow resolutions of foreign authorities on the subject of names to be adopted.

182. Report No. OBH 207/2000. Two infants found on 16 March 1999 were still not registered in January 2000, and they had no social security identification numbers either. The acting guardianship authorities violated the provisions of the Family Act, article 41 (1), when they failed to take immediate action to register the children, of unknown parents, under the names of imaginary parents. The children had no names or social security numbers for almost a year. By failing to act, the guardianship authorities violated the minors' right to human dignity guaranteed in the Constitution, article 54 (1), and their right to the highest level of physical and mental health guaranteed in article 70/D (1).

183. Report No. OBH 2701/1999. The plaintiff complained that the registration of her child born in Panama was delayed in Hungary and the municipality of her district refused to issue an identification number for the child. Thus, the child could not obtain a social security identification number, and the mother had to pay for the mandatory immunization as well. An official of district 18 reported that the personal identification number could not be issued because the parents, with different citizenships but exercising parental authority jointly, should have agreed on the domicile of the child. The mother could not present such written agreement, and therefore the personal identification could not be issued. The official of district 18, however, failed to notice that the data of the father were not included in the birth certificate of the child. In line with the birth certificate, the mother alone could exercise parental authority over the child and was therefore alone entitled to decide on where to settle with the child. The approval of the

father living abroad was not needed because, legally, he could not be considered the father of the child because of the lack of an acknowledgement of paternity. The official, by refusing to issue a personal identification number for the child, caused an infringement of the right of the child to protection and care because no social security number could be issued without a personal identification number. Thus the health and social care of the child was endangered.

184. Report No. OBH 2795/1997. Complainant reported the tragic loss of her baby and the inexplicable action taken afterwards. The foetus died in the twenty-ninth week of gestation and had to be removed from the mother's body during an operation. The parents were not allowed to give a name to their dead child. The Commissioner ruled that security in law derived from the constitutionally declared rule of law had been infringed, and a constitutional anomaly was caused with reference to the parents' right to human dignity if a child born alive is not registered. During the investigation the question arose whether, in line with the parents' request, action could be taken to give a name even if the child is stillborn, but the parents insisted on its being buried. In such a case the risk of anomaly is present with reference to the right to human dignity. Stillborn children cannot be registered, but this should not deprive the parents of their right to give their child a name.

185. In Hungary, keeping the register of births, marriages and death is not a problem. Registrars must obtain a proper qualification at the College of State Administration or pass a special exam to operate.

186. Pursuant to AT article 32 (1) (a)-(g), the register of births records the following data: the place and date of the birth (day, month, year), the place of origin, the first name and surname of the child, the child's sex, the personal identification number, the first name and surnames of the parents, their place of birth, their personal identification numbers, residence, whether there were multiple births, the foreign citizenship of the child or of the parent(s) and the date of registration (day, month, year).

187. The registration form shall be completed on the basis of the parents' (or only the mother's) identification cards, or, lacking that, on the basis of another public document. The Registrar will not complete the lines related to the child's surname and the father's data if the father of the child cannot be identified at the time the birth is registered. If the Registrar cannot obtain the missing data within three years of the birth of the child from the mother or from the guardianship authorities, the Registrar will contact the guardianship authorities to establish an imaginary father ex officio.

188. The Child Protection Act (Gyvt.) provides that children have the right to grow up in their own family environment ensuring their physical, mental, emotional and moral education and development. A child can only be separated from its parents or other relatives in his/her own interest in cases and a manner defined by law. The child has the right to learn about his/her origins and biological family and to keep contact with that family. The Family Act provides that an adopted child can request information from the guardianship authorities about his/her biological parents. The parties must be informed about this fact during the adoption proceedings. In order to provide such information, the biological parent and - if the adopted child is still a minor - the adopting parent or other legal representative must be heard as well.

189. Pursuant to the Child Protection Act (Gyvt.), the child welfare service is responsible for ensuring family care in order to resettle the child into his family, in cooperation with the institution providing care for the child or, with the regional child protection service, to assist in creating and improving proper conditions in the family for the child's care and to restore the relationship between the parents and the child. It is also responsible for aftercare in cooperation with the institution providing childcare and the regional child welfare service to facilitate the child's readaptation to his/her family.

190. According to the governing court practice (BH2000. 206), termination of parental care is not only aimed at preventing parents from exercising parental control over their children, but also expresses the negative moral judgement related to a person's inability to exercise parental responsibility. It is a guarantee in the interest of both parents and children that such severe legal stipulations can only be employed in case of such conduct (article 88 of the Family Act).

191. We think it is important that mediation and facilitation proceedings are becoming more widespread in judicial rulings, which promote successful involvement of the children and thereby the enforcement of their right to expression. Therefore, it is not only possible that the guardianship authorities decide in a disputed issue but also that the child welfare service or the trained staff of family-care centres can assist those involved in a democratic procedure (Act No. LV/2002 on mediation).

192. In his report No. OBH 550/1998, the General Deputy to the Parliamentary Commissioner of Civil Rights investigated how the constitutional rights of children living in childcare institutions were enforced and made the following statements:

“In some cases we did not find a major effort to ensure that children were able to contact their biological families, including their siblings who might be in State care as well, and to maintain such relationship. The relationship between a child and his/her biological family cannot be maintained artificially beyond certain limits, and it cannot be restored if completely broken. A child, however, under articles 15 and 67 of the Constitution, has the right to maintain personal relationships and direct contact with both parents, except if it is contrary to the best interest of the child which stands above everything else. Should the authorities neglect to ensure the above, the risk of constitutional anomaly develops. The same is true if a child is not given proper information about his/her family or relationships.”

193. Under Act LV/1993 on Hungarian citizenship, the child of a Hungarian citizen obtains Hungarian citizenship by birth. The Hungarian citizenship of a child of a parent who is not a Hungarian citizen can be established with retroactive effect to the date of the birth if the child's other parent is a Hungarian citizen and there is a fully effective paternal acknowledgement, subsequent marriage, or paternity or maternity established by the court. Unless proved to the contrary, the child of a stateless person resident in Hungary shall be a Hungarian citizen if born in Hungary, as well as a child of unknown parents found in Hungary.

194. An amendment to the Act, which took effect on 1 July 2001, in consideration of the European Convention on Citizenship, ensures a preferential option to obtain citizenship via a declaration. A person can make a declaration to this effect before completing 19 years of age while the legal representative is authorized to make such a declaration for a minor, but a child

older than 14 must also give his/her consent to do so. The Minister of the Interior can refuse such a declaration only if the conditions provided by law are not met. Such refusal can be appealed in court. Stateless people can apply for preferential naturalization under article 4 (4) (c).

## **2. Freedom of expression (art. 13)**

### **Paragraph 56**

195. Under article 61 of the Constitution, everybody in the Republic of Hungary has the right to freedom of speech and to obtain information about and distribute data of public interest. Under article 8 of the Child Protection Act (Gyvt.), children have the right to freedom of speech and to receive information about their rights and about their opportunities to enforce their rights.

196. The provisions of the Public Education Act related to students' rights ensure freedom of speech. Under the Act, students have the right to obtain the information needed to exercise their rights, and to be informed about the proceedings needed to exercise their rights. Under the Act, teachers and educators are obliged also to regularly inform students about issues involving them. The law defines the restrictions on freedom of speech, while respecting human dignity. The Act provides that students' rights are restricted in that exercising those rights cannot endanger their own rights to health and physical integrity and the enforcement of their right to education, or the right of their schoolmates' and the employees of the school or other educational institutions.

## **3. Freedom of thought, conscience and religion (art. 14)**

### **Paragraphs 57-58**

197. Under the Constitution everybody has the right to freedom of thought, conscience and religion. This right includes the freedom to select or adopt a religion or another moral conviction and also the freedom to express a religion or religious conviction in public by performing the acts and ceremonies of the religion or by any other way, either individually or together with others, in public or in private; to refuse to exercise such expression; and to practise or to teach such religion or moral conviction. The Child Protection Act (Gyvt.) also provides about this right, and children's freedom of conscience and religion must be observed when children are in auxiliary care. Children taken into temporary or permanent custody have the right in particular to receive education and schooling that takes into consideration the child's nationality, ethnic identity and religion in accordance with the child's age, state of health, maturity and needs.

198. The Public Education Act provides that both the Government and local governments shall respect the rights of parents and guardians in fulfilling their duties regarding training and education, and that their children can receive education consistent with their religious or ideological beliefs. Parents will exercise those rights in the interest of their children in such a way that they respect the child's right of thought, conscience and religion, and that the child's opinion is taken into consideration, depending on the child's age and maturity. Under the Act, parents are authorized to freely select an educational institution for their children. Under this right, parents can select a nursery school, school or boarding school in accordance with their own



religion or ideological beliefs and national or ethnic minority identity, in line with their children's talents, abilities and interests. Parents' rights, however, cannot restrict the rights of the child to the freedom of thought, conscience and religion, which is exercised under parental control in line with the child's maturity. When the child is 14 years old, however, the child and parents can exercise their right to select a school jointly, unless the children are deemed incompetent.

199. The relevant judicial law also deals with the child's freedom of conscience and religion. The legal case BH1998, No. 398 stipulates that the main goal of institutions offering social assistance to families is to provide such assistance. The behaviour of a social worker was contrary to this objective because the person involved intended to persuade a minor under his control to adopt his own religious views contrary to the intentions of the child's family. Such behaviour was considered a breach of discipline. In his report No. OBH 2461/1999, the Parliamentary Commissioner for Civil Rights stated, in relation to the case of a child living in a children's home, that the child's rights to freedom of thought, conscience and religion were infringed when, following his adoption of the Muslim faith, the head of the institution and the teachers of the child did not facilitate the provision of meals in accordance with his religion and did not assist him to contact his religious community.

200. Institutions of public education shall respect a child's right to the freedoms of thought, conscience and religion. The Public Education Act provides that State or local government-owned educational institutions cannot be committed to any single religion or ideology. They must, however, ensure an objective and many-sided presentation of knowledge, including religious and ideological information. The teaching programmes, educational programmes, operations, activity or direction of such institutions shall not take sides regarding the truth of religious or ideological teachings; they shall remain neutral. The Public Education Act guarantees the freedom to establish educational institutions. Thus, Churches have the possibility to establish nursery schools, schools and boarding schools so that they can carry out educational activities in accordance with their ideological commitment. Parents are entitled to freely select an educational institution for their children; thus, they are free to enrol their children in Church institutions.

201. Pursuant to the Act on the rights of national and ethnic minorities, persons belonging to any of the minorities have the right to observe their family-related minority traditions, to maintain family relations, to keep family ceremonies in their mother tongues and to request the related religious ceremonies to be performed in their mother tongues as well.

202. In resolution No. 22/1997 the Constitution Court found that the State was responsible only for the establishment and maintenance of ideologically neutral schools. This does not imply that the State should ensure free education for everybody in a school of their choice. With reference to an earlier resolution, it also stated that, although parents do not have the right to demand that the State establish a school corresponding to their ideological preferences, they still have a protective right, under which they cannot be obliged to enrol their children in a school that is contrary to their religious beliefs or ideological views.

#### **4. Freedom of association and peaceful assembly (art. 15)**

##### **Paragraph 59**

203. Both the Constitution and the relevant Acts acknowledge the fundamental right of all, including children, to freedom of association and assembly. Accordingly, the Republic of Hungary acknowledges the right of peaceful assembly and guarantees the free exercise of such right. Everybody has the right to set up an organization for any goal not explicitly banned by law or to join such organizations. Freedom of association and assembly, however, cannot be exercised if it is manifested in a criminal act or in calling upon others to commit a criminal act, and it cannot imply nor involve infringement of other people's rights and freedom.

204. The Public Education Act does not directly regulate the right of children to freedom of association and assembly. Under the Act, students are entitled to take part in the work of students groups, to launch such student groups, to be members of school-organized cultural, art, science, sport and other groups and of extra-curricular social organizations. Under the Act, there is also an opportunity to establish students' communities at schools or boarding schools and to set up student self-governments. In fact, there is no restriction in that area among the provisions related to public education.

205. The relevant court practice also acknowledges the child's freedom of association and assembly. The legal case BH1997 No. 95 is an example of this because it says that a minor who is member of a social organization cannot be restricted in exercising his right to vote because of his age. Furthermore, the legal case BH2000 No. 471 stipulates that the diminished capacity of a minor does not exclude the possibility of the minor being nominated as a member of a board of trustees. It must be decided, after careful consideration of the nature of the foundation in question, whether membership in the board of trustees is an appropriate function for a minor.

206. National minority organizations also have an active life. Among others, the Association of Young Germans in Hungary stipulates in its statutes that its basic objective is to educate youth and children to have a healthy life, and to organize leisure activities for them. The organization carries out non-profit activities in the fields of child and youth welfare and undertakes to represent the interests of German youth and children living in Hungary. It tries to represent the interests of its constituents in decisions related to youth and children. The Association for German Children in Hungary is also a registered non-profit organization, which, in line with the objectives expressed in its name, organize programmes and camps for children.

#### **5. Protection of privacy (art. 16)**

##### **Paragraph 60**

207. Pursuant to the Constitution, everybody, irrespective of his/her age, has the right to the inviolability of the home and to the protection of personal data. The right of the child to private life requires specific regulations with reference to children living in child welfare and child protection institutions. The Child Protection Act (Gyvt.) regulates those instances for it details the rights of children removed from their families. Children living in State care and taken into custody have the right to initiate a change in the place of their care or the place of their custody, or to initiate their placement in custody together with their children or siblings, to freely select

their religion or ideological conviction, to initiate the establishment of children's self-government to represent their interests, to maintain personal relationships, to exercise their rights related to the usual objects of personal property, to express an opinion on the care, meals, education and training provided to them, and to be heard and informed on issues having an impact on their persons.

208. Pursuant to the Child Protection Act (Gyvt.), a child can only be separated from his/her parents or other relatives in his/her own interest and in a manner stipulated by law. The Child Protection Act (Gyvt.) defines the forms of maintaining contact between a child and his/her parents and relatives. For boarding-type institutions, the heads of the institutions shall ensure civilized and undisturbed conditions for contact. A decree on the institutions and people providing childcare and child protection and the rules of their operation stipulates an obligation for such institutions to ensure the inviolability of privacy of correspondence and privacy in general. Contact between a child and his/her parents and relatives can only be regulated by the guardianship authorities for children living outside their biological families. The right of children to privacy is also regulated in a decree for children removed from their families and given custody in an institution. The decree provides the obligatory minimum standards of custody; it specifies that no more than four children can share a bedroom. It also stipulates the way the children's personal articles and clothes should be placed. If those regulations are not met, no operating licence can be issued to the institution in question.

209. The Public Education Act guarantees, as part of students' rights, the right to correspondence and to live in a dormitory. It also stipulates that schools and boarding schools shall observe those rights.

210. Civil rights also apply to youth living in penal institutions. A convict also has the right to protect his/her civil rights, including his reputation, privacy, the protection of personal data and his private apartment. Decree No. 6/1996 IM regulates imprisonment and police custody. It stipulates that during detention the protection of the civil rights of the people detained shall be guaranteed by the penitentiary institutions as well as by the bodies and people taking part or assisting in the execution of detention. No data, facts or information can be provided to unauthorized people or bodies if they can be used to infringe personal rights.

211. The legal case BH2001 No. 61 contained statements related to the above. Accordingly, "arbitrary intervention into private life infringes the right to privacy. Arbitrary intervention is the case when the action is explicitly contrary to the will or intention of the person involved and the intervention cannot be justified by careful consideration of the circumstances". A 13-year-old plaintiff became pregnant in an extramarital relationship. The primary defendant made a false report of the facts to the hospital and to the guardianship authorities, which was unjustified and unnecessary and which prevented the plaintiff from exercising her right to free expression of her opinion. The action of the defendant also questioned the plaintiff's right to self-determination. Furthermore, the General Deputy of the Parliamentary Commissioner for Civil Rights found in his report No. OBH 550/1998 on the implementation of constitutional rights of children living in children's homes that the lack of a child's own tools, own desk, or at least a drawer can result in uncertainty and a disturbance of identity in the life of the child, which can lead to the infringement of an unalienable fundamental constitutional right to human dignity.

The standard of facilities in temporary childcare institutions is extremely low. The lack of personal articles or, even if there are some, the problem of safekeeping can cause an anomaly in terms of the right to property and privacy.

## **6. Access to appropriate information (art. 17)**

### **Paragraph 61**

212. The Child Protection Act (Gyvt.) stipulates the general right of children to be informed about their rights and the possibilities of exercising them. The law defines the right of children to access programmes in public service media which correspond to their level of development, promote the expansion of their knowledge, and are free of violence while preserving cultural values. The Act amending the Child Protection Act (Gyvt.) extended this to cover protection against negative effects such as generating hatred, violence and pornography. The Press Act stipulates that in the Republic of Hungary everybody has the right to be informed about issues concerning their close environment, homeland and the world. The duty of the press - together with other means of communication - is to provide credible, accurate and quick information. Exercise of freedom of the press may be restricted in acts of crime or a call for acts of crime, may not violate public morals and may not entail infringement of the civil rights of others.

213. In accordance with the Act on radio and television, the public broadcaster shall give special attention to broadcasting programmes that serve the purpose of physical, spiritual and moral development and to the interest of minors and to enriching their knowledge; and to making accessible information that is important to groups in a seriously disadvantaged position due to their age, intellectual and spiritual condition or social circumstances, with particular regard to broadcasting programmes presenting children's rights, serving the protection of children and providing information on the services available in prime time. The Media Act devotes a separate section to the rules aimed at protecting minors, according to which programmes that are liable to adversely influence the physical, intellectual or moral development of minors (particularly programmes containing violence or sex) shall be classified in a specified category, and shall be given a warning sign, and may be broadcast only at certain times.

214. The Act also contains provisions to protect minors among the prohibitions and restrictions of advertising, according to which advertisements promoting or presenting tobacco products and arms as well as advertisements of alcoholic beverages may not target minors and may not depict minors consuming alcohol. Advertising may not call directly on minors to encourage their parents or other adults to purchase or use toys or other goods or services. Act No. LVIII of 1997 on commercial advertising activities declares that it is prohibited to publish advertising that may damage the physical, intellectual or moral development of children and minors, in particular if it depicts children and minors in a dangerous, violent situation or a situation that highlights sexuality. It is prohibited to advertise alcoholic beverages immediately before a programme produced for children or minors, as well as during the entire duration and just after such a programme; on toys and packaging of toys; in public education and health-care institutions, and within a distance of 200 metres from the entrance of these institutions.

215. Press products in the native languages of national and ethnic minorities financed out of central funds regularly contain separate columns prepared for the children of the given community. There are no separate children's magazines produced in Hungary in any of the minority languages. There are local children's magazines and yearbooks for minorities, published by the children in the schools of nationalities.

216. The Ministry of Culture assists children in accessing sources of information by publishing books.

217. The national programme for the Year of Reading started in June 2001 and lasted for one year. Within this programme the Ministry of Education and the Ministry of National Cultural Heritage organized and implemented a number of programmes for children. The National Week of Children's Books was organized in 2001; this meant the organization of large-scale events addressed to children, the installation of book stands and the presentation of writers of children's and young people's books. The Ministry of National Cultural Heritage organized a collection campaign during the Christmas Book Sale under the title "Bring a book so another can read", and supported a worthy celebration of the International Day for Children's Books held worldwide on 2 April at the refurbished "Szabó Ervin" Library. The competent organizations of the Ministry of National Cultural Heritage treat the issue of supporting the publication of books for children as a priority.

218. An expert team dealing with the different aspects of the media, and particularly its impact on children, was set up in coordination with the Ministry of Education; a conference was organized to make a comprehensive evaluation and an action plan was elaborated, based on both the social context and professional criteria in respect of education. The main task is to identify the most important problems and to identify the practical actions to be taken to solve them in order to ensure that interaction between education and training on the one hand, and the media, on the other, is more planned and more purposeful. Relying on the analysis and impact studies of media texts, the expert team identified four major problem areas along which the work started:

- (a) The social context of the media;
- (b) The impact of media content;
- (c) Media education;
- (d) The relationship between the media and children in terms of law.

The plan for implementing measures in practice was also elaborated in order to realize and resolve these issues.

219. Constitution Court ruling No. 37/2000 found, in connection with the Act on business advertising, that the State has fulfilled its constitutional obligations to provide appropriate protection for the physical and the intellectual development of children. Court case No. BH2002.247 serves the purpose of protecting minors; it stipulates that no advertisement can be made public which may have a detrimental impact on the physical, intellectual or moral

development of children and minors. According to this case, the first-instance consumer protection authority detected an advertisement for a striptease bar on an advertising facility in a public area showing two women wearing underwear in a suggestive pose. It was determined that the advertisement could have a detrimental impact on the physical, intellectual or moral development of children and minors, as it carried a message with recognizable sexual content and the depiction of persons of the same sex could play role in causing uncertainty as to sexual identity. Depictions of sexuality taking sexuality away from its human context may have a detrimental effect on the development of the emotional lives of the young.

220. During the reporting period the Parliamentary Commissioner for Civil Rights and his Deputy have addressed two cases dealing with the impact of advertisements violating public morals, violent advertisements and advertisements with erotic content placed in public areas on the appropriate development of children. The Parliamentary Commissioner made a reference in both reports on the cases to the obligation to take the freedom of economic competition into account when drafting regulations, not only the desire to provide appropriate protection to children.

## **7. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))**

### **Paragraph 62**

221. According to the Constitution, nobody is to be subjected to torture or cruel, inhuman or humiliating treatment or punishment, and it is particularly prohibited to perform medical or scientific experiments on humans without their consent.

222. Hungary is a State party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment adopted on 26 November 1987 in Strasbourg, and has promulgated the said Convention in Act III of 1995. The Convention established the European Committee on the Prevention of Torture (CPT), which investigates, during its visits, the treatment of persons deprived of their freedom in the States parties for the purpose of strengthening, if necessary, protection against torture and inhuman or humiliating treatment or punishment. The Committee paid visits to Hungary in 1994 and 1999.

223. The Republic of Hungary is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated in Law-Decree No. 3 of 1988. Hungary is obliged to report to international forums about the implementation of the Convention in periodic reports.

224. The Public Education Act declares that children and students may not be subjected to physical discipline, torture, or cruel, inhuman, or humiliating punishment or treatment. Criminal law sanctions abuse committed in official proceedings by official persons and extorting testimonies. Perpetrators who torture children and treat children in a cruel, inhuman or humiliating manner are liable to prosecution.

225. Law-Decree No. 11 of 1979 on punishments and measures stipulates that the human dignity of convicts shall be respected and that they may not be subjected to torture or cruel, inhuman or humiliating treatment. The Decree stipulates that only the legal prejudice defined in a court ruling may be applied against convicts, and convicts are entitled to remedies in the course of executing the punishment and actions against them; convicts are entitled to make reports of public interest, submit complaints and make requests to independent bodies in penal institutions and correctional institutions.

226. Act XXXIV of 1994 on the police also stipulates the prohibition of torture, extorting testimonies, and cruel, inhuman or humiliating treatment in line with international requirements, and regulates the most important guarantee provisions applicable to the use of means of extortion at the level of laws. According to the law, police officers shall not use torture, extortion of testimonies, or cruel, inhuman or humiliating treatment and shall refuse instructions to this effect given by their superiors. In addition, police officers shall take measures against persons exhibiting such behaviour for the sake of prevention, and initiate legal proceedings and investigations. Pursuant to the Decree of the Minister of the Interior No. 19/1995 on the procedures in police jails, the detainee shall be treated with respect for his human dignity in the course of any action. It is prohibited to subject detainees to torture or to treat them in a cruel, inhuman or humiliating way. No medical experiments or scientific tests may be performed on detainees, even with their consent.

227. The Ombudsmen have conducted several investigations during the reporting period and made recommendations:

(a) Report of the General Deputy to the Parliamentary Commissioner for Civil Rights OBH 550/1998: application of the constitutional rights of children living in homes/institutions. The investigation detected several cases of punishments which violated fundamental human rights, such as taking away pocket money, refusal to grant leave, and banning from meals and even from extra-curricular and leisure activities. Banning from meals is always a punishment that infringes the constitutional provision of prohibition of torture and humiliating or inhuman treatment, so its application was evaluated as a serious abuse;

(b) Parliamentary Commissioner for Civil Rights report No. OBH 2461/1999: the plaintiff and his younger brother were living under care in a children's home. It was found that the educational methods and means of discipline the plaintiff was subjected to in the home infringed several constitutional rights. The means of corporal or spiritual punishment, as well as punishment used arbitrarily, infringed the constitutional rights of the children to proper physical, intellectual and moral development, and their rights to human dignity, freedom and personal security. Furthermore, they also endangered the enforcement of the constitutional rights to physical and spiritual health of the highest order and to the right to education. Any form of corporal punishment is unacceptable as a method of discipline. Other means of discipline that endanger the development of children's personalities and infringe human dignity are, for instance, forbidding younger children to kiss their teachers or to call them by their first name.

**E. Family environment and alternative care (arts. 5; 18, paras. 1-2; 9-11; 25; 27, para. 4; and 39)**

**1. Parental guidance (art. 5) and parental responsibilities (art. 18, paras. 1-2)**

**Paragraphs 63-68**

228. The Child Protection Act (Gyvt.) stipulates that a parent is entitled and obliged to take care of his/her child in a family, to educate the child and to provide the conditions required for the physical, intellectual, emotional and moral development of the child - particularly the supply of housing, meals and clothes - as well as access to education and health care. Pursuant to the Act the child's parent is entitled to receive information on care and aid in raising a child.

229. Pursuant to the Family Act, parents are obliged to take care of and raise their children, and to promote the physical and intellectual as well as moral development of children. Parents must exercise parental control in accordance with the interests of underage children. Parents are entitled and obliged to represent their children in personal and financial matters if they are entitled to exercise the right of parental control. Therefore, parents are to cooperate with children, provide information on issues that concern children, provide guidance, advice and assistance to children in exercising the rights of the child, take the necessary measures in order to enforce rights and to cooperate with persons, agencies and authorities participating in providing care for or administering the affairs of children.

230. Pursuant to the Child Protection Act (Gyvt.), children are entitled to be raised in a family environment that ensures their physical, intellectual, emotional and moral development, that is, welfare for the child in his/her own family. The guarantee for this right of the child is provided by the obligation to assist families in raising children, to which the State and/or municipalities provide assistance in the form of basic welfare care for children. Aid and in-kind care as well as personal services shall be provided by the municipality of the settlement, and the Government contributes to this to a certain extent.

231. The Social Act provides that the purpose of family help services and the institution of family help service are to contribute to the welfare and development of individuals, families, as well as different groups of communities, and to their adaptation to their environment.

232. In the framework of general and special assistance services within the family help service, municipalities provide assistance to persons and families who need and request help due to social or mental health problems or crisis situations and who live in the municipality for the purpose of preventing the reasons for the development of such situations, eliminating crisis situations and regaining their ability to lead their lives. The family help service provides assistance to individuals in administering social and children's welfare and children's protection matters, among others. Children can also make use of children's welfare services on their own in Hungary.



233. Legislation provides that assistance should be given to parents in taking care of their children, but, on the other hand, very few services are accessible and available for providing real help. It is necessary to include several types of consulting and family therapy methods in as broad a scope as possible within the child welfare system, as well as to strengthen existing NGOs and services and to ensure cooperation with State institutions of family help.

234. Pursuant to the Family Act, parents exercise parental control together even if they do not live together anymore. Parents are obliged to exercise their right in accordance with the child's best interest. In the course of exercising their rights parents shall ensure that their child expresses an opinion. Parents who are separated shall decide together on substantial issues concerning the child's life. If the parents are separated and their child is placed with one of them, according to the provisions of the Family Act, the parents or a court may decide on joint parental control. Components of parental control are: providing care to the child, managing the child's assets, the right and obligation to provide legal representation, the right to appoint a legal representative and the right to exclude persons from becoming legal representatives. Parents are entitled to the above rights and their obligations apply only in connection with minors. Usually parental control is created by force of law when a child is born. Parental control ceases to exist with the death of the child, or a parent or if one of them is declared to be dead.

235. The court may discontinue parental control for the following reasons:

- A parent's accountable, unsuitable conduct that seriously infringes or threatens the child's welfare or mental and moral development;
- The conduct of a parent of a child who is placed with another person or taken into temporary custody if the parent fails to cooperate with the foster parent or children's home, fails to keep contact with the child, and fails to change his/her conduct and lifestyle in order to terminate care;
- A crime committed by the parent against the child if it was an intentional act and the parent was sentenced to deprivation of liberty;
- Living together with the other parent deprived of parental control if there is good reason to believe that the parent would not exercise parental control in accordance with the child's best interests.

236. The legal consequence of discontinuing parental control is that persons subject to such a court decision may not adopt or may not be guardians of a child; no children may be placed with such a person; and such persons may not keep contact with their children. The court may restore the right to parental control for the future if the reason for which the parental control had been discontinued ceases to exist. A significant right that is important for the guardianship authorities for performing the tasks that constitute protection of a child's right is the right to start litigation for custody of the child, changing custody, and terminating and restoring the right to parental control.

237. In resolution No. 32/1997 the Constitution Court ruled that men and women enjoy equal rights and bear equal responsibilities when raising children.

238. Directive No. 17 of the Supreme Court provides, in connection with the custody of children, that married partners have the responsibility to protect the family and the marriage and to provide the conditions required for the healthy development of a child living in the family pursuant to the Constitution and the Family Act. Both parents are entitled as well as obliged to promote the achievement of these objectives. Parents - unless otherwise agreed between them or otherwise decided by a court - exercise parental control together, regardless of whether they still live together as husband and wife. Therefore, neither spouse has any privileges in terms of either rights or responsibilities. Under equal rights they are equally responsible for caring for the child, performing the tasks related to child-raising, as well as for doing their share of the family chores. The maintenance of the family, the development of the most appropriate atmosphere for raising the child and preserving this atmosphere is a task for both spouses.

239. The Child Protection Act (Gyvt.) defines basic child health care as including children's welfare services, day care for children and temporary care for children. The tasks for children's welfare services are to provide information on children's rights and support for the development of the child, promoting access to support and aid in order to help develop the physical and spiritual health of the child as well as to raise the child within a family; and organizing family planning, psychological child-raising, health care, mental health and addiction prevention counselling or organizing access to such services. Municipalities provide the organization, management and coordination of children's welfare services by operating a children's welfare service, either in the framework of a family help service or by employing an appropriate person. The children's welfare service - in coordination with the nurse service - performs organizational, service and care tasks. Assistance to parents and guardians as well as institutions dealing with children is ensured primarily through family care. It is mandatory to employ a family care officer/family visitor in institutions providing personal care, as defined in the Child Welfare Act, for instance at the children's welfare service, in temporary care for children and in specialist care for children's protection (children's homes, network of foster parents). The task of the family care officer/family visitor is to help parents resolve their problems and get assistance in raising their children, to help the separated child reintegrate into his/her natural (biological) family. The professional conditions for employing family care officers are regulated by separate legislation for each type of care. Additional assistance to children living with single parents or in families in a disadvantaged position relies on the parent's sense of responsibility and is provided primarily as financial aid. Single parents are entitled to a higher amount of family allowance and schooling aid.

240. In 2001 and 2002, separate centrally funded programmes were running within the family policy grant application programme of the Ministry for Social Welfare and Family Affairs to assist families in disadvantaged positions. Generally, children's welfare and family help services of municipalities or NGOs run the programmes made available by these grants.

241. As a result of the amendment to the Public Education Act in 1999, children may continue in nursery school at the parent's request on the proposal of the education consultant or the expert and rehabilitation committee, and with the agreement of the nursery school's teaching staff, even if they have reached the age of 7 in the given year. Another component of the amendment also promoted the schooling opportunities and the access of students in a disadvantaged position to vocational training by providing that if a student has not completed the eight years of elementary school by the given deadline and reaches the age after which schooling is no longer compulsory,

he/she may participate in remedial courses in specialized schools and may enter the first year of vocational training in the specialized school after successfully completing the remedial course. Starting from 2001, the Budget Act has been providing double the amount for supporting remedial courses in specialized schools. One purpose of this regulation is to prevent students who have not completed elementary school from dropping out of the public education system without the possibility of getting a qualification. The amended Act provides the possibility for students who are in a disadvantaged position due to their health condition or level of development to complete the first year of elementary school as a preparatory course, in the framework of which they prepare for studies in a playful setting. Another opportunity for these students is to comply with schooling requirements according to their individual progress (progress aligned to individual capacities and level of development) during the first to fourth grades of school. Students need not be obliged to repeat a school year if they know less than their classmates in certain fields, because the Act provides the possibility for these students to meet the requirements defined in the school curriculum only by the end of the fourth year.

242. The education programme plays a special role in the teaching programme, in which the pedagogical principles, objectives and tasks of the educational work conducted in the school must be defined together with the tasks related to developing the personality, pedagogical activities related to the protection of children and youth, and the programme to assist students with learning problems.

243. The development of a more flexible system is promoted by the possibility of establishing integrated subjects and the possibility of reallocating the number of hours for a subject for not more than 10 per cent of the required number of hours.

244. Full-day “school-home” school may provide the possibility for creating equal opportunities primarily to children in a disadvantaged position who have the worst chances in the school education and training system. The Budget Act for 2001/2002 supports the organization of school-home care and education through the allocation of a separate additional budget. Schoolbooks and meals at school have to be provided free of charge to those school-home students for whom parents receive special additional child-raising aid. Both the care programmes of nursery schools and the education programmes of schools must include the tasks related to child protection. The Ministry of Education firmly represented the interests of the groups living on the peripheries of society by amending the legislation and making the decisions to provide financing.

## **2. Separation from parents (art. 9)**

### **Paragraphs 69-73**

245. Pursuant to the Child Protection Act (Gyvt.), children may be separated from their parents or other relatives only in their own interest, in cases and a manner specified by law. Children may not be separated from their families for being endangered purely due to financial reasons. In this case children have the right to protection substituting the care of parents or other relatives, primarily in adoptive families, foster families or in children’s homes accommodating a small number of children. The freedom of conscience and religion as well as the national, ethical and cultural ties of children have also to be respected in the course of such substitute care.

246. Pursuant to the Family Act, if placement with a parent endangers a child's interests, the court may place the child with another person, assuming that this person him/herself requests the child to be placed with him/her. In the course of court proceedings all interested parties must be heard.

247. The child is entitled to keep personal and direct contact with the parent who lives separated from the child. Children also have the right to keep contact with both parents also if the parents live in different States. In especially justified cases, a parent whose right to parental control has been discontinued by the court may also be authorized to keep contact with the child in the interest of a minor. Decisions related to the substitute protection of children will be taken by the municipal guardianship authorities, and the decisions related to this must serve the best interest of the child, respecting also the right of the child to express his/her opinion. These decisions may be appealed or may be contested before the court. If a parent is not able to care for the child for health reasons, justified absence or some other factor that prevents the parent from caring for the child, it will be given full care in the frameworks of temporary care. Temporary care for children - meals, clothing, health care, schooling, education and accommodation corresponding to the child's health condition and age, promoting the physical, intellectual, emotional and moral development of the child - shall be provided on the request of the parent who exercises parental control or with his/her consent. Temporary care shall be provided by substitute parents or in temporary children's homes. It is an important provision of the Child Protection Act (Gyvt.) that the parent and the child must be placed together if they become homeless, i.e. it does not allow, or makes it possible only in especially justified cases, removing children from their parents and addressing their problems separately. For this purpose, municipalities have to operate a temporary home for families or conclude a supply agreement with the operator of such an institution.

248. The primary obligation of the guardianship authorities is to provide for the children whose parents are not alive or whose parents cannot exercise their rights of parental control. Guardians must be appointed for such children, and efforts should be aimed primarily to ensure that further care for these children is provided in a family environment. Care within a family is assisted by the institution of "acceptance into a family", as defined in the Child Protection Act (Gyvt.); in this case the guardianship authorities consent to children being accepted into, cared for and raised by a family designated by the parent, on a temporary basis, because the parent's health condition, justified absence or other family reason make this necessary. The guardianship authorities assign the parent who accepts a child into a family as the guardian of the child. The parent is entitled to keep contact with the child as well as to make decisions on basic issues concerning the child's life together with the family, such as determining the child's name, designating his/her place of residence or selecting his/her school.

249. If a child cannot be placed with a guardian or adoptive parent, the State must ensure substitute protection, primarily with foster parents or in a children's home, as possible. Children placed with foster parents or in children's homes must be provided care which gives the child a home, including full care for the child and family care to be provided to the child's family, the purpose of which is to allow the child to return to his own family as soon as possible. After a child leaves the institutional child welfare system, follow-up care continues in the framework of which the child's integration into his/her own family or the starting of his/her own family as an adult is assisted.

250. If a child remains without supervision or his physical, intellectual, emotional and moral development is seriously threatened by his family environment and this requires immediate placement elsewhere, the notary of the municipality, the guardianship authorities, the court, the police, the prosecution organization or the headquarters of the penalty institution will place the child with his/her parent living separately from the child who is capable of and agrees to raise the child or another relative or person, or, if this is not possible, with the closest foster parent performing temporary care tasks; if this too is not possible, the child will be placed in a children's home or other boarding institution on a temporary basis in the framework of specialized care.

251. The guardianship authorities will take over the child for temporary care if the child's development is endangered by his family environment and this threat could not be eliminated with the services provided in the framework of basic care and by providing protection for the child, or cannot be expected to yield results, and if appropriate care for the child cannot be provided within his family. At the time the child is taken for temporary care, the guardianship authorities will place the child with a foster parent or - if this is not possible - in a children's home or another boarding institution and will assign a (professional) guardian. The guardianship authorities will take over the child for permanent care if the child has no parent to provide supervision and care for the child cannot be guaranteed by way of an assigned guardian, or if the parent has made a statement of consent to the adoption of his/her child and it was not possible to place a child temporarily with a prospective eligible adoptive parent. At the time of accepting a child for permanent care, the guardianship authorities will place the child with a foster parent or, if this is not possible, in a children's home or other boarding institution, and will assign a (professional) guardian.

252. In the course of temporary custody or accepting a child for temporary or permanent care, the guardianship authorities will determine the place where the child will be cared for based on the professional opinion of the child welfare authorities in the area or the proposal of the custody hearing. In the course of custody, the child's nationality and religious and cultural ties shall be taken into account as well as the possibility of placing siblings together, the child's health condition and the distance from the child's earlier place of residence and school. The forms of contact between children removed from their families and their parents or other close relatives entitled to keep contact - regulated by a resolution of the guardianship authorities - are: continuous and periodic contact, with the right to take the child away and the obligation to return the child; visit to the child's place of residence; correspondence; contact by phone; giving gifts; sending packages. The task of the children's home is to promote contact between children and their families and the children's return to their families, for the sake of which it shall cooperate with the family, the children's welfare service dealing with the family, the regional children's protection specialist service and the guardianship authorities.

253. Foster parents shall ensure contact of the children raised by them with the parents and close relatives authorized to keep contact, as provided in a resolution of the guardianship authorities; this, naturally, does not mean only contact in the parent's own home.

254. Pursuant to the Child Protection Act (Gyvt.), the purpose of keeping contact is to maintain the contact between children and parents as well as close relatives entitled to keep contact. Both parents and grandparents are entitled to keep contact with the child and, if a parent or grandparent is not alive or is prevented from keeping contact, siblings of the children who are

of age, siblings of the child's parents and spouses of parents are also entitled to keep contact. Children who have reached the age of 14 may submit an application to keep contact with their parents on their own. In justified cases, the guardianship authorities will promote contacts between a detained or imprisoned parent and their children if this does not endanger the child. The guardianship authorities and the court take care of the matter of keeping contact primarily by reaching a settlement, in the course of which they also seek agreement between the parents and children who have reached the age of 14. The guardianship authorities and court will restrict rights to keep contact already established if the person to whom the right to keep contact had been granted abuses this right to the detriment of the child or the person raising the child, in the child's best interest. If the person to whom the right was granted commits a serious abuse, a suspension of the right to keep contact may be ordered. The right to keep contact may be withdrawn if the person to whom the right was granted seriously abuses this right and by doing so, seriously endangers the child's upbringing and development.

255. Directive No. 17 of the Supreme Court provides that the common responsibility of the parents for the life of the child will not cease with divorce. The dissolution of marriage does not necessarily mean that either of the parents loses the child. Both parents and the child must strive to maintaining parent-child relationships because it is in the child's best interest to know that both parents are behind him/her and that he/she may expect help from both parents particularly at the turning points of life, e.g. deciding on studies and preparing for life.

256. The governing judicial practice - including during the reporting period - dealt with the issue of placing children and keeping contact in several cases. The following section provides summaries of significant court rulings:

(a) BH1998.283. Placement of a child with one of the parents will not affect the right and obligation of the other parent to regularly visit the child, express his/her affection, and maintain an intimate relationship with the child. A parent who restricts the child from getting in touch with the other parent without reason and turns the child against the other parent is proceeding in a manner which seriously infringes the child's best interest;

(b) BH1998.26. When selecting the most appropriate way of placing the child, the court may depart from the requests of the parties, and may make an ex officio decision on custody that serves the child's best interests;

(c) BH1999.72. The irresponsible dissolution of family life, unjustified humiliation of the spouse and the regular repetition of such humiliation constitute conduct which, if established, gives rise to doubt whether the given parent has the personal and moral characteristics necessary for raising a child;

(d) BH2000.205. The fact that positive changes have taken place in the situation of a parent who lives separately from the child in itself does not justify a change in the custody of the child;

(e) BH2001.432. It is reasonable to change the custody of children who have reached the age of 14 and who had been placed with their grandparents if it is in their best interest and their wish to be raised by their mother in the future, if she is capable of raising them;

(f) BH1997.81. The primary criterion in determining the method and duration of keeping contact is the child's best interest; on the other hand, individual characteristics of the case play an important role in the decision. Therefore, the court may provide for keeping contact in a manner other than the usual practice and to the usual extent;

(g) BH1997.537. When placing a child, the question of permanence shall be a predominant consideration because it is very rare that a change in his/her environment would not cause a child emotional distress. Permanent placement can be changed only if the child's physical, intellectual and moral development is no longer ensured in his/her current environment. Any change in custody should be in the child's best interest;

(h) BH1998.180. The question of permanence is irrelevant in the case of a parent who displays arbitrary or violent conduct and with the intention to exclude the other parent from the child's life;

(i) BH1997.231. "Permanence" created by preventing contact may not be evaluated as an advantage in favour of the parent who displays objectionable conduct;

(j) BH2001.280. The fact that the parent who raises the child moves from the home which had been their joint homes and enters into a relationship and lives together with a partner after the settlement concerning the custody of the child in itself does not provide a basis for changing custody if that is not in the child's best interest;

(k) BH1998.132. If conditions are equally favourable with both parents, siblings may be placed separately in justified cases;

(l) BH2000.451. The placing of siblings with different parents is not an infringement of the law if this takes place in accordance with a situation that evolved over several years and is in line with the wishes of the children and with their best interest;

(m) BH2001.479. The court may decide only after having explored all circumstances concerning the child's life and considered all of the circumstances together; giving excessive weight to certain circumstances and ignoring other aspects prevent the judge from appropriately applying the principle of the child's best interest in placing the child;

(n) BH1999.413. The child's emotional attachment may not justify a decision that represents an impediment to the child's healthy development in the course of further care;

(o) BH2001.125. In the absence of culpable conduct that threatens the child's best interest, the right to contact, including the right to take the child away, may not be refused to the parent who lives separately from the child.

257. During the reported period, the Parliamentary Commissioner for Civil Rights found in a number of cases of children in care keeping contact that the guardianship authorities had not exhausted all the possibilities provided by legislation, had not taken consistent measures for promoting contacts, and by the prolonged procedures and exceeding the deadline for settling matters had infringed the relevant procedural rules, as a result of which the right of children to

appropriate protection and family relations had been infringed (for instance: OBH 4163/2000, OBH 3472/2000, OBH 4387/1998, OBH 4657/1999, OBH 1059/2000, OBH 2723/2000, OBH 2950/2000).

258. Pursuant to the Report of the General Deputy to the Parliamentary Commissioner for Civil Rights No. OBH 4497/2001, the husband of a convict temporarily placed in the prison hospital in Tököl complained in a petition that he was informed about the birth of his son only days later. He was not able to talk to his wife on the phone, and was not able to see his newborn son at the prison hospital. Only one visit per month was allowed, and only for five minutes, through glass. The institution did not give any information about the child's condition and care, and the boy was not placed together with his mother. In the course of the investigation the Deputy found that the constitutional rights of the father and his son born in the prison hospital had been infringed. The child and the parent living separately are entitled to keep contact, as provided in the Family Act, and it is also a responsibility of the parent to do so. The person who raises the child is obliged to ensure undisturbed, personal and direct contact.

259. Pursuant to report No. OBH 3018/1999, according to the Government Decree on guardianship authorities, child welfare and guardianship procedures, the purpose of keeping contact is to maintain family ties between child and parent and other close relatives entitled to keep contact, and to allow the authorized parent to continuously monitor and possibly help, as much as he/she can, with the raising and development of the child. All this cannot mean that a parent entitled to keep contact should rigidly insist on contact-keeping dates set many years before, even when the children are already grown and have other plans and programmes corresponding to their age. Rigid insistence on dates would weaken rather than strengthen the ties between the child and the parent who lives separately.

### **3. Family reunification (art. 10)**

#### **Paragraphs 74-75**

260. Act XXXIX of 2001 on the entry and stay of aliens in Hungary (Alien Act) defines the rules for the stay of family members of persons entitled to stay in Hungary in order to ensure that families live together. Pursuant to the Act, in order to ensure that the family lives together, the spouse, the minor child of a Hungarian citizen and an alien having a residence, a permit to stay, or recognized as a refugee in Hungary who are staying in Hungary, and minor children of the spouse (including adopted children), are entitled to a residence permit on request if the conditions are met. The immigration authority issues the residence permit to children of aliens with a residence permit who were born in Hungary without investigating the legislative conditions. The Office and the regional immigration authority will also issue residence permits to those who were born in the territory of the Republic of Hungary and remained without the supervision of the person who was responsible for him/her under Hungarian law in the absence of the conditions required for residence by law - for humanitarian considerations - provided that this person has not obtained Hungarian citizenship or a right to stay in Hungary due to any other legal title. The residence permit of such a minor child may be withdrawn or the extension of the permit may be refused only if the family is reunited, or State or other institutional care is provided in the minor's State of origin or a third country.



261. Aliens who have been in Hungary for five years with an unlimited residence permit may be expelled from the country under the Alien Act only if their further stay poses a serious threat to national security or public security. In this case increased legal protection for the alien is justified by his/her integration. The Alien Act provides the same for minors who were born in the territory of the Republic of Hungary or who entered unaccompanied, as well as to aliens living in marriage or in a family with Hungarian citizens. Permits for the purpose of settling in Hungary may be granted to aliens who have been in Hungary for at least three years from the date of their entry, without interruption and lawfully. Aliens who have a residence visa or residence permit and request to settle in Hungary as a family member for the purpose of reuniting the family may be exempted from these criteria, provided that they have been staying legally in Hungary with a Hungarian citizen, an alien having a permit to stay or an immigration permit or an alien recognized as a refugee in Hungary, in a family community for at least one year from the date of entry.

262. No permit for settlement may be granted to aliens who suffer from diseases that threaten public health, unless they request the permit for settlement as family members for the purpose of living together with a spouse or minor children who are Hungarian citizens, provided that they receive compulsory and regular health care. Unaccompanied minors who do not meet the conditions for legal stay may be expelled only if the family is reunited, or care in a State or other institution is provided in the child's State of origin or a third country.

263. The implementation orders for the Alien Act provides that in order to protect the interests of unaccompanied minors, immigration authorities must immediately take measures to assign a case guardian when the procedure is instituted. Pursuant to the Government Decree on the enforcement of the Alien Act, child welfare institutions, reception centres that place unaccompanied minors separately, other contracted accommodations or private accommodation may accommodate unaccompanied minors. Unaccompanied minors may be placed with a relative who is not considered to be a close family member if the relative agrees in writing to take care of the child and the placement obviously serves the child's best interest.

264. The legislative package on migration defines the legal concept of persons authorized to stay under the scope of alien police regulations, together with the group of aliens who are not sent back to their countries of origin who are entitled to stay in Hungary for humanitarian reasons.

265. Children who have reached the age of 14 and are authorized to stay are entitled to pocket money every month starting from the third month of the stay, free of charge, at the community shelter. The amount is determined by the Minister of the Interior.

266. Compulsory schooling applies also to children authorized to stay as of 1 September 1999. At the request of the legal representative, the cost of meals related to nursery school care and placement in elementary schools, boarding schools and child welfare institutions of children authorized to stay will be given directly to the institution. Starting on 1 January 2002, the legal representative of persons authorized to stay who study in elementary school will be entitled to a one-time grant to start school at the beginning of the school year or, occasionally, on a welfare basis.

**Paragraph 76**

267. Law-Decree 14 of 1986 on the promulgation of the Hague Convention on the Civil Aspects of International Child Abduction, signed on 25 October 1980, and Decree of the Minister of Justice No. 7/1988 (VIII. 1) on its implementation provide for regulating the contact between children and their parent living in different States. Pursuant to the Family Act, children have the right to keep contact with both parents even if the parents live in different States. This is confirmed by the governing judicial practice (BH2001.230), which rules that it is the constitutional right of the child, as stipulated also in international conventions, to keep contact with their parent living apart even if the parents live in different countries.

**Paragraphs 77-78**

268. The Constitution stipulates that all persons staying in the territory of Hungary lawfully - except for the cases specified by law - are entitled to the right of free movement and to the right to freely select the place of residence, including the right to leave the place of residence or the country. Aliens staying lawfully in the territory of Hungary may be expelled only based on a court ruling in accordance with the Act.

269. Act XII of 1998 on travelling abroad provides that leaving the territory of the Republic of Hungary - including departure with the intention of settling abroad - is a right to which all Hungarian citizens and aliens lawfully staying in the country are entitled. The right to travel abroad may be exercised and restricted as stipulated by law. Hungarian citizens may return home from abroad at any time. The right to return home may not be refused even in the absence of conditions defined in the Act, and may not be restricted and may not be linked to other conditions. The Act contains certain provisions restricting travel abroad as well. These include persons sentenced to deprivation of liberty, those in police custody or serving a prison sentence, those subject to a prohibition of leaving their place of residence, those sentenced to forced medical treatment; and those who have tax, customs or social security contribution debts of an amount of at least HUF 10 million, established by a final and binding ruling.

270. The Alien Act provides that entry and stay may be permitted if aliens have valid travel documents or a permit to stay and/or a valid visa; have the legally set amount of financial resources; if they are not subject to expulsion, prohibition of entry and stay. In the absence of these conditions, entry may be permitted only for humanitarian considerations, national interest, or for complying with an obligation assumed in an international convention. The Minister of the Interior may grant an exemption from meeting the conditions for entry due to important public interest, in particular for public health reasons, in order to prevent epidemics or in case of a natural disaster.

**4. Illicit transfer and non-return (art. 11)****Paragraph 79**

271. The Republic of Hungary is a State party to the Hague Convention on the Civil Aspects of International Child Abduction, signed in The Hague on 25 October 1980. The responsible Hungarian authority for the Convention is the Ministry of Justice. Based on this Convention, cooperation is provided with several States to return children who have been taken abroad from

Hungary illegally, and brought to Hungary illegally from abroad. We have bilateral international agreements on legal assistance which provide the possibility for mutual recognition and enforcement of rulings on the placement of children (e.g. legal assistance agreement between Hungary and Czechoslovakia, Hungary and Poland, Hungary and France and Hungary and Greece).

272. Our accession to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, signed in Luxembourg on 20 May 1980, is under preparation, and signature and ratification will take place in the near future.

273. The requirements set by the Hague Convention are reflected also in the governing judicial practice. Case No. BH2002.401 finds that in the course of applying the Convention the child's best interest is to immediately restore the right of custody that had been infringed. In addition, case No. BH2001.325 provides for the rejection of an application for taking a child illegally brought to Hungary back if the return of the child would expose the child to unbearable physical or mental damage.

274. The number of cases increases radically year after year: in 2000 the number of requests to take children and visit children abroad was 41, but in 2001 it was already 52; the number of requests to bring children back and visit children arriving in Hungary was 21 in 2000 and 27 in 2001.

## **5. Recovery of maintenance abroad (art. 27, para. 4)**

### **Paragraph 80**

275. Pursuant to the Family Act, parents are obliged to share whatever is available for their common lives with their minor children, even to the detriment of the livelihood required for the parent him/herself. The parent who takes care of the child shall provide the care in kind, and the parent living separately from them shall provide it primarily in money. Parents are responsible for the care for the child even if the child is raised by a grandparent. The amount of the child support of a minor shall be paid to the parent (guardian) or other person taking care of the child who exercises parental control. The obligation to pay child support may be settled also with an appropriate asset or amount of money. In the absence of agreement between parents, the court decides on the child support. In general, the amount of child support has to be determined at around 15-25 per cent of the obligor's average income, and when determining the child support, the child's actual needs shall be taken into account, together with the income and asset conditions of both parents, and also other dependant children supported in the household of the parents - whether their own or foster children - and the child's own income. If a person obliged to pay child support fails to meet his/her payment obligations, the entitled parent can request the court to garnish the obligor's wages, the rules for which are provided by law. The total amount of the child support that may be enforced against the obligor may not exceed 50 per cent of his income. The guardianship authorities may decide that the State would pay an advance on the child support if the parent obliged to pay is not able to do so temporarily and, as a result, the parent who takes care of the child is not able to provide appropriate care for the child. Child support cannot be advanced if there is no hope that the advance will be recovered, for instance, if

the obligor's place of residence is in a State where child support cannot be enforced based on international agreement or reciprocity, or if the obligor's place of residence abroad is unknown, or if garnishing his regular income or other assets has failed to bring results over three years.

276. Hungary is a State party to the Convention on the Recovery of Maintenance Abroad signed in New York on 20 June 1956, and the Convention on the Recognition and Enforcement of Maintenance Obligations towards Children signed in The Hague on 15 April 1958. Furthermore, several bilateral legal assistance agreements have been concluded between the Republic of Hungary and other States that also cover the provision of legal assistance in family law, and therefore claims are enforced and collected through these channels.

277. The most important factor influencing collection of child support is whether the person obliged to pay has a regular income. Under Hungarian criminal law failure to pay child support due to the payer's own fault is a crime, but the punishment may be waived if voluntary compliance takes place before ruling of the first instance.

278. Resolution no. 1091/B/1999 of the Constitution Court on investigating whether article 196 (4) of the Criminal Code is in conflict with the Constitution. According to the petitioner, this provision of the Criminal Code creates the unjustified opportunity to escape punishment for those who pay child support only when criminal proceedings are already under way. The disputed regulation merely indicates the intention of the legislator to put the interest of the party entitled to the child support before the State's intention to punish; in other words, it is more important to meet the payment obligation than to punish the perpetrator. The contested provision is not in conflict with the provisions of article 67 (1) of the Constitution; on the contrary, the particular instrument made available to the judiciary may efficiently serve to enforce the children's rights provided in the Constitution because it encourages the obligor to pay child support.

279. The governing judicial practice - including during the reporting period - has dealt with the issue of child support in several cases. A summary of significant court resolutions on this topic can be seen below:

(a) BH2001.580. The child support shall be determined in a way so that none of the children is put into a better situation than another, particularly if they are not raised in the same household;

(b) BH2001.123. The child support may be increased if the child's needs justify this and the income situation of the obligor allows for it;

(c) BH2002.314. When increasing the amount of child support, due consideration shall be given to the fact that providing care in kind for a seriously ill child with physical handicaps puts a much greater burden on the parent taking care of this child. The claim of the beneficiary aimed at allowing an appropriate lifestyle - depending on the situation of the minor, on his/her age and orientation - covers not only basic needs such as housing, food, clothes and schooling but - depending on the capabilities of the parents - the costs of cultural, sports and other needs, except luxury needs. Providing care in kind to adolescent children who are

seriously ill and are restricted in their movements due to physical handicaps puts an enormous physical burden on the parent taking care of such a child, as is well known, and requires significantly more time and effort than for a normal child;

(d) BH2000.159. Child support may not be advanced by the court in respect of a child who has reached legal age. The court may pay support only for minors, in order to guarantee material security for raising them;

(e) BH1999.412. In the order of child support obligations, care for minors precedes the care for children who have reached legal age and are capable of working, and of grandchildren;

(f) BH 1993/9/554, BH 1994/2/82. The defendant has three university degrees: in transport engineering, mathematics and as a programmer. Thus, he may clearly be expected to pursue income-earning activities that provide a regular income that allows for payment of child support suitable for covering the reasonable needs of his child;

(g) BH1997.30: The obligor may be expected to pursue income-earning activities out of which he is able to pay the minimum amount of child support;

(h) BH1997.78. When determining the amount of child support, the assets of the obligor shall also be taken into account in addition to the taxable income declared within the rules of self-taxation;

(i) BH2002.271. Child support may be increased if the parent's lifestyle and spending allows for concluding that his income is substantially higher than declared;

(j) BH1997.29. Judicial practice is consistent in that it does not consider child support disbursed during extraordinary contact to be a separate remuneration, because child support serves to ensure continuous care for children including the costs of housing, travel, clothes, health care and cultural, etc. in addition to daily meals. Thus, care provided during contact in itself is not enough to justify non-payment of other expenditures arising continuously;

(k) BH1999.258. Determining the amount of child support if both parents live in very needy conditions. According to judicial practice, the liability to pay child support must take the fact into account the parents' own needs and that their ability to pay is not unlimited, and the obligation to pay child support may not lead to a situation where the parents' lives are jeopardized by paying child support (BA1996/591). However, limited financial conditions do not exempt parents from the obligation to pay child support for minors, particularly in a case where the other parent is not able to supplement the child support. According to the data in the case, it could be established beyond doubt that both parties lived under very stringent conditions and had limited income, but had joint liability for supporting their child. The plaintiff was not able to provide care in kind, even when she exercised the strictest of measures for her own support, that was necessary for the survival of an adolescent child, so the defendant was obliged to limit even his minimum needs in order to make a contribution to the minimum maintenance of the child. In this connection, the ruling of the appeal court does not infringe the law;

(l) BH1998.235. The child's needs include an appropriate lifestyle, including the material conditions for providing care for raising the child, as well as expenditure that meets needs that are reasonable based on the child's age. Judicial practice today has distanced itself from the rigid application of the principle according to which in determining the amount of child support the child has to be put into the same financial position as though his/her parents were living together;

(m) BH1997.79. The parent taking care of the child shall ensure housing, clothing, schooling, health care, travel costs, etc. for the child in addition to meals, i.e. all the child's needs as they arise in the child's life, continuously or periodically, and the parent living apart from the child shall provide his/her share by paying child support to cover these expenditures. It follows from this that child support due monthly is not meant to be used to cover the costs of that month, but is to be used by the parent taking care of the child for other expenditures as they arise.

## **6. Children deprived of their family environment (art. 20)**

### **Paragraph 81**

280. Pursuant to the Child Protection Act (Gyvt.), children who have been removed from their families for whatever reason have the right to receive care that is aligned to their age, health condition, level of development and other needs, primarily in an adopting family or, if this is not possible, with foster parents or in children's homes with a small number of children. In the course of providing substitute protection for children, their freedom of conscience and religion shall be respected, and their national, ethnic and cultural ties shall be taken into account. Removing a child from the family is justified and lawful if the risk cannot be removed by providing aid, children welfare services, day or temporary care for children that constitutes basic care, or by taking the child under protection as a statutory measure.

281. In the course of providing substitute protection for a child, it is important for the ethnic and cultural links of the child to be respected. Currently there is no training for Roma foster parents, only a small number of prospective parents are willing to adopt, and no initiatives have been taken in this direction to date. There is no special preparation for families that would help them accept and respect the identity of foster children.

### **Paragraphs 82 and 83**

282. The network of children's homes has changed and the network of foster parents has strengthened since the Child Protection Act (Gyvt.) came into force. Thus, approximately 45 per cent of the 18,000 children removed from their families live with foster parents.

283. The Parliamentary Commissioner for Civil Rights has repeatedly studied the rights of children living in State care provided by child welfare services. Report OBH 550/1998 of the General Deputy to the Parliamentary Commissioner for Civil Rights studied the enforcement of the constitutional rights of children placed in children's homes during the reporting period. The report found constitutional anomalies regarding the accommodation, the material and personal conditions and the quality of life of the children. A follow-up study (OBH 2376/2002) was

conducted to inspect the implementation of the recommendations of the first study in the five institutions where the highest number of anomalies had been found. The follow-up study stated that the rights of children to adequate physical, intellectual and moral development, as well as their rights to private property, education and a healthy environment, were infringed in certain institutions.

284. In report No. OBH 400/1999 the Parliamentary Commissioner established that children of foreign citizenship had been raised in children's homes under an unregulated legal status for several years. Moreover, Hungarian authorities had demonstrated significant uncertainty as to the procedures to be followed in cases involving foreign children, and no one really knew why these children were not placed with foster parents. Information received from the county guardianship authorities and the Budapest guardianship authorities strengthened his assumption that the procedure for children of foreign citizenship was not properly regulated, and thus the various guardianship authorities and child protection services followed different practices. There was no unified supervision and monitoring in this field and the measures were not harmonized. There had been no central measures to ensure a unified interpretation of the regulations, and the individual cases were handled differently in various counties, and sometimes even in various settlements of a given county.

285. Following the initiation of the study, the county guardianship authorities, the Budapest guardianship authorities and the Department of Family and Child Protection at the Ministry of Social Welfare and Family Affairs turned their attention to this issue. Meetings were held at various levels and the first steps were made to coordinate the activities of the guardianship authorities in this field. The most evident activity of the past six months was that the status of children of foreign citizenship placed in State care institutions, or temporarily or permanently placed with foster parents was changed to "temporarily placed in State care". Many of the second instance guardianship authorities were faced for the first time with the fact that these cases are completely unregulated. Unfortunately, the campaign aimed at settling these issues was and is focused primarily on administrative matters, and hardly any measures had been taken to redress the infringements of constitutional rights.

286. The Parliamentary Commissioner has stated in several reports that the constitutional rights of children living under State care are infringed when they are placed with foster parents who had not received adequate training. Constitutional rights are also infringed by the insufficient supervision of the activities of the foster parents and the procrastination of measures aimed at solving the problems arising in foster families. At the same time, the Parliamentary Commissioner indicated that the new Child Protection Act (Gyvt.) will resolve this anomaly (see also: OBH 3308/1998, OBH 8201/1997, OBH 9202/1997).

287. Report No. OBH 6191/1996 established that the guardianship authorities had caused constitutional anomalies by repeatedly infringing procedural and substantive laws. This resulted in further constitutional anomalies as the constitutional right of children to the highest level of physical, intellectual and moral development had been severely infringed when the guardianship authorities settled the fate of the child with formal measures, without striving to ensure the possibility of living in a family. The Commissioner asked the notary of the Municipality of ... and the head of the guardianship authority of ... to strive for a more thorough understanding of

the situation of children who are subjects of welfare procedures, to take measures that can truly solve the situation of the children, and to ensure, whenever possible, that the children are raised in families.

288. Report No. OBH 3331/1998 of the General Deputy to the Parliamentary Commissioner. The child has been raised at the Institute for the Protection of Children and Juveniles of Budapest since 1994. The child has a congenital heart disease which was diagnosed at the Institute of Cardiology several years ago. In 1993 the treating physician established that the child required an operation which could help her recovery. The child's mother explicitly opposed the intervention, thus the child was not operated upon. It is hereby established that GyIVI (Institute for the Protection of Children and Juveniles) failed to initiate the discontinuation of the custody rights of the parents, as provided by the guardianship authorities, to protect the interest of the child. Thus, the omission of the measures aimed at preventing the investigated events and at alleviating the known consequences was detrimental to the medical treatment of the child. Thus, due to the negligence of the institution founded to enforce the constitutional obligations of the State with respect to the care and raising of the child, the constitutional rights of the child to the highest levels of physical and spiritual health have been infringed, and thus a constitutional anomaly has occurred.

289. It is established that the refusal of the health service institution to permit the cardiac operation of the child raised at the institution was legally unfounded, as there was no legal possibility for the health institution to refuse the operation/intervention due to the request of the parent when the parental rights of the parent were suspended. Thus, the health service institution has infringed the right to the highest level of physical and spiritual health of the minor raised in an institution, and thus caused a constitutional anomaly.

290. Reports No. OBH 3923/1999 and OBH 5667/1999. In order to enforce the Decree of the General Assembly of Szabolcs-Szatmár-Bereg County aimed at decreasing the number of municipal employees by 43, the Child Protection Service of the Local Government of Szabolcs-Szatmár-Bereg County discharged 33 professional foster parents, thereby essentially abolishing the staff of professional foster parents in the county. If the professional foster parent - with view to his/her old-age pension years - does not undertake to continue to care for the children under his/her care as traditional foster parents, children, who sometimes spend 10-15 years in a foster family, are placed in new environments, or possibly institutions.

291. Considering the vulnerable and unprotected conditions of children, special emphasis should be placed on enforcing their rights. It is detrimental to the physical, intellectual and moral development of the child if he/she is separated from his/her foster parent and is placed in an institution for any length of time. The child would lose his/her roots and the sense of security provided by the foster family.

292. OBH 3684/2000. Report of the Parliamentary Commissioner. In accordance with the Child Protection Act (Gyvt.), a child can only be separated from his/her parents in his/her own interests. It is a major dilemma for guardianship authorities to decide to what extent a family should be helped in order to prevent the separation of the child or children from his/her parents, and which events justify the separation (removal) of the child from his/her family.



## 7. Adoption (art. 21)

### Paragraph 84

293. According to the Family Law Act the aim of adoption is to create a familial relationship between the adopter and his/her relatives and the adoptee, and to primarily ensure the raising of orphans or children whose parents are unable to raise them adequately. The adoptee gains the legal status of the child of the adopter. The parental rights and obligations of the natural parents are annulled. The adopted child uses the surname of the adopter. The first name of the adoptee can also be changed with the authorization of the guardianship authorities. In exceptional cases, the adoptee can keep his/her original surname. The Family Law Act prohibits the authorization of adoption if the involved entities or individuals receive remuneration for the process of the adoption. Moreover, adoption cannot be authorized if it is contrary to the interests of the child. The process of adoption consists of two distinct phases: the preparatory phase and the official phase. In both phases, the decision is made by the city guardianship authorities. The decision can be appealed or contested in court.

294. There are two types of adoption. In open adoption, the natural parent consents to the adoption of his child knowing the particulars of the adopter, i.e. the natural parent and the adopter know each other and, essentially, file a joint request for the authorization of the adoption. In case of open adoptions, the parent cannot revoke his/her consent to the adoption. In closed adoption, there is no personal contact between the parent and the adopter. The parent is not notified of the adoption and cannot contest the decision, either in an administrative or in a judicial procedure. A child can be the subject of a closed adoption if the natural parent has consented to place his/her child for adoption by a person unknown to him/her, if the court annuls his/her parental rights or if the guardianship authorities rule in an absolute decree that a child raised in an institution or by foster parents can be adopted. The statement of consent to placing a child for adoption - which can be made prior to the birth of the baby - can be revoked until the child is 2 months of age. Foreign citizens can only adopt children through closed adoption.

295. A person is qualified to become an adopter if he/she is a legally competent adult, whose personality and situation render him/her qualified to adopt the child. The psychological aptitude tests are aimed at assessing whether the motivation for the adoption, the situation of the adopting family (adopter), the age and personality, and the child-raising concepts of the adopter can ensure the harmonious development of the child. The health aptitude test aims to establish whether the adopter has any diseases or deficiencies of health, sensory organs, mental capacities, or severe psychotic disorders, alcohol or drug dependency, or any disease that may hinder his/her capacity to look after the child, or which may endanger the development of the child.

296. The adoption is authorized by the guardianship authorities. Thus, prior to deciding upon the concrete request for adoption, the guardianship authorities perform an in-depth home study of the adopting family and decides upon the placement of the child with the adopting family; ascertains - within the period set by the Family Law Act (at least one month) - that the child is integrated into the adopting family; obtains expert opinion concerning the child's personality; and calls upon the regional child protection service to obtain further expert opinions, if necessary.

297. The following documents are required for the authorization of the adoption: a statement of consent containing the request of the parties (adopter and adoptee), as well as the consent of the child's parents and the spouse of the married adopter. The parent can consent to the adoption without having information on the identity and the particulars of the adopter. A parent can revoke his/her consent until the child is 6 weeks old. The right of parental supervision is discontinued upon issuance of the statement if the child in question is older than 6 weeks, or in case the statement involves a child under 6 weeks when the child reaches 6 weeks of age.

298. If the child is older than 6 years or if the child's health is impaired, the consent statement of the parent is only valid if approved by the guardianship authorities. Parental consent to adoption is not necessary if the guardianship authorities have ruled that the child can be adopted; if the whereabouts of the parent is unknown or the parent is legally incompetent. The consent of the spouse is not required if the couple have been separated.

299. During the reported period, the governing judicial practice has repeatedly examined cases involving the adoption of children. Following is a list of the major court rulings concerning this area:

(a) BH2001.323. An adoption can only be annulled if it is evidently no longer capable of fulfilling its aim and social objective. An adoption cannot fulfil its aim if the parties do not expect any emotional or other type of care from each other, if the parties have become estranged and their relationship has become purely formal. The fact that the relationship between the parties has loosened on account of legal disputes between the parents or the physical distance between the domiciles of the parties cannot lead to the conclusion that the family relationship between the parties has irrevocably ceased;

(b) BH2000.158. In order to assess whether the adoption has become unsuitable to fulfil its social aim and role, the relationship between the parties during the entire period of the adoption should be studied;

(c) BH2000.19. The existence of conflicts - especially if the party requesting the annulment of the adoption was also involved in the creation of the conflicts - does not in itself constitute a basis for the annulment of the adoption;

(d) BH2000.60. The aim of the adoption is not exclusively to ensure adequate education and care for the child, but also to ensure that the adopter, as a result of the parent-child relationship, will receive support and care in his/her old age.

300. The Parliamentary Commissioner for Civil Rights and the General Deputy to the Parliamentary Commissioner have conducted inquiries concerning the adoption of children:

(a) Report No. OBH 3194/1997. The plaintiff had a grievance concerning the adoption procedure of his child. From the start, the procedure of the guardianship authorities was characterized by hastiness, misinterpretation of the laws and consequently a series of infringements of the law, and the provision of false information to the plaintiff. The measures of the guardianship authorities created a situation which was incomprehensible even to people

capable of understanding the administrative procedures of various authorities. The plaintiff was not informed of decisions involving his child, he was misinformed on several occasions and, for a long time, he was not even aware of the whereabouts of his child, which resulted in legal insecurity;

(b) According to report No. OBH 3879/1999, it is important for both the adopted child and the future adopter that they only meet after the child can legally be adopted and the parental aptitude of the adopter has been ascertained. In pending cases there is a possibility that the adoption will be cancelled. (The child is not available for adoption, or the future adopter is deemed unsuitable.) However, an emotional link may be formed between the child and the adult. It is undesirable for a child living in State care, and thus more vulnerable, to completely lose his or her trust in adults following an unsuccessful adoption procedure. In order to prevent future infringements of the law, the head of the county guardianship authorities held meetings with the participation of the relevant experts to establish how adoption procedures should be conducted in accordance with regulations;

(c) Report No. OBH 2260/1999. During the on-site inspection of a children's home on 7 May 1999, the teachers of the institution said that they had recently learned about the annulment of the adoption of D.Zs., an 11-year-old girl raised in the institution. The adopters requested the placement of the child in the institution, as she was more problematic than average. The guardianship authorities authorized the annulment of the adoption and ruled that the child no longer had the right to the name she had previously used for nine years, and was reregistered under the name she had received at birth. Thus, the first name of the child was also changed. The procedure of the annulment of the adoption took 18 months. The guardianship authorities did not even formally assess the interest of the child; the decision was based on the statements of the adopters and a school opinion issued several years before. According to the Family Law Act, following the annulment of an adoption, the adoptee has the right to use the surname gained by the adoption if it is justified by the circumstances resulting from the adoption, or the length of the period for which the adopted surname was used. Changing the first name of the child without the expert opinion of a professional or a teacher who knew the child, or even the child herself, as she was in possession of discretionary abilities, resulted in severe infringements of the constitutional right to human dignity. A child who was in dire need of help and professional treatment was deprived of her first name at the age of 11.

### **Paragraph 85**

301. According to the Family Law Act, Hungarian citizenship is not a prerequisite for either the adopter or the adoptee; the adoption of children of Hungarian citizenship by foreign citizens is therefore not precluded. The amendment of 1995 of the Family Law Act states, however, that foreign citizens can only adopt children who are in State care. With regard to international adoption, the Family Law Act stipulates that it is only possible on condition that the child was not adopted within Hungary because no one requested the adoption of the child, or the measures aimed at the adoption of the child were unsuccessful. Adoption is also precluded if the adoption entails remuneration for either party or any other person or authority participating in the process of the adoption.

302. Foreign citizens can submit their requests at the National Institute of Family and Social Policies, with the exception of requests by the relatives or spouse of the parent. The expert opinion attesting the aptitude of the applicant should also be attached, along with the report of the inspection of the domicile, an income report, a preliminary authorization of the foreign State, a statement concerning the reasons for the adoption and the adopter's plans concerning the child, and a document attesting the legitimacy of the agent organization. As a result of amendment of the Family Law Act, carried out in accordance with the Convention, the number of foreign adoptions has decreased: while in 1990, 132 of the 958 adopted children were taken abroad, in 1998 only 80 of the 850 adopted children were adopted by foreigners, i.e. the percentage of foreign adoptions in 1990 and 1998 was 13.7 per cent and 10.6 per cent, respectively. The parental aptitude test is not performed within the framework of a preliminary procedure, but during the actual adoption procedure.

303. Although the conditions of adoption are regulated by law, there are considerable shortcomings in the following areas:

- The aptitude test is not unified in the various counties. A decisive principle, which focuses primarily on the interests of the child, is often infringed: it is always the child for whom we should find suitable parents, and not the other way around;
- A study conducted in infant's homes in 2000 has revealed that children who could be adopted are unduly kept in State care for years;
- The preparation of the adopting parents is inadequate;
- For women in crisis pregnancies, the primary objective is not to arrange the adoption of the unborn child. The primary task is to help the women in a crisis pregnancy to decide whether she wants to raise the child and, if she decides to consent to the adoption of her child, she should be able to do this with dignity.

#### **Paragraph 86**

304. The Republic of Hungary (previously the People's Republic of Hungary) has entered into bilateral agreements concerning the regulation of issues of common law, family law and criminal law. We have agreements in force with the Czechoslovakian Socialist Republic, the Socialist Republic of Viet Nam, the Republic of Cuba, the People's Democratic Republic of Korea, the People's Republic of Mongolia, the Federal Socialist Republic of Yugoslavia, the People's Republic of Bulgaria, the People's Republic of Albania, the People's Republic of Poland, the People's Republic of Romania and the Union of Soviet Socialist Republics.

305. The amendment of the Child Protection Act (Gyvt.) affects the regulations of the Family Law Act concerning adoption, by introducing a minimum and maximum age difference between the adopter and the adoptee (16 years and 45 years, respectively), and decrees the obligatory participation at preparatory courses (except for adoption by spouses or relatives) and states that children should preferably be adopted by couples. Our future plans include the regulation of the activities of private organizations acting as agents in adoptions and the procedure for the authorization of such agencies, in addition to ensuring the conditions required for joining the Hague Convention signed in 1993.

### Adoption and annulment (City guardianship authorities)

(Abbreviation: CSJT: Family Act)

No.	Description		1998	1999	2000	
1.	Total number of authorized adoptions		850	928	949	
2.	Of these (line 1)	Children under permanent State care	283	326	323	
3.		Children under temporary State care, deemed adoptable	110	144	177	
4.		Authorized in accordance with the consent statement of the parent (with the exception of CSJT article 48 [3])	Spouse	286	236	268
5.			Other	166	107	104
6.		(with the exception of CSJT Article 48 [3])			106	66
7.	The number of approved adoptions by foreign citizens (from line 1)	Closed	55	116	108	
8.		Open (spouse, relative)	25	31	20	
9.	The number of decrees authorizing the adoption of foreign minors		9	24	11	
10.	Number of annulled adoptions		20	21	12	
11.	Of these (line 10)	Children under permanent State care	6	6	3	
12.		Children under temporary State care, deemed adoptable		2	2	
13.		Authorized in accordance with the consent statement of the parent	11	10	5	
14.	Of the annulled adoptions:	Minors	10	14	9	
15.		Adults	10	7	3	
16.	The number of minors decreed adoptable		221	322	372	
17.	The number of parents decreed suitable to adopt a child		1 856	1 672	1 631	
18.	The number of rejected applications for suitability to adopt a child		27	29	18	

### 8. Periodic review of placement (art. 25)

#### Paragraph 87

306. The guardianship authorities review the conditions of the temporary or permanent placement of the child in State care based on recommendations and information gained from the guardian, official guardian, foster parent, children's home, the child welfare authorities or the regional child welfare services, and the expert opinion of the child protection expert committee. The review is conducted annually for children over 3 years of age, and semi-annually for children under 3 years of age. Based on the results of the review, the guardianship authorities shall decide on the following issues: maintenance or modification of the individual placement plan and place of care; initiation of the annulment of the right of parental custody, or if this is not required, declaring that the child can be adopted; the discontinuation of the temporary State care of the child. The aim of the annual review is to ensure that the care provided and the individual placement plan suit the individual needs of the child.

307. The individual placement plan approved by the guardianship authorities includes:
- Designation of the person to whom the child shall be returned after the termination of the temporary State care;
  - The expected length of the period in State care;
  - Recommendations concerning the personal contacts between the child and his/her parents (visits);
  - The conditions to be met by the parent and the child in order to terminate the State care;
  - The necessity of judicial or administrative measures;
  - Date of the regular review.

### **Paragraph 88**

308. In order to ensure that the periodic assessment of the child's situation is substantiated by expert opinions, the amendment of the Child Protection Act (Gyvt.) designates the county, capital and national child protection expert committees. The opinion issued by these committees contains recommendations as to the adequate form of State care and the individual placement plan for the child. The child protection expert committee consists of at least three members, or at least five members in cases involving children with special needs. The permanent members of the expert committee shall include one paediatrician, one paediatric psychologist, one social worker, one psychiatrist and one special education teacher. Special experts can also be included in the child protection expert committee depending on the child's health and mental condition and general personality. The amendment to the Act introduces the legal instrument of childcare supervision, which is ordered if a child with special needs demonstrates behaviour that is or may be hazardous to his/her or other people's life or health and such behaviour is due to a disease or psychological disorder, on condition that such hazards can be averted by examination, care and therapy conducted in closed circumstances. Barring exceptional cases, the guardianship authorities must comply with the opinion of the aforementioned child protection expert committees. Childcare supervision should be reviewed as necessary, but at least monthly by the guardianship authorities and/or the court of justice.

309. The files of children living in State care prior to when the Child Protection Act (Gyvt.) came into force were reviewed by the city guardianship authorities in close cooperation with the regional child protection services (TEGYESZ), and since 1999 the files of each child in temporary or permanent State care have been reviewed annually. The situation of children placed in State care, with special emphasis on children placed in children's homes, is monitored continuously, with obligatory periodic and continuous reviews conducted in accordance with the Child Protection Act (Gyvt.).

310. The cooperation between the guardianship authorities and the regional child protection services is incidental: measures are often taken by the former without the knowledge of the latter. Another problem is that if a child is brought under child protection care, it is not always

established that the measure was justified and that all necessary steps had been taken in the field of primary care. Although according to an underlying principle of the Child Protection Act (Gyvt.) a child should not be removed from his/her family due to endangerment of a purely financial nature, this principle is often infringed in practice. The use of the registration cards (“teddy-bear cards”), as provided by law, should become much more widespread.

**9. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)**

**Paragraph 89**

311. The substantive and procedural penal laws aimed at protecting children and juveniles were compiled so as to ensure that the Hungarian regulations comply with the relevant international documents - including the Convention. Although the Penal Code currently does not include “child abuse” as a legal concept, it enables the sanction of the forms of child abuse established in the Convention, if the action comes under any of the provisions of the Penal Code.

312. The Penal Code defines the crime of genocide and states that someone removing a child belonging to any national, ethnic, religious or racial group with the intent of completely or partially annihilating the group commits the crime of genocide and is liable to 10-15 years of imprisonment or life imprisonment.

313. According to the Penal Code the murder of a person under the age of 14 years shall constitute a case of aggravated murder and shall be liable to 10-15 years of imprisonment or life imprisonment.

314. The murder of a newborn baby is also punishable according to the Penal Code. Any woman who murders her newborn during labour or immediately after birth is liable to two to eight years of imprisonment.

315. An aggravated case of assault is committed if the assault is directed against people incapable of defence or expressing their will. Assault is punishable by imprisonment of up to three years, while aggravated assault is punishable by imprisonment of one to five years. According to the Penal Code, children under 12 years of age are deemed incapable of defending themselves.

316. Article 195 of the Penal Code sets forth the crime of the endangerment of minors, whereby a person in charge of raising, supervising or caring for a minor can be punished with one to five years of imprisonment if, due to failure to comply with their obligations, the physical, intellectual or moral development of the minor is jeopardized.

317. An adult, who induces or tries to induce a minor to commit crime or to engage in debauched activities, is punishable by law.

318. The Penal Code sets forth the sanctions for sexual crimes committed against children (see para. 558 below).

319. A novel practical approach to facilitating the social reintegration of minors is the method known as the “face-to-face” method, and the guardian-mediator activity which has been in force since June 2003.

320. The prohibition of child abuse stating that a child or pupil cannot be subjected to corporal punishment in school is enforced only partially due to the following:

- In many schools, child abuse is still used as a means of disciplining that the children often take for granted;
- The problem cannot be handled by the child and juvenile protection officer working in the schools, and often not even by the school social worker;
- In such cases children rarely exercise their right of complaint;
- There are no age-specific child abuse prevention programmes available to schools;
- There are no obligatory systems of supervision of teachers, which could help in reducing child abuse in schools;
- In concrete cases of child abuse, there is no efficient cooperation between the entities involved in child protection (child protection service, district nurse, family doctor, police, school, etc.);
- A major problem stems from the fact that following instances of child abuse it is the abused child who is removed from the family, causing further trauma for the child;
- There are currently no concrete plans for what to do with the perpetrators of child abuse, in addition to their legal punishment. The practice of several EU member States has shown that the perpetrator himself/herself often requires assistance, and in most countries, he/she receives therapeutic help. Experience shows that in such cases repeated offences are rarer.

321. It is our task to ensure self- and body-awareness of children in primary educational institutions. Age-specific child abuse prevention programmes should be held in schools. The training of professionals would require fundamental changes, and the curriculum of teachers, lawyers, etc. should cover the possibilities for the prevention and management of child abuse. Child welfare services should employ trained professionals as needed. The legal procedures lack the modern solutions for victim protection, witness protection and the separation of the perpetrator from the victim. A national media campaign for the prevention of child abuse is planned for 2004.

322. Pursuant to the Public Education Act, a student cannot be subjected to corporal punishment, torture or cruel, inhumane or humiliating punishment or treatment. The obligations of the teacher include the obligation to ensure the physical integrity, moral protection and the development of the personality of the child or student. According to the law, nursery schools, schools and boarding schools must ensure the supervision of the children, as well as healthy and safe conditions for their education, the identification and termination of health and safety hazards



and the regular medical examination of the children. The law sets forth the process of legal remedies. Educational institutions have to inform the students, or the parents of under age students, of the institution's decisions. The student or the parent can start legal proceedings against the decisions or measures of the nursery school, school or boarding school, or against the failure of the institutions to take the appropriate measures. The procedure can be initiated for violations of individual interests or infringements of the law. Infringements of the law can be contested in court.

323. In accordance with the Child Protection Act (Gyvt.), the following health service providers function to assist the raising of children in their families and to prevent and cease the endangerment of the child within the framework of their main field of activities: district nurses, general practitioners (GPs), paediatric GPs, personal health-care service providers, with special emphasis on the family assistance services, family assistance centres, public educational institutions, educational counselling services, the police, the General Prosecutor, the court of justice, refugee reception centres, temporary refugee shelters, NGOs, Churches and foundations. These institutions are obliged to notify the child welfare service of the endangerment of a child and, if required, to initiate official proceedings. Any citizen or NGO representing the interest of children can also notify the child welfare service in such cases. These individuals, services, institutions and authorities should cooperate to assist the raising of the child within his/her family, and to prevent or cease the endangerment of the child. The tasks of the child welfare service include the following: operating the aforementioned system to monitor and detect instances of endangerment in order to prevent such cases; assisting the participation of NGOs and private individuals in the prevention system; identifying the reasons for and causes of the endangerment and proposing solutions to resolve the problem; coordinating the cooperation between the aforementioned individuals and organizations and harmonizing the activities thereof. Its tasks also include helping the families to resolve the endangerment of the child, especially in cases involving divorce, child custody and parent-child visits; provision of health and social care; initiating official intervention; making recommendations to remove the child from the family and recommendations for the future place of residence of the child.

324. The regulation governing the operation of educational institutions sets forth the tasks of the child- and youth-protection officer. These include the obligation to inform the director and request the assistance of child welfare services in case of presumed child abuse or endangering circumstances that cannot be solved by other pedagogical means.

325. The governing judicial practice - including during the reported period - has repeatedly examined cases concerning endangerment of minors. Following is a list of the significant court rulings in this field:

(a) BH1997.263. The endangerment of minors is usually a continuously performed act, thus the number of instances and the various forms of the breaches of duty constitute a single act of crime, which usually cannot be deemed a continuous act of crime. The obligations are individual obligations for both parents and each care provider, who are thus charged as individual perpetrators and not as accomplices. A single breach of duty with grave consequences can aggravate the crime, although usually, or at least often, all the infringements together add up to have serious consequences;

(b) BH1997.469. Special education teachers and assistant teachers commit multiple instances of endangerment of minors if they continuously use physical abuse, or punitive disciplinary action and humiliating measures against the children under their care;

(c) BH2000.236. A mother cannot be charged with manslaughter by negligence for leaving her 2-year-old child unattended for a few minutes, during which the child opened a closed window, fell from the tenth floor and died;

(d) BH2002.129. A paediatric GP can be charged with reckless endangerment during the exercise of profession leading to manslaughter if, having noted the exceptionally poor social circumstances of the children and the resulting critical condition of the children due to malnutrition, the GP does not immediately refer the child to a hospital and due to this omission one child dies and the life of the other child is endangered. A justified additional punishment of the paediatric GP is the revocation of his/her medical licence if the malpractice - i.e. omission of immediate referral to hospital - leads to the death of a child under his/her care;

(e) BH1999.397. In order to establish the crime of involuntary manslaughter it is necessary to clarify whether any form of malpractice committed by the perpetrator led to the investigated event; the fact that the accused usually neglected the child and did not seek medical counselling for the child is not in itself a crime. It should be ascertained that the resulting event was caused by a deliberate or neglectful conduct of the accused;

(f) BH1999.55. A person of legal incompetency/incapacity has no parental rights and can thus not be accused of endangerment of a minor.

## **Paragraph 90**

326. In accordance with the aforementioned regulations, nursery schools, schools and boarding schools cooperate to fulfil child- and youth-protection tasks. An integral part of this activity is to recognize situations where a child is abused at home. In such cases, it is the obligation of every teacher to inform the head of the institution. One of the tasks of the child- and youth-protection officer obligatorily employed in all schools is to take the necessary steps in case of presumed child abuse.

327. The Convention sets forth the necessity of protecting children from all forms of aggression, physical or psychological abuse, negligence or other maltreatment. The Hungarian practice is regulated by the Child Protection Act (Gyvt.). This is supervised by the Ministry of Social Welfare and Family Affairs. This was the basis for the foundation of the child welfare services, the new child protection registry and the monitoring system.

328. The legal framework is in place, but the system is dysfunctional in many areas. Adequate links have not been established between the institutions, the methodological regulations are incomplete (e.g. the lack of child-friendly hearing rooms at courts and police stations; the role of the health service within the monitoring system has yet to be defined, etc.). The training and post-graduate training of specialists in this area should also be developed. These are issues which need urgent attention as, according to the child protection reports, the number of minors

endangered for various reasons has almost doubled since 1990. The figures for the year 2000 show some improvement. (In 1998, the number of endangered minors was 380,340; in 2000 it was 262,980.)

329. According to criminal statistics, the number of criminal cases initiated for endangerment of minors in the years 1998, 1999 and 2000 were 1,160, 1,024 and 1,014, respectively. The number of assaults leading to the death of children was 29 in 1998 (infanticide: 13), 24 in 1999 (infanticide: 5) and 34 in 2000 (infanticide: 12). A book on the possibilities of preventing infanticide was published in 2001 (Mária Herczog: *Don't Abandon Them*).

330. During the reporting period, several interdisciplinary meetings were held to discuss child abuse. In 1999, the National Institute for the Protection of Families and Children organized a meeting on secret pregnancies and the murder of newborn babies. In 2001-2002 the Research and Education Centre for the Rights of Women and Children organized three professional conferences on child abuse, with the support of the British Council. The National Institute of Criminology and several NGOs organized a conference on the sexual exploitation of children, with the support of UNICEF. The meetings ended with the compilation of professional guidelines and closing documents, which were sent to the relevant ministries and authorities. The exceptional significance of education and the media was underlined at each meeting.

331. It is an important task to keep the issue of child abuse and infanticide on the agenda, both for professionals and the general public. Closer cooperation between the relevant services is required; the legal framework has been defined, and we now have to fill it with contents. There have been promising initiatives. The National Society of Paediatric General Practitioners has organized a seminar on child abuse.

332. One of the basic tasks of the network of district nurses is family support, which consists of helping the family in developing a harmonious life, in ensuring the healthy development of the child and in using educational means to ensure the positive self-esteem of the child. Unfavourable processes should be recognized and resolved, in close cooperation with the competent child protection services. The district nurse service also acts as a monitoring and detection system. In case of presumed or identified child abuse, the district nurse service has to notify the child welfare service, which in turn is in charge of ensuring the safety of the child and solving of the problem of endangerment of the child. With the help of professional material compiled by the National Institute of Public Health, district nurses are regularly informed on the child support systems, the prevention of infanticide, the possibilities for the adoption of unwanted children and on placing such infants in children's homes. Health-service professionals are obliged to report cases of neglected children and child abuse. In 1997, the number of families registered and supported by district nurses was 1,304,268. Neglected children were reported in 16,193 families (1.2 per cent), and child abuse in 2,101 families (0.2 per cent). In 2000, the number of families registered and supported was 1,253,929. Neglected children were reported in 13,542 families (1.1 per cent), and child abuse in 1,725 families (0.1 per cent).

### **Paragraph 91**

333. The Child Protection Act (Gyvt.) sets forth the right of the child to receive help in averting situations that may hinder his/her development, and to receive protection against environmental and social effects harmful to his/her development, and against substances that are

hazardous to health, and against abuse - physical, sexual or psychological violence, neglect and information abuse. Furthermore, the child has a right to human dignity and cannot be subjected to cruel, inhumane or humiliating corporal or other forms of punishment or treatment. In accordance with the Child Protection Act (Gyvt.), the prevention and elimination of the endangerment of the child is the duty of the child welfare service. The psychological treatment of children at risk of violence or sexual abuse is provided by educational counselling centres and child welfare services operated by the local governments.

334. There is a national network of crisis lines operated by volunteers to supply information on psychological services available for children. Child crisis lines occasionally offer special services, including psychological services to child victims of sexual exploitation. The ESZTER Foundation provides psychosocial services to child victims of sexual abuse within the family.

335. The perpetrators are generally men, usually the natural or stepparents or relatives under 40 years of age. The perpetrators usually have eight years or less of primary education. Most of them are skilled or unskilled workers, followed by trained employees and inactive individuals. Forty per cent of the perpetrators have a criminal record; the percentage of recidivist criminals is 5 per cent. Approximately half of underage victims are in the 14-17 age group, the boy-girl ratio is about 65:35. The crimes are usually committed at home, thus often only the closest relatives gain knowledge of the crimes. The torture of the child victims often lasts years as it is hidden from the outside world. Witnesses in possession of direct information are often afraid to testify, partly because they fear an unfavourable reaction from their environment. It is often emotionally stressful for child witnesses to testify against their parents. Physical abuse committed by the father or the stepfather is often coupled with sexual harassment. If the victim rejects sexual advances which do not constitute a sexual crime, the reprisals include aggression, beatings or neglect.

336. New types of offences are also committed. For instance, in a case currently before the court of justice, the parents “turned their back on society” as a result of their religious beliefs. They live in a tent by the side of the village, amidst very rudimentary hygienic conditions. Their children are not allowed to attend school and there are no telecommunication appliances at their domicile. Thus, not only do their children receive no schooling, they cannot even gain knowledge of the external world from the media. All these violate the rights of children set forth in article 6 of the Child Protection Act (Gyvt.).

337. Victims below the age of puberty are usually questioned by psychologists or their care provider. Thus, the psychologist can see whether the incidents recounted by the victim are based on personal experience and are undeniably true, and to what extent the child incurred psychological damage. If necessary, the competent authorities (police, the Public Prosecutor, the court of justice, guardianship authorities) can remove child victims from the hazardous environment and order their placement in an institution where the healing of the physical and psychological injuries of the victim can be assured. As a general practice, the investigative authorities notify the competent child welfare service and the guardianship authorities of the refusal to conduct an inquiry or the closure of the inquiry.

338. If child protection measures are deemed necessary, the General Prosecutor notifies the child protection authority by sending a copy of the bill of indictment or the resolution stating the refusal to conduct an inquiry or the closure of the inquiry.

339. The amendment of the Child Protection Act (Gyvt.) empowers the child welfare service, the notary of the local government and the guardianship authorities to handle information pertaining to all acts of crime committed by the minor or crimes committed against the minor by his/her parents or other legal representatives.

### **Paragraph 92**

340. As a result of the addendum to the provisions of the Child Protection Act (Gyvt.) governing the handling of data, investigative authorities will henceforth be able to inform the competent guardianship authorities and the child welfare service of crimes committed against or by minors, in case of a well-grounded suspicion of a crime. The Public Prosecutor will strive to ensure the legitimacy of the care provided to endangered minors by conducting regular reviews and by providing feedback on the results of the investigation to competent authorities.

341. The Parliamentary Commissioner for Civil Rights and the General Deputy of the Parliamentary Commissioner have studied several cases of child abuse or child neglect. It has repeatedly been established that the child welfare services designed to prevent or eliminate the endangerment of children were not set up by the local governments, or were set up with insufficient personnel and professional resources; the child welfare services did not operate the monitoring system, or did not operate it adequately or it was only operated formally; the authorities were often late in signalling cases of child abuse and did not comply with their lawful obligations, and in certain cases were not even aware of such obligations. In several cases, the service did not choose the best form of child protection care (see also: OBH 4360/2000, OBH 11590/2001, OBH 1546/2001, OBH 3684/2000, OBH 3048/2000, OBH 3407/1999, OBH 750/1999, OBH 6702/1999).

342. In report No. OBH 1757/2002, the General Deputy of the Parliamentary Commissioner established that there are no general guidelines concerning the obligations of health-care professionals as set forth by the Child Protection Act (Gyvt.), or sanctions for failing to comply with these obligations. The Code of Conduct of the Hungarian Chamber of Medicine does not contain moral rules concerning these legal obligations of doctors.

343. According to report No. OBH 6430/1997, the police are reluctant to interfere in so-called family affairs until a crime or an offence is committed. If no offence or crime is identified on site, the policeman is not even obliged to file a report; his only obligation is to find night shelter for people who are rendered homeless.

344. In report No. OBH 2597/1999, the Parliamentary Commissioner established that the cooperation of the regional child welfare services - and sometimes even that of services operating in the same settlement - is completely non-existent. The monitoring system - if it functions at all - will most probably only be of effect within the settlement. It is impossible to understand how a child enters the child protection system, and how an endangered child whose parents often change their place of domicile can be removed from the system. There are no laws governing the possibility/obligation of the child welfare system or guardianship authorities to gather information and take measures concerning the antecedents or the life of a child who has moved to or away from the area of the relevant authority. Children of parents who change their

domiciles, who do not live at a permanent domicile and do not register their temporary domiciles, or who live in poor social conditions may be totally removed from the system of child protection services or may bypass it.

## **F. Basic health and welfare**

### **1. Disabled children (art. 23)**

#### **Paragraph 93**

345. The Constitution stipulates that everyone has the right to the highest degree of physical and emotional health. Act XXVI of 1988 “On the rights and the equal treatment of people with disabilities”, besides setting forth the rights of the relevant persons and the way they can assert them, also aims to provide active regulation of the rehabilitation provided to these persons and, as a result, equal treatment and active participation in social life. The Child Protection Act (Gyvt.) ruled that a child with disabilities or long-term illness has the right to special treatment aiming to provide for the development of his/her personality, regardless of whether the child lives in a family or in protective care. The day crèche, being the service to provide daytime care for children under the age of 3, is the primary institution for the provision of professional care and attention, and is also responsible for the rehabilitation of children with disabilities. Based on the opinion of the professional rehabilitation committee, disabled children can receive development training and care in such crèches up to the age of 6.

346. The Health Act sets forth that a special task of youth health care is to provide - on the basis of previous consultation with the relevant general practitioner - intensive monitoring, psychological assistance and assistance in the social integration of those living with congenital diseases, chronic illness or physical, sensory or mental disabilities.

347. The Act on Public Education, in the general section, discusses the support provided to children and students with disabilities mentioning requirements concerning positive discrimination. The Act has a separate chapter dealing with the right to special care and rehabilitation activities. In accordance with the substance of the Convention, special care can be provided to all children who suffer from physical, sensory, mental, speech or other disabilities. The joint legal and substantive law regulation also articulates the equality of healthy children and those with disabilities, as well as the pedagogic principle of all humans being equal. The care of children with disabilities based on equality aims to use educational institutions as a medium to provide the same cultural services to them as to healthy children, even if this means modifying what is to be communicated and taught in accordance with the restricted means of the disabled children.

348. Disability can only be ascertained by specialist expert and rehabilitation committees, through complex - medical, pedagogical, therapeutic and psychological - examination. A request and the presence of the parent are required for an expert examination. In the interest of the child - if the parent does not voluntarily see the necessity of such an examination - the parent can be obliged to attend the examination and to participate in it. The expert committee, if it ascertains the existence of a disability, will make a proposal as to the nursery school or school in which it can foresee the development of the child. The expert committee will inform the parent about possible institutions from among which the parent can choose. Naturally, deciding

whether a disability exists is also possible at an earlier age. In this case, children in need of early development and care can receive attention earlier. The Act sets forth that the child with disabilities has the right to receive adequate therapy, education and special education from the time of the diagnosis of the disability. This constitutes early development and care.

349. Early development in the majority of cases is organized by expert and rehabilitation committees, the independent early development centres being multipurpose specialist organizations providing therapeutic consultation and assistance in the care of children brought up in an integrated environment. About 2,000-2,500 children receive early development care annually. Legislation sets it as a duty of local authorities to provide this service, with normative State subsidy provided for such activities. Seriously disabled children who by virtue of their situation cannot benefit from a school-type education participate from the age of 5 in skill-development activities. In Hungary, from 1994 onwards these children were granted general exemption from attending school and did not receive any sort of care from the public education service. However, currently no child is excluded from education, however serious his/her disabilities. Access to public education for those growing up in the family is to be provided through the expert and rehabilitation committees, whereas in the case of those brought up in social care institutions (nursing home or day-care centre for the disabled), it is the obligation of the institution to provide for such care. The definition of the objectives and the tasks of the development programme are always decided on the basis of the actual status of the child, the basis for the year-end assessment of the child being the progress the child has shown since the beginning of the year. The Act on Public Education sets forth the responsibility of the county authorities, with the State providing normative support in every case.

350. Disabled children can also attend nursery schools from 3 years of age. Primary school education is provided in eight grades, which is the basis for special vocational training. The Act on Public Education does not declare whether a disabled child should be educated in special institutions for disabled children or in regular schools. The Act permits both forms of education, establishing that special education requires the necessary personnel and material conditions. The Act and the related ministerial decrees have brought about significant changes by setting forth the provisions related to nursery school education and compulsory school attendance of disabled children, and by creating the legal framework for integrated education. Local governments have to inform the expert and rehabilitation committees of the institutions with adequate facilities to ensure the education of children with various disabilities. Thereby, the expert and rehabilitation committees recommending the nursery school and primary school education of disabled children have adequate information on the facilities of the various institutions, and are able to inform the parents of the possible choices.

351. The legal framework of special vocational training has also been created in recent years. The development of the vocational training schemes has also been intensified. The programme entitled "The complex vocational training, rehabilitation and employment of disabled juveniles" ensures the continuous development of the curricula and the teaching materials of the four target groups of disability. In the first phase, the development activity included the vocations listed in the National Vocational Register. The vocations were selected following continuous negotiations and consultations with the interest groups and professional organizations of the disabled.

352. Special vocational schools can be established for juveniles who, due to their disabilities, cannot keep up with the pace of the other students. If the condition of the student does not enable the passing of the vocational exams, this type of institution enables the student to acquire information and skills necessary for everyday life and employment. In this case, the curriculum is adapted to the individual circumstances, requirements, and the future possibilities of the disabled juvenile. The common and compulsory objective of this type of education is to supply as much practical knowledge as possible, in order to help the individual to live his/her life independently or with external assistance. Approximately 5,000 students participate in special vocational training annually. Several laws on positive discrimination help to ensure the adequate education of disabled students. For instance, educational institutions where disabled children are taught (either in integrated or in segregated groups) have to organize so-called rehabilitation training classes to overcome or diminish the handicap due to the disability. The percentage of rehabilitation classes is 15-50 per cent of the total compulsory classes, depending on the type of the disability.

353. Based on the recommendation of the expert and rehabilitation committee, disabled students can be exempted from attending certain classes, or from receiving marks or evaluation in certain subjects. At the primary general knowledge exam and the matriculation exams, disabled students have the possibility to choose other subjects instead of the ones they were exempted from. The student is entitled to a longer preparation period at the exams and he/she should be allowed access to accessories used during his/her studies (typewriter, computer, etc.). If necessary, written exams should be replaced by oral exams, and vice versa. A disabled child/student counts as two (slight mental deficiency/impaired speech) or three (physical disability, impairment of the sensory organs, moderate mental deficiency) students when calculating the average number of students in the class. Schools for disabled students can allow a period of more than one year for the completion of an annual curriculum.

354. The following issues may cause concern: the extent to which certain institutions for disabled children merge classes and the high number of students per class is contrary to the provisions of the Act on Public Education; the lack of professionals or access to special vocational training may infringe the right of disabled children to rehabilitation and therapy. Therefore, the Ministry of Education plans to conduct a survey of these institutions and take the necessary measures.

355. The Act on Public Education sets forth the contents of nursery school education and compulsory primary education (the National Programme for Nursery School Education, the National Basic Curriculum and the framework curricula based on the latter). The regulatory function of these centrally compiled documents is to ensure that the basic contents of the curricula are standardized in all types of institutions of public education. However, the Act on Public Education establishes that there are institutions where the educational activity cannot be organized exclusively according to the central regulating documents. These institutions include nursery schools and schools attended by disabled children (occasionally in addition to healthy children). The individual curricula of these institutions are compiled in accordance with the Guidelines for the Curricula of Nursery Schools for Disabled Children and the Guidelines for the Curricula of Schools for Disabled Children. In accordance with the provisions of the law, the guidelines were published as ministerial decrees. The guidelines set forth the main areas of



development aiming to decrease or compensate for the disadvantages due to the disabilities of the children (physically disabled; impaired motor capabilities; impaired sight - impaired vision, almost blind, completely blind, impaired hearing - hard of hearing; deaf; mentally deficient; impaired speech and other groups of severe developmental disorders). The guidelines set forth the basic principles, objectives and main tasks of the development activities, in addition to activities aimed at educational and health rehabilitation. The guidelines act as central documents enabling disabled children to exercise their right to special care by governing the contents of their curriculum.

356. The aim of the amendment to the Child Protection Act (Gyvt.) is to enable the setting up of the complete network of institutions for children removed from their families and requiring specific care (approximately 4,000 children) and of children removed from the family and requiring special care (approximately 3,000 children). Thus, permanently ill or disabled children should be cared for at foster homes or children's homes, permanent residency institutions for disabled people or homes for disabled people or psychiatric patients.

357. In institutions serving disabled people, in addition to the general rights (right of complaint, protection of private information, free movement, maintaining family contacts), the following special rights should be provided to children: the right to information concerning the reviews, the obligation to inform, the right to development of capabilities and skills, the possibility to maintain or improve the health condition of the child, autonomy, the right to social integration.

358. Professional considerations enable the integrated care of disabled and healthy children in infant's homes where the integration has been carried out. For older children, integration is always decided upon individually.

359. In accordance with Government Regulation 141/2000, the State shall provide financial support to cover the extra costs due to the disability.

360. Although the legal background is in place, in practice there is still no unified system of care. An increasing number of crèches integrate disabled and healthy children. The situation is not as straightforward in nursery schools, and it is mainly the private and foundation-operated nursery schools that integrate healthy and disabled children, usually at extra cost. Unfortunately, no national data regarding this issue have been collected as yet. Integration in schools is similar to that in nursery schools. As a result of the above, a smooth change of institution is not possible for disabled children, and there are no established channels of information between public institutions and the civil sphere.

361. Crèche (until 6 years of age): at the moment 529 children are admitted to 173 crèches countrywide; 168 children are in separate groups, 101 are in integrated groups and 258 are in partially integrated groups. A total of 4,183 children participate in integrated education in primary schools:

Grade	1	2	3	4	5	6	7	8	9	10
No. of children	778	618	543	513	490	440	463	303	34	1

362. A considerable number of children studying in segregated special education institutions (institutions for children with impaired vision or impaired hearing) also participate in integrated education. The conditions in institutions allowing integrated groups are not always adequate and the infrastructure is lacking in many places, both in terms of educational material and personnel. The exchange of information in the field of disabilities is conducted through the databases of the Ministry of Health, the Ministry of Social Welfare and Family Affairs (since 2002 one Ministry), the Ministry of Education and various NGOs. These databases do not secure equal opportunities, as they do not cover the entire area of the country or all types of disabilities. An important task for the future is the development of a unified monitoring system and standardized methodologies.

363. There are several institutions conducting rehabilitation activities in the country, but only three of these can be deemed complex in medical terms (Debrecen, Pécs and Miskolc). The annual reports of the Commissioner for Education Rights have established that disabled students are probably the most vulnerable subjects of public education. Local governments are often incapable of securing the conditions necessary for providing the services set forth in the laws for these students. Often, the teachers conducting the integrated education of these students have no training in special education. Parents often lack adequate information on their rights and on where help can be sought.

364. During the reported period, the Parliamentary Commissioner for Civil Rights conducted several inquiries concerning disabilities:

(a) Report No. OBH 28/1998 establishes that special emphasis should have been placed on ensuring that the parents of the child with multiple disabilities educate their child. If this proved unsuccessful, a more effective method of child protection (State care) should have been employed. As the competent State authorities failed to monitor the situation of the child, the minor was lost to the child protection system after the Child Protection Act (Gyvt.) came into force;

(b) Report No. OBH 433/1998 concerning the home for sick children in Göd. The handicapped children in wheelchairs could not gain access to the activity room on the upper floors of the building. This violates their rights to physical, intellectual and moral development as set forth in article 67 (1) of the Constitution;

(c) Report No. OBH 2818/2000. The acting guardianship authority did not act with the required deliberation when it took a disabled autistic child into temporary State care at the request of the child's mother. The child's right to adequate physical, intellectual and moral development was infringed with the temporary referral to the children's home operated by the child protection services. The officer of the guardianship authority complied with the request of the mother by temporarily taking the child into State care, but did not consider the basic right of the child to be raised in the environment of his own family. In this case "the environment of his own family" does not always mean living together every day, as the child needed treatment provided in weekly care centres. However, this does not mean that the child should be placed in State care and the parental rights of the parents should be discontinued and transferred to an official custodian. Autistic and mentally disabled children require special health care, and not child protection care.

## 2. Health and health services (art. 24)

### Paragraphs 94-99

365. The Constitution provides that individuals living in the territory of the Republic of Hungary have a right to the best available physical and mental health; the Republic of Hungary implements this right together with the organization of labour safety, health institutions and medical care, regular physical exercise, as well as protection of the built and natural environments. On the basis of the provisions of the Child Protection Act (Gyvt.), a child has a right to protection against environmental and social impacts harmful to his/her development, as well as substances that are harmful for health.

366. Act CLIV of 1997 on Health Care stipulates that minor patients have a right to be with their parents, legal representatives or individuals nominated by them or their legal representatives while they are ill. The Act contains a separate part with provisions on health care for youth and family and women's care. The objective of health care for youth is to promote the harmonious physical and mental development of individuals of minor age. This overall objective involves the following: health education; screening tests according to age; mandatory vaccinations related to age; analysis of the completed vaccinations and their efficiency; vaccination campaigns; health tasks involved in career-selection consultation; tests before schooling; assessment of aptitude for a profession; periodic suitability tests in educational institutions, including those providing vocational training. In addition, health care for youth has other special tasks (disabled or addicted youths). Youth health care also includes, among others, control of meals provided in nurseries and educational and training institutions, compliance with epidemiology regulations, as well as first aid requirements. Arrangements must also be made for first-time medical services to children and students in educational and training institutions.

367. There has been an increase in the number of methods available for giving birth, and in fact more and more baby-friendly hospitals have been established, but in many hospitals WHO recommendations are not taken into account. The health service does not react to an increasing trend in Hungary, as in numerous other countries in Europe, towards giving birth outside health institutions, i.e. in maternity homes or at home. With regard to vaccinations, information on potential complications is insufficient and, in contrast to European practices, there are very limited opportunities for developing an individual vaccination schedule. It would be very important to comply with WHO recommendations in all areas and for the practices of hospitals to be surveyed and assessed annually. Our responsibility is to provide conditions for safe and undisturbed births outside institutions and to supervise the health care staff regularly, for which mandatory financing needs to be provided by the State.

368. Health service providers offering primary care and special care pay outstanding attention to prevention, recognition and elimination of all factors representing a risk for children's health. Therefore, they cooperate with public education, social and family assistance and other child protection institutions and individuals and initiate various measures as required.

369. On the basis of the provisions of the Decree of the Minister of Welfare No. 26/1997 NM on health services at schools, children 3-18 years of age are regularly treated by school doctors,

district nurses and dentists and, in addition to regular screening, examinations and vaccinations, health education and information supply are also very important (during and outside lessons, club meetings and individual consultations).

370. Health services before and after pregnancy are also made available for everyone with regard to primary and special care. Pursuant to the provisions of the Act on Health Care, family and women's care includes control of the healthy development of foetuses, prevention or early recognition of risks and complications, as well as preparation for childbirth, breastfeeding and baby care. The objective of family and women's care is to promote the ideal biological and psychological conditions for having children through pre-conception care and genetic consultation, as well as care instruments used in the fertility cycle; to share with individuals family planning ideas, including also the risks involved in abortion, as well as contraception methods with the help of which they can plan and help the conception of their children in the required number and at the required time, ensuring that their children are born in good health conditions. District nurses care for pregnant mothers in the framework of primary care. District nurses register pregnant women, monitor their health conditions, participate in their health development, the completion of required screening examinations, early recognition and signalling of pathological changes. They prepare families for the birth, reception of the new baby, breastfeeding and caring for the baby.

371. UNICEF puts a lot of stress on increasing the proportion of breastfeeding in both developing and developed countries. In this respect, Hungary has done quite a lot: it has organized a regular national series of events (Breastfeeding World Week, women's health-family health), but it has not made a lot of progress. A methodology guideline supports exclusive breastfeeding until the age of 6 months, but only a few childcare professionals have adopted a feeding method which would support this goal. According to the last district nurses' reports, 59.4 per cent of babies are breastfed only between 0 and 3 months of age; 31.5 per cent of babies are breastfed only up to 4-5 months; 44.5 per cent of babies are breastfed even after the age of 6 months.

372. Although there has been a decline in the absolute figure of abortions among 15- to 19-year-old girls, it is still relatively very high (7,163 abortions in 2000, 30/1000 women/year). There has also been a decline in the number of abortions among under-14-year-old girls during the last few years, but those figures are also still high: 160 cases in 2000. There was a similar decrease in the number of live births among girls of adolescent age (26/1,000 women of that age), but a higher number of live births takes place outside marriage (26 per cent).

373. These days, teenagers in Hungary receive sexual education haphazardly and of different quality. In addition to a possible pregnancy, involving health and social disadvantages for them, sexual education could also prevent sexually transmitted diseases. Furthermore, there are very few gynaecology consultations available for teenagers, where they can receive advanced care and services (only very few, and even they are in larger cities).

374. A survey was conducted on health education practices in Hungarian schools. The findings of the survey concluded that children obtain information on healthy lifestyle very haphazardly and of variable quality.

375. Act XLII of 1999 on the protection of non-smokers contains legal guarantees for protection of children against passive smoking, among other purposes. In addition to regulations, strict control and educational instruments also need to be used.

376. The “Nursery School Programme for the Prevention of Smoking” launched by the National Health Information Centre (OEFK), and a future school programme based on it, represent one instrument aimed at developing deliberate and active steps taken against passive smoking.

377. A national vaccination/immunization programme aims to prevent contagious diseases that may be prevented with vaccines. The vaccination schedule, which has been formed and regularly updated on the basis of Hungarian and international experiences, is implemented on the basis of the Act on Health Care. The Hungarian vaccination schedule contains vaccinations to prevent 10 contagious diseases (tuberculosis, diphtheria, whooping cough, tetanus, measles, rubella, mumps, poliomyelitis, Haemophilus influenza (Hib) and hepatitis B). The vaccines in the vaccination schedule are provided by the State, free of charge. The National Public Health and Surgeon General’s Service (ÁNTSZ) is responsible for managing and controlling vaccinations, and the effectiveness of the activity is indicated by the fact that the proportion of vaccinated individuals is close to 100 per cent in the case of almost all vaccines.

378. Immunization is based on the diligent work of family practitioners, paediatricians and district nurses. This activity is also assisted with up-to-date information practices within the framework of which the “Johan Béla” National Epidemiology Centre publishes a detailed methodology letter concerning the vaccinations for the year in the first month of each year in the *Health Gazette*. This methodology letter contains all necessary information for vaccinations. Furthermore, this methodology letter is also sent in printed form to the physicians administering the vaccines. As a result of the efficient vaccination practices, Hungary’s epidemiological record with regard to contagious diseases that can be prevented by vaccination is one of the best in Europe.

379. It is an individual and fortunate feature of Hungarian childcare that two thirds of the child population between 0-14 years are treated by specialists within the framework of primary health care; nearly 5,000 district nurses, trained primarily in prevention, work in primary care. Each nursery school and school has an appointed physician and district nurse. Higher-level specialist care or inpatient care for children who cannot be treated within primary care may be provided almost immediately, with the exception of mental problems or cases requiring rehabilitation. The legal regulations governing the structure and services allow access to the required services for all children without any discrimination. Naturally, the place of residence and social and cultural environment of children may limit these opportunities, partly because of weaker health services in small and poor villages (lack of specialized primary care for children, lack of district nurses, or vacant physician positions). The health service network is the weakest where it would be needed most.

380. It is very important to “revive” the Mobile Special Physicians’ Service, which had been active for many years, in one form or another, and to provide special consultation in areas

without a paediatrician; to extend the capacities of the health system to treat mental problems and of child rehabilitation facilities (institutions and specialists); to improve the quality of health services at schools. The "For a Healthier Nation Popular Health Programme" has set a goal of developing such areas.

381. The "Charter of Children Treated in Hospitals" contains special features of children's rights adapted to inpatient institutions. Only those children should be referred to hospitals who really need hospital treatment. The financing system, which has been in place for 10 years, could not change the practice according to which institutions receive a lot more money for the same service (diagnostics, therapy) if it is provided to an inpatient compared to the service provided to an outpatient. Similarly, provisions of the Charter could not be implemented according to which inpatient children must be kept in a children's environment. According to paediatrician specialist reports, 20-40 per cent of child patients are still treated in adult wards, often among severely ill old people. The Ministry guideline, issued in the middle of the 1980s, has not been implemented. However, significant progress can be reported in the following areas: extension in the number of available birth options; more frequent births in the presence of fathers; establishment and maintenance of the baby-friendly hospital movement (primarily thanks to the UNICEF National Committee). The Act on Health Care guarantees a parent's right to participate in the nursing and care of his/her child in hospital. The quality assurance system of an increasing number of inpatient health institutions contains a survey of patient satisfaction and an analysis of cases of inadequate compliance (cooperation with the care staff). However, the above practices are at increasing risk of severe financial and personnel problems affecting hospitals, the declining empathy of the nursing staff due to a huge workload and the problems of daily life, and a large loss of prestige of careers in the health professions.

382. Negative trends have been present in Hungarian population growth since 1980 (decline), but the rate has been decreasing for the last few years. The decline of infant deaths, which lasted for several decades, stopped in 2000 (in 1999, it was 8.4 per 1,000 live births and in 2000, 9.2, but, according to preliminary data, in 2001 the figure was below 9 again). There is an increase in the average weight of Hungarian babies, yet the ratio of births below 2,500 grams is still high (8.4 per cent), corresponding to 150-200 per cent of the figures in Western Europe. The biggest barrier in the decline of infant deaths is the high frequency of premature births, and within that the ratio of premature babies weighing very little.

383. In 2000, the perinatal mortality rate was 10 per 1,000 births, and 55 per cent of the figure involved stillbirths. This calls for an urgent need to improve the lifestyle of pregnant women and birth control. There is a high proportion of pregnant women (36.4 per cent) requiring increasing care, and 14.5 per cent of pregnant women smoke. The 4.5 per 1,000 figure of deaths between 0 and 6 days after birth is the result of improving infant intensive care.

384. The 38.8 per 1,000 figure of infant deaths (158 deaths/year) is also an acceptable figure in a European comparison. From the age of 5, accidents represent a higher proportion of total deaths, while between 10 and 19 years of age, suicide also occurs, along with accidents. During the last few years, the number of deaths from accidents has declined significantly, and the number of suicides committed by children is between 40 and 60 per year. For the time being,

Hungary does not have a reliable reporting or monitoring system, which would help to understand better the nature and conditions of accidents (not only deaths from accident) and suicides (self-inflicted damage), which could also be used as a basis for prevention.

385. In Hungary, each educational institution (nursery school, primary and secondary school) has a paediatrician and a district nurse; 3,200 physicians and 4,300 district nurses conduct screening examinations on approximately 1.5 million students each year. The results of the tests show that there is an increase in the number of changes and illnesses characteristic of the health conditions of the young population in the same age groups. This increase may indicate a deterioration of health conditions, but it can also involve improvement of medical discipline and attention (for example, among 17-year-old teenagers, asthma occurred in 1.7 per thousand 20 years ago, and these days 13 teenagers suffer from asthma among 17-year-old secondary school students).

386. It can also be noted that the health conditions of children entering school continuously deteriorate during the school years. For example, for a particular age category, the proportion of scoliosis is 1.5-1.6 per cent at the age of 5-7 years, and the figure increases to 11.5 per cent at the age of 17.

387. In Hungary, the biological conditions of the 18-year-old male population were surveyed in detail in 1998 for the last time. The survey was conducted on a representative sample (by Kálmán Joubert et al.). It was concluded that for the last 25 years the average height of boys increased by 18 mm every 10 years (in total 4.6 cm), because their living conditions have improved. (In countries where living conditions, nutrition and hygienic conditions are ideal, height increases more slowly). In Hungary, the average height of boys subject to mandatory military service increases from the eastern part of the country to the west (175.8 cm). The weight of 18-year-old teenagers increased more than their height (in total, they are 5.3 kg heavier than 25 years ago), with an average weight of 68.3 kg. (The same trend can also be observed in younger age groups as well.) 26.4 per cent of this age category is not suitable for military service, but it is also important to note that nearly two thirds of them (16 per cent) are not suitable due to mental problems, neurotic diseases, or a disease of a sensory organ.

388. Concerning the Hungarian child population, the ratio of obese children is estimated variably in different reports depending on age and sex (from 1-2 per cent to 10-15 per cent), and there are also contradictory data for malnutrition. It is difficult to estimate the malnutrition proportions (between 4 and 4.6 per thousand).

389. Between 1997 and 2000, a national representative survey on nutrition and health was conducted among secondary school students. The survey covered about 6,400 students. The subjects of the survey did not have regular meals (nearly 40 per cent did not have breakfast, 51 per cent did not have a second meal in the morning, 18 per cent did not have lunch, only 28 per cent had something to eat in the afternoon, and 25 per cent did not have dinner regularly). Only 60 per cent of the children had milk and dairy products, 28 per cent ate raw vegetables and 55 per cent ate fruit every day. Only 30 per cent of the children used public catering services. 8 to 10 per cent of them were slim and 15 per cent were overweight and fat. Approximately 60 per cent of the subjects of the survey drank alcohol occasionally, 10 per cent of boys and 5 per cent of girls drank weekly; 4 per cent of boys and 1 per cent of girls drank alcohol several times a week.

390. There is also an increasing number of mental problems which, in addition to development disorders and hyperactive disorders, also include a high number of anxiety-related disorders (20-30 per cent) and childhood depression (estimated 4-20 per cent, depending on the severity of symptoms). According to the data of the "Health Behaviour of children of school age" report, in international comparison, there was a high proportion of Hungarian adolescents (especially 15-year-old teenagers) complaining about frequent bad moods, headaches and other, mainly psychosomatic symptoms. Between 1990 and 1997, according to the results of the four nationally representative surveys (1986, 1990, 1993 and 1997), there was an increase in the proportion of children who are not satisfied with their life ("not happy", "unhappy") and children considering their health "not good". There would be a definite need for complex surveys of standard health conditions conducted on representative samples, based on a good plan, with the involvement of relatively few surveyors. Since there are no such surveys, we have compiled a picture from reliable data using the puzzle method.

391. A government decree was issued in 2001 on the quality requirements of potable water and control procedures, and a National Potable Water Quality Improvement Programme was launched to supply perfect-quality potable water in settlements where the quality of potable water did not comply with the provisions of the decree with regard to one or several parameters. In settlements listed in Part A, annex 6, of the Decree (191), local governments must comply with the limit values by no later than 25 December 2006 with regard to arsenic, boron, fluoride and nitrite, and in settlements listed in Part B, local governments must comply with the limit values for arsenic and ammonium by no later than 25 December 2009 (686 settlements). With respect to transposing the guideline, the biggest task is to decrease the limit value of arsenic, which involves 402 settlements and 1,272,000 inhabitants. Compliance with the limit values of nitrite, boron and fluoride involves 121 settlements with 179,000 inhabitants.

392. The incidence of arsenic of natural origin (1981-1982) affected almost 500,000 consumers when it was recognized. According to the investigation, the number of stillbirths and spontaneous abortions was significantly higher in the affected areas, primarily in Békés County, than in the control areas (supplied with arsenic-free water). Among children, slight symptoms of arsenic poisoning (hyperkeratosis, hyperpigmentation) could also be observed.

393. The air quality limit values for residential areas are determined in a decree. Air pollution in cities is classified on the basis of by how much the limit values are exceeded with regard to the three main pollutants, sulphurdioxide, nitrogen dioxide and sedimenting dust. The ratio of diseases of the respiratory and digestive organs and dermatological problems relating to air pollution, nutrition and environmental allergens is estimated at 10-15 per cent.

394. The Hungarian HIV/AIDS situation is relatively good even by European standards. In order to promote actions against AIDS in Hungary and develop professional controls, in 1994 the Minister of Welfare created the National AIDS Committee in the form of a consultation board. The Committee is responsible for organizing actions against AIDS in Hungary, and developing general proposals for such actions, preparing, assessing and making the relevant decisions. Between 1985 and 31 December 2001, altogether 961 known HIV-positive individuals were registered. Seventy-two per cent of them were infected in homo/bisexual contacts. The ratio of



this risk group has significantly declined among HIV-positives recently. However, the contrary tendency may be observed in the number of those who have been infected in heterosexual contacts: between 1985 and 1990, that proportion was only 5 per cent, but since 1996, it has reached 27 per cent. Since 1986 (when mandatory controls were introduced for blood and blood preparations), no new HIV infections occurred among Hungarian haemophiliacs, but 4.5 per cent of them proved to be HIV-positive in the early period of the epidemic. For epidemiological purposes, it is an advantage that to date only two HIV-positive individuals were registered who had been infected in relation to the use of intravenous drugs. As the number of drug users is increasing in Hungary, it is expected that the risk of infection among users will increase significantly in future. A considerable proportion of registered HIV-positive individuals are not Hungarian citizens (until the end of 2001, in total 258 foreign HIV-positive individuals from 59 countries were registered. The proportion of infected foreigners has been gradually increasing for the last five years. Of the 961 HIV-positive individuals registered at 31 December 2001, 41 were children below 13 years of age, representing 4.8 per cent of the total number; 24 of them were foreigners. Of the HIV-positive children, 14 suffered from haemophilia from birth, and their infection had already been diagnosed in 1986. Of the 590 Hungarian HIV-positive individuals, 72 per cent live in Budapest or Pest County. To date, of the HIV-positive children, 15 were detected in Budapest and Pest County. The HIV-positive children and those infected with AIDS get antiviral treatment centrally, similar to adults, in Szent László Hospital, Budapest, where guidance is also offered to parents. The haemophilia care providers monitor those suffering from haemophilia.

395. State institutes (institutions of the public health network, institutions treating people with sexually transmitted diseases, blood supply stations) and social organizations have launched wide information campaigns for the population and special groups of the population (risk groups) since 1986. In these campaigns, experts gave presentations and a lot of brochures and fliers were distributed with the involvement of voluntary organizations and the media. These focus primarily on describing the methods of HIV infection and disseminating information on preventive methods. The population learnt that cohabiting with HIV-infected individuals does not involve a risk of infection without sexual contact. A small number of cases have occurred in Hungary where parents tried to isolate HIV-positive, primarily foreign children and they had to be stopped, with the involvement of epidemiology experts.

396. Constitution Court Resolution No. 36/2000 establishes that limitation of the right of autonomy of patients with limited capability of action (right of approval and rejection) applied in the same way as limitations to patients incapable of independent action under the provisions of article 54 (1) of the Constitution.

397. In the reporting period, the Parliamentary Commissioner for Civil Rights and his General Deputy conducted several surveys on children's rights with regard to health care:

(a) Report of the Parliamentary Commissioner's Office No 1403/1997. A 19-year-old boy living in a children's home committed suicide. Prior to the suicide, he was clearly in a bad psychological condition, but he did not receive any professional help to solve his problems. The Parliamentary Commissioner concluded that the boy's right to the best mental health, provided in the Constitution, was severely infringed, together with his right to protection and care required for adequate physical, intellectual and moral development, as his bad psychological condition was considered a fact, and he was not given any health support at all;

(b) Report of the Parliamentary Commissioner's Office No. 1942/2000. As a result of unhealthy housing conditions, the environment of the plaintiff and his family is not adequate from the viewpoint of health conditions, and it hinders the recovery of children of minor age from allergy. All these conditions infringe the right to a healthy environment. Due to the small number of homes still owned by the local government/municipality, the local government can only provide housing to a few applicants, as was the case with this plaintiff. Lack of social housing is not a legal issue but an economic one;

(c) Report of the Parliamentary Commissioner's Office No. 2244/2000. According to the report representing the basis of the investigation, orthodontic services were not provided to schoolchildren free of charges in Zala County. The Parliamentary Commissioner concluded that in Zala County there were no orthodontic services for years; therefore, there is a direct risk of infringement of a constitutional right to the best physical and mental health;

(d) Report of the Parliamentary Commissioner's Office No 4650/1999. At Rákospalota Girls' Home of the Ministry of Social and Family Affairs, cigarettes are used as an educational tool, an award or disciplinary punishment; therefore, development or alleviation of harmful dependence led to a troublesome situation because it represents a risk to the right to the best physical and mental health, stated in article 70/D (1) of the Constitution.

### **3. Social security and childcare services and facilities (arts. 26 and 18, para. 3)**

#### **Paragraph 100**

398. Children have practically the same right to social security as any Hungarian citizen and individuals staying in Hungary, in accordance with the effective legal regulations. These rights are specified in the Constitution and applicable legislation. The system serving social security services to children is based on several pillars. The services available on the basis of social insurance are determined in the Act on social insurance. Benefits available on a means-tested basis are regulated in the Social Act, while services extended on the basis of the Family Support Act are provided to families with children on the basis of a subjective right.

399. The Hungarian State supports children raised in families financially through several channels. The objective of this support is to contribute to the direct costs of raising children and to supplement the income of parents raising the child or children, making sure that parents can care for their children themselves. The individual types of support and the related procedures are regulated by law. A new act was passed in 1998 on support to families raising children which, in addition to supporting children living in poor families, aimed at supporting families with an average income so that families raising children should not be in a more disadvantaged situation than those who do not raise children. Contributions to the costs of raising children are direct and indirect. Every mother is entitled to a single maternity support payment to cover extraordinary expenses occurring at the time of childbirth. Later on, parents raising children receive direct financial support monthly in the form of child-raising support, (family allowance and schooling support), and they are also entitled to family tax allowance within the framework of the personal income tax system. In addition to these types of support, families in a socially disadvantaged situation are also entitled to supplementary family allowance.

## Paragraph 101

400. Parents caring for their children, and thus unable to work, receive income substitute primarily within the framework of social insurance, in the form of pregnancy and maternity support, followed by childcare benefit. For those who are not covered by social insurance, the State provides a lower amount of support from general taxes, on the basis of a subjective right, in the form of childcare benefit and child-raising support. Hungarian citizens living in Hungary and foreign citizens staying in Hungary with a permanent residence permit, or recognized by Hungarian authorities as refugees, are entitled to family support.

401. The single maternity support payment is available for all women giving birth to a child, irrespective of whether they worked earlier and whether they are covered by insurance. The amount of maternity support equals 150 per cent of the lowest amount of the currently prevailing old-age pension. (In 2002, the old-age pension minimum was HUF 20,500 a month.) Under the title of child-raising support, a parent or adoptive parent is entitled to family allowance, and then, as soon as school starts, schooling support for each child below the age of 16 raised in his/her household (or children below the age of 20 participating in primary or secondary education). The two types of support are available for all families raising children on the basis of a subjective right, under the same terms and conditions, irrespective of their wealth or income conditions, or whether the applicant is employed or covered by insurance.

402. In the case of schooling support, a certificate is also required stating that the child is subject to compulsory schooling. The schooling support is not withdrawn even if the child does not attend a school, but in such a case child protection measures may be required in the interest of the child.

403. The amount of child-raising support depends on the number of children raised in the family, the health conditions of the child, and whether he/she is being raised in a family with one or two parents. In 2002, the monthly amount of support was HUF 3,800 per child in the case of families with one child, HUF 4,500 in the case of an adoptive parent raising one child alone, HUF 4,700 in the case of families raising two children, HUF 5,400 for single parents raising two children, HUF 5,900 in the case of families with three or more children, HUF 6,300 in the case of single parents raising three or more children alone, HUF 10,500 for a chronically ill or severely disabled child, and HUF 5,400 in the case of children living in a home, or placed with foster parents.

404. The family tax allowance can be claimed by individuals subject to the payment of personal income tax in Hungary, provided that they also receive child-raising support. The rate of tax allowance depends on the number of children raised in the family. In 2002, it was HUF 3,000 per child per month, HUF 4,000 per child per month for two children, and HUF 10,000 per child per month for three or more children. The same individuals are eligible for tax allowance as are eligible for child-raising support, the only difference being that tax allowance is available from the ninety-first day of the conception of the child. Either parent may claim the family tax allowance, and parents can also share it. Parents raising children or supporting students below the age of 25 are eligible for supplementary family allowance, if the per capita monthly income of the family is not higher than the lowest amount of the old-age

minimum pension (in 2002, HUF 20,500 a month). This practical benefit-type support is extended by local governments, the funding of which is reimbursed by the State budget up to 75 per cent. Supplementary family allowance is disbursed for approximately 800,000 children, representing approximately 40 per cent of the total number of children. In 2002, the amount of supplementary family allowance was HUF 4,300 per child per month.

405. Either parent raising children is eligible for childcare benefit on the basis of a subjective right until the child is 3, providing that he/she raises the child in his/her own household and he/she is not working. While the child benefit is being paid, when the child is 18 months old, daily work for up to four hours may be undertaken. Parents raising chronically ill or severely disabled children are eligible for childcare benefit until the child reaches 10 years of age. The term of disbursement of the childcare benefit is included in the service period for pension; therefore, individuals receiving the benefit pay an 8 per cent pension contribution and the State budget pays a 21 per cent pension insurance contribution to the relevant funds. The amount of childcare benefit is identical to the lowest amount of old-age pension.

406. Parents who raise at least three minors in their own households, with the youngest child between 3 and 8 years of age, are entitled to child-raising support. The amount of child-raising support is the same as the amount of childcare benefit and, under identical conditions, the term of disbursement is included in the service period for pension.

407. Pregnant women are eligible for pregnancy/maternity support if they are covered by insurance at the time of the application for support or give birth within 42 days of the termination of insurance, or use sickness benefit after the termination of insurance and give birth during the period of sickness benefit coverage, or give birth within 28 days of the termination of sickness benefit and have had at least 180 calendar days of insurance coverage up to two years prior to the application date. The pregnancy/maternity support is payable during the maternity leave, which is 24 weeks in Hungary. Four weeks of the maternity leave can be used before the childbirth. The amount of pregnancy/maternity support equals 70 per cent of the previous average wages.

408. The Child Protection Act (Gyvt.) obliges local governments to provide sufficient services and supervision during the day for children whose parents cannot care for them during the day because they are at work, they are ill, or for other reasons. Such services must primarily be provided for children who are raised by single parents or old people, or who cannot be cared for by their parents due to their bad social position. The daytime care of children may be organized for a period during the day or for weeks, primarily in the framework of activities in nurseries, family childcare facilities, nursery schools or after-school care, or in-house child supervision. The Child Protection Act (Gyvt.) specifies three forms of daytime care for children: nurseries, family daytime care facilities and in-house child supervision. Nurseries care for children below the age of 3 being raised at home, as well as provide early training and rehabilitation care for handicapped children. As an additional service, nurseries can also undertake the supervision of children for specific periods, and may assist families by operating a children's hotel, or running other services assisting child-raising.

**Number of nurseries and places in 1999 and 2000**

Owner	1999		2000	
	Number of nurseries	Places	Number of nurseries	Places
Local government	520	25 158	504	24 035
Company	15	528	11	386
Foundation	3	64	3	64
Enterprises	4	107	6	252
Central administration	1	80	1	80
Non-profit companies (NGOs)	2	8	2	70
Joint ownership	2	30	3	54
Public foundation	2	24	2	24
Total	549	26 071	532	24 965

**Paragraph 102**

409. The services of active nurseries are used by approximately 7 per cent of the child population aged 1-36 months. Between 1990 and 2000, the number of such institutions dropped by approximately 50 per cent (in 1990: 1,300, in 2000: 532 nurseries). There were several reasons for this decline: family policy corrections with the objective of keeping children in their families as long as possible; demographic reasons; and the introduction of new services (family daytime care, child supervision for specific periods, playgroups, children's hotels, in-house child minder service). However, it must be noted that since the increase in the number of places in nurseries occurred as a requirement of the society, some development has taken place in this direction since 2001.

410. It is a task for child and youth protection to arrange daytime supervision for children. The public educational institutions are involved in this activity. On the basis of the provisions of the Public Education Act, nursery schools fulfil the task of caring for children during the day. Nursery schools care for children between the ages of 3 and 7 years. On the basis of the provisions of the Act, after-school daytime care must be organized at schools from first to the tenth year, in accordance with the parents' requirements. Family daytime services provide daytime care for children below the age of 14, mainly in smaller settlements. The childminder receives and cares for children during the day in his/her own home or other premises specifically established for this purpose. The conditions for the provision of this service are defined in legal regulations. This type of service and the in-house child supervision detailed below have been created with the Child Protection Act (Gyvt.); therefore, the establishment of a national network has only started recently. This explains the low number of these services. Daytime care for children includes the supervision of children not attending nursery schools, supervision of children in families and outside the official school time, and supervision of children not using the daytime care facilities of schools for purposes other than public education. A family daytime care facility provides supervision and care, education, boarding and other activities for children raised at home during the day and in accordance with their age. Disabled children must receive services in accordance with their special needs.

### Family daytime facilities in 1999 and 2000

	1999			2000		
	Places (on 31 December 1999)	Actual days of care	Minors supervised in family daytime facilities in 1999	Places (on 31 December 2000)	Actual days of care	Minors supervised in family daytime facilities in 2000
Total	268	15 976	424	272	18 338	852

411. In the framework of in-house child supervision, daytime care is provided in their own homes for children who cannot be placed in a daytime institution for a variety of reasons. This service must be adjusted to the parents' work schedule. In the framework of in-house child supervision, daytime care may be provided to children by a childminder in the home of the parents or other legal representative if permanent or temporary care for the child cannot be provided in a daytime institution (for example, due to an illness) and the parent cannot care for the child during the day at all, or only partially. The term of daytime care provided in the framework of in-house child supervision must be adjusted to the work schedule of the parents. In 2000, in total 26 childminders cared for 312 children.

412. The Child Protection Act (Gyvt.) sets an obligation for local governments to provide daytime care for children in some form. A local government may operate its own institutions for this purpose, but they can also satisfy this obligation by entering into a contract with an institution operated by an NGO - church or foundation - or an entrepreneur for such purposes. The State provides support to local governments and other operators for these tasks from the central budget.

### Paragraph 103

413. The Parliamentary Commissioner for Civil Rights concluded in several cases during the reporting period that the extension of procedures related to benefits and services for children, and late disbursement, caused infringement of the right to social security (see Parliamentary Commissioner's Office report 4330/2001, Parliamentary Commissioner's Office report 4049/2000, and Parliamentary Commissioner's Office report 571/2000). Similarly, a constitutional anomaly arose in several cases from local government decrees, which interpreted the provisions of the law in relation to services with limitations and set further conditions for eligibility for services that were not regulated by law (see Parliamentary Commissioner's Office report 3768/2001, Parliamentary Commissioner's Office report 4703/1999, Constitution Court Resolution 7/1999 AB).

414. Constitution Court resolution No. 42/2000 states that the right to social security specified in article 70/E (1) of the Constitution contains a State guarantee of the minimum subsistence by means of social services. No specifically defined partial rights, including the right to housing, can be derived as fundamental constitutional rights from the guarantee of minimum subsistence. The Child Protection Act (Gyvt.) describes the concept of support as home creation, temporary homes for families, temporary care for children and follow-up care. In relation to these types of support, the Constitution Court has repeatedly stressed that the State must continuously strive to increase the rate of support, taking into account the current conditions of the national economy, and extend social services in accordance with the performance of the society.

415. Constitution Court resolution No. 8/1999 states that, pursuant to the provisions of the Child Protection Act (Gyvt.), the subject of child protection support, extended as an inkind service, is the child who is exposed to financial or social risks, and that the support must be used to alleviate the expenditure directly relating to the child. The existing social policy system, regulated in the Welfare Act (Szt), is aimed at alleviating and supporting expenditure affecting the entire family, including children. The elements of this system aimed at housing support cannot be integrated into the child protection support system of the local government decree adopted for the local implementation of the Child Protection Act (Gyvt.), because that would be contrary to the objectives and provisions of the Child Protection Act (Gyvt.).

416. In the reporting period, the Parliamentary Commissioner for Civil Rights and his General Deputy conducted a lot of surveys in relation to social security. Parliamentary Commissioner's Office report No. 3965/2000 established that the objective of regular child welfare support is to assist children at risk, due to financial reasons, of failing to receive care at home from their own family in accordance with the rights of the child, and also established that deduction of the support from the local tax liability infringes the constitutional right of the child to outstanding protection and is separate from the constitutional principle of legal security prevailing in a State of law.

417. No. 1609/2002 Parliamentary Commissioner's Office report. A mother raising her child submitted a petition claiming that young mothers do not receive information on the benefits they are entitled to for their children, where the benefits can be applied for, where the application forms are available and what documents need to be submitted for the application. With regard to the part of the petition concerning family support and benefits, it was acknowledged that lack of information and its occasional nature cause problems in relation to legal security prevailing in a democratic State of law, defined in article 2 (1) of the Constitution. The Parliamentary Commissioner recommended to the national medical chief nurse that district nurses should be given information on all available family support types and benefits in the entire country. District nurse services should have forms related to types of family support, and they should also be aware of the address and accessibility of the competent Regional Public Administration Office. It should be made compulsory for district nurses to provide information to pregnant women treated by them before birth on the types of family support and accessibility of the competent Regional Public Administration Offices.

418. Parliamentary Commissioner's Office report No. 5499/2000 states that the local government provides regular child protection support to all eligible primary school students and nursery school pupils in the form of inkind benefits (meals). The law does not allow local governments to provide support to all eligible individuals only and exclusively in the form of inkind benefits and individual cases cannot be studied with a view to providing the most suitable benefit.

419. Parliamentary Commissioner's Office report No. 1425/2002 established that the unclear provisions of applicable legal regulations have resulted in problems related to constitutional rights. Since 1 January 1999, when Act LXXXIV of 1998 on family support entered into force, no mother has received family allowance for children born and temporarily placed in a penitentiary hospital, thereby infringing the right of children concerned to appropriate physical, intellectual and moral development.

#### **4. Standard of living (art. 27, paras. 1-3)**

##### **Paragraphs 104 and 105**

420. The physical, mental, intellectual and moral development of children is influenced by the situation and region of their place of residence, financial and cultural relations in their household, and family holidays. In addition, the economic, cultural and health position of the mother, the relationship between work and home and the time spent directly on children also have an influence on development. The annex describes in detail life conditions promoting the development of parents and children (regional distribution and living conditions of households, their income and support depending on the number and age category of children, and institutional services; demographic, economic and cultural characteristics of mothers and their time management), and how the State assists parents (institutional services for children, social support, food and clothing allowance).

#### **G. Education, leisure and cultural activities**

##### **1. Education, including vocational training and guidance (art. 28)**

##### **Paragraph 106**

421. The Constitution stipulates that the Republic of Hungary provides the right to education to its citizens, which is implemented through the extension and generalization of general education, free and mandatory primary schools, secondary and higher education available for everyone based on capabilities, and financial support for those participating in education. The Republic of Hungary respects and supports the freedom of scientific and artistic life, freedom to study and the freedom to teach.

422. The Public Education Act stipulates that public education includes education in nursery school, schools and dormitories. Schools can participate in vocational training under the terms and conditions laid down in the Act on vocational training. Nursery schools, schools and dormitories participate in teacher training and additional training in accordance with the provisions of the Act. Everybody is entitled to education and training in public education institutions. The State is responsible for operating a public education system. Within the framework of tasks specified in the Act, nursery schools, schools and dormitories are responsible for the physical, intellectual, emotional and moral development of children, and for the establishment and development of a children and student community. The Public Education Act is currently being revised.

423. The scope of the Act on vocational training covers basic training, obtaining vocational qualifications required for a particular job, occupation or activity, as well as rehabilitation training for those in a disadvantaged situation and with changed working abilities. Vocational training institutions include vocational training schools, secondary schools training for specific skills, special technical schools, and workforce development and training centres.



424. The right to higher education is regulated in the Act on higher education and a Government decree laying down the general rules for admission procedures for higher education institutions.

425. The ministerial Commissioner for Educational Rights regularly monitors the implementation of the right to education. There has been an increase in both the number and proportion of petitions submitted by students. In 2000, of the petitions submitted to the office, 20 per cent were from students. This proportion rose to 33.8 per cent in 2001, and 38 per cent in 2002. In view of the fact that young people like using the Internet and electronic mail, the method of approaching the office has also changed. In 2000, only 5 per cent of the petitions were submitted in an electronic form; in 2001 it was 31 per cent, and in 2002, 50 per cent of the petitions were submitted via e-mail. In 2001, the Commissioner submitted a legislative proposal to the Minister of Education as a result of a survey initiating amendments to the Act on higher education so that students with disabilities could sit for exams in accordance with their abilities. The Minister accepted the proposal and Parliament amended the Act on higher education, authorizing the Minister to regulate these issues in a ministerial decree. The decree entered into force at the beginning of January 2002.

426. During the three years of operation, the Commissioner found that Hungarian legislation complied with international conventions and the requirements of democracy on most issues. This is justified by the fact that only six legislative proposals were made. However, there is a huge backlog in the area of the implementation of regulations. The problem is not only that the individuals concerned are not aware of their own rights; even institutions and authorities are not aware of the legal regulations which are responsible for protecting and implementing the rights of children. However, it is an equally important problem that there is no forum for the rational solution of conflicts in educational institutions.

427. Authorities have a lot of education-related information, but the information does not reach children, although that could lead to cooperation between all parties concerned. Everybody feels deceived if information has been hidden. Conflict can only be avoided if the most important data are available for children and families when they make decisions. The Commissioner is convinced that this is the only way democracy can work at school. The Hungarian authorities still have a lot to do in this field.

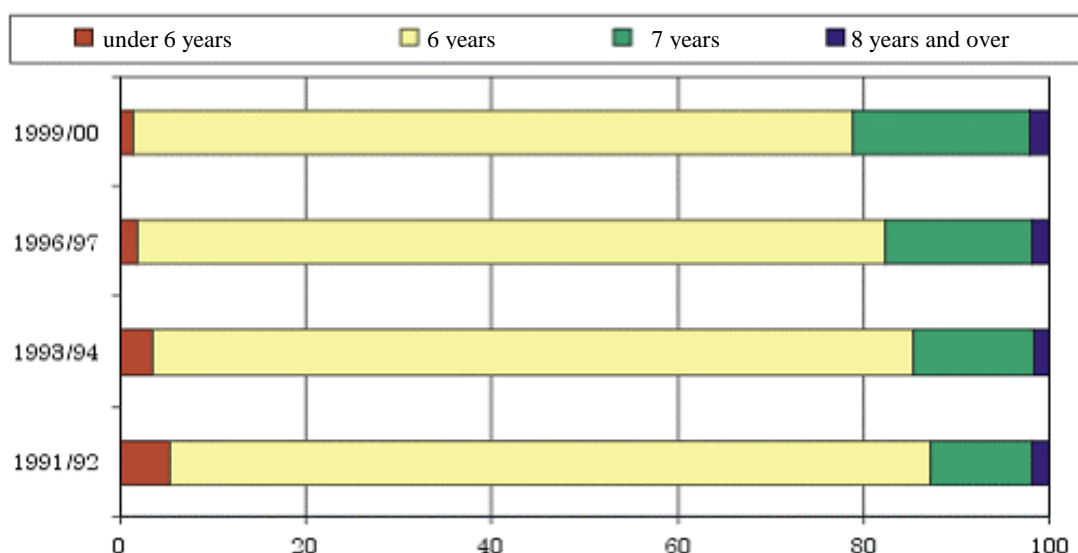
428. Children belonging to minorities are entitled to participate in nursery school and school education in their own language. In Hungary, a considerable proportion of the population of nursery school age, 92 per cent (in 1990, 87.1 per cent) attend nursery schools. Regarding the network of nursery schools, the majority are still run by local governments (94 per cent in the country, 81.7 per cent in Budapest). Compared to the past, churches, foundations and other non-local government agencies participate more in the care of children of nursery school age. Their role is most striking in Budapest.

429. Occasionally the large size of the groups represents a problem in nursery schools, although the number of nursery school pupils has declined significantly as a result of demographic changes. On the basis of 1999/2000 data, 39.6 per cent of the groups have more

than 25 pupils (the maximum number allowed). In the National Programme of Nursery School Education, it is an important principle that child education is primarily the right and obligation of the family, and nursery schools only have a supplementary role. Teachers conduct their pedagogic work under the permanent influence of the opinion of parents a lot more in nursery schools than other schools.

430. As a result of flexible school starts, with children starting school when they are mature enough, the age of children in the first class has changed. Between 1991/92 and 1999/2000, the proportion of children below the age of 6 dropped from 5.3 per cent to 1.3 per cent and the proportion of 6-year-old children also decreased, especially in the last few years (1999/2000, 78 per cent of students in the first class were 6 years old), but the proportion of 7-year-old children in the first class has increased significantly, from 11 to 18.9 per cent. The proportion of older pupils was about 2 per cent in the period covered.

**Composition of students in the first class of primary school by age group,  
1991/92, 1993/94, 1996/97 and 1999/2000 (per cent)**



*Source:* Ministry of Education, education statistics.

431. Concerning the number of pupils starting primary education, the impact of demographic processes can be felt in the number of pupils in primary schools. While at the beginning of the decade the upper classes contained significantly more pupils, by 1996/97, the difference completely disappeared, and the number of pupils in a year varied between 115,000 and 125,000. In 1999/2000, the number of students was about 340,000 fewer than the peak number in 1986/87. After the demographic peak, the proportion of students attending lower and upper classes is practically the same. Since 1997/98, primary schools also contain 9th and 10th classes, but the number of students attending those classes is not significant. The distribution of primary school students according to sex is the same as in the relevant age group, i.e. there is a

slight majority of boys. The proportion of girls has been stable - approximately 49 per cent - for years, while in the 1999/2000 school year, of the total of 960,601 students, 469,500, i.e. 48.9 per cent, were girls.

432. As a result of the changes taking place in recent years, entry into secondary education is possible at several ages: 10, 12 and 14. As a result of competition between schools, an entrance exam is now generally used irrespective of the training programme, despite the fact that originally it was required in institutions offering special training programmes. Entrance exams were introduced because the decisions on the acceptance of students fell into the competence of the management of the school. The amendments to the Public Education Act in 1999 significantly restricted the decision-making freedom of schools in this area in order to eliminate a superfluous workload on students, because entrance exams can only be organized for a scope covering and with a method specified in the procedures of the curricular year. Concerning the 1999/2000 academic year, the ministerial decree regulating the entrance procedures allowed the organization of an entrance exam in the case of secondary elementary schools for years below the 9th year if the average number of applicants for the last three years was 3½ times higher than the number of acceptable students. The entrance exam was a centralized and standard competence test in the 1999/2000 curricular year. The same decree set new rules for further training after the 8th year too: from 2000, entrance into a secondary institution takes place with the use of a new central information system.

433. During the last few years the school system became very fragmented, and there are significant differences between the content, standards and efficiency of individual institutions. These differences represent a risk in relation to the subjective right to quality education in the case of numerous students. A national curriculum represents a stop to this undesirable process and guarantees that education operates in a system. The national curriculum sets a clear and common basis for preparing a local syllabus. The curriculum sets out clearly for teachers what is expected from each institution, based on civil rights. The curriculum for all subjects and educational modules focuses on skill development and the principle of learning based on activities. Therefore, it functions not only as a regulatory instrument, but also as a source of up-to-date methodological knowledge, improving the quality of public education. The modification of the Public Education Act defined four basic pillars of development of public education: improvement of financing conditions; a stronger role for planning; supplementing the documents regulating the content of the curriculum; and putting in place conditions for evaluation, control and quality development. The focus on the quality principle also creates a clear framework in education for institutional autonomy. The objective of quality-based education control is the coordination of the education system and the setting and establishment of the frameworks and procedures within which schools and nursery schools can operate, according to the local requirements and expectations. Institutional autonomy cannot be an end in itself; it will achieve its real meaning when it is capable of providing quality education for everyone while satisfying special expectations.

**Paragraph 107**

434. The Public Education Act prohibits discrimination, and also contains a lot of measures for equal opportunities. There is a separate provision dealing with students who are not capable of progressing with the others because of their condition. The Act provides for the right to special care and rehabilitation-type services, within the framework of which children and students can claim additional services and preparation in accordance with their condition in order to overcome deficiencies of the body, sensory organs, mind and speech. The same provisions guarantee additional services required for the preparation of children and students struggling with learning, behavioural and integration problems. A separate institutional system gives advice for the preparation of the students and children concerned. Educational consultation, speech therapy services, conductive pedagogy and expert and rehabilitation activities guarantee that these children and students receive the required care in nursery schools and schools.

435. The Constitution also recognizes the right of individuals belonging to national and ethnic minorities to participate in education and training in their own language. On the basis of the Public Education Act, nursery school education, school education and training, and boarding schools may also be organized in the language of national and ethnic communities in addition to the Hungarian language. It is up to the parents to decide what education to choose for their children. The law sets an obligation for local governments to organize minority services. If eight parents belonging to the same national or ethnic minority request a nursery school or primary school, the village, town, county borough or Budapest district government has to organize the institution. The counties are responsible for secondary schools. The State budget supports the organization of national and ethnic minority education with a separate supplementary normative contribution.

436. Institutions offering special pedagogic support provide adequate education for children and students. The education consultation service, further education selection consultants, and the expert and rehabilitation committee help children and students in a situation disadvantaged because of their capabilities to receive appropriate services.

437. The Public Education Act defines the qualifications for teachers. Only individuals possessing the required qualifications can perform pedagogical activities. The requirements are valid throughout the country. In general, the number of teachers working in the educational system of the Republic of Hungary is sufficient.

438. The law stipulates the obligation of local governments to organize public education services. Each village, town, district and county borough is obliged to guarantee that children and students living in the area of their jurisdiction can have access to nursery school education and school education.

439. There are special institutions in public education for students who were unable to successfully complete primary school during the years of compulsory school attendance, i.e. until the age of 16. Such students learn subjects related to general education, as well as subjects with the help of which they can join vocational training in the framework of this follow-up training. This type of training was added to the Public Education Act in 1998. At the moment, a few thousand students attend such training.

440. Early development and care for children below the age of 3 must also be organized on the basis of the provisions of the Act. Early development and care may be organized at home, in nurseries, or in the framework of services provided in the home by nurses and carers, or in the framework of care in children's homes, under remedial education, consultation, early development and care, or conductive pedagogic services. Children may participate in early development and care until the age of 5. After that, children who are unable to attend school will participate in obligatory training. In the obligatory training, they receive all services that are required for the development and improvement of their personality. The obligatory training lasts from the age of 5 to the end of the compulsory school attendance age. The preparatory year and individual progress increase the chances of students who struggle with a disadvantage at the beginning of school, or during the first four years, to attend a school. This category also includes Roma children in a disadvantaged sociocultural or social environment. With this regulation, children need not attend a school with a special curriculum at the beginning of their school attendance unless there is a specific reason.

441. This Government provides HUF 84,000/person for disabled persons participating in higher education. Education of individuals participating in national and minority training is supported at a high normative rate. During the entrance exam, they can use their own language, and higher education is provided in the languages of six of the officially recognized nationalities. In 2000, a Roma studies specialization was established for the Roma minority and for those holding a teacher's diploma, a post-graduate specialization was introduced in Roma sociology. A foreign language exam may be taken in the Roma language, which is officially recognized by the State.

442. Regarding primary education, the school network has been extended during the first years of the decade, mainly in regions with small villages where the proportion of commuting students has decreased. However, there is still a high number of schools at risk of closure because of the low number of students or inadequate financial capacities of local governments. Despite the fact that regional higher education centres have strengthened and the scale of higher education has increased with specializations, there are still unequal opportunities in further training and there are large differences in the standard of education. Outstanding support is needed for training and retraining, primarily in preferred regions, equal opportunities must be provided for disadvantaged groups and attempts must be made to reduce differences in the standard of education. The surveys of the last few years proved that the follow-up training supported with special amounts did not satisfy the hopes, and even strengthened segregation of disadvantaged and Roma children within schools. From September 2004, the Government will also introduce a new, so-called integration normative support, which will be made available for the gradual elimination of such segregation.

### **Paragraph 108**

443. In the Republic of Hungary, all children must attend school. Compulsory schooling lasts until the age of 18 for children who began their primary school studies in the 1998/99 academic year or afterwards (earlier compulsory schooling ended at the age of 16). The notary competent in the place of residence is obliged to monitor the start of school attendance and the completion

of school attendance obligations. The notary must prepare a list on the basis of which each school knows which students need to be enrolled. The school director must notify the notary if a child subject to obligatory school attendance has not been enrolled in the school. The students must be monitored until the end of the compulsory schooling period. The school must notify the notary if a student subject to compulsory schooling does not attend school, drops out or does not enrol in another school after completing the first school. In a public administration procedure, the notary can oblige parents to take their child to school. In extreme cases, a criminal procedure may also be initiated.

444. The Act on public education defines the services that are available free of charge. The free status relates to the tasks of local governments. Nursery school services, primary school education and the 9th and 10th years of secondary education are free of charge. In general, school education is free until the age of 23, provided that the student attends a daily course. This free status applies to services extended by institutions. Meals, textbooks and other required instruments, such as clothing and shoes, are not free. The budget, however, contributes to such expenditure. Part of the support is distributed through public education institutions, and the other part is distributed in the framework of child and youth welfare. Various pedagogical services, education consultation, further training selection, conductive pedagogic services and expert and rehabilitation committees offer their services free of charge. Education is also free of charge in adult education until the end of the 10th year. In school education operating with daily courses, the first and second qualification are also free of charges until the ages specified above.

445. In the territory of the Republic of Hungary, secondary education is provided by elementary schools and secondary technical schools. Elementary school and secondary technical school attendance are among the free services in the framework of daily education. Disabled students can always use the services free of charge. Until 1998, the first qualifications could be obtained free of charge in school education, but since 1998, the second qualification is also free.

446. All students of all settlements must have access to the services of public education. The Budapest and county governments must prepare a development plan, in which they indicate the services available for particular settlements. The institutional system of public education covers the whole territory of the Republic of Hungary. Secondary education is available for everyone free of charge, with standard support, which does not depend on the situation within the country, or the number of children and pupils attending the institution. It is the right of the children and students to receive free or preferential meals and learning tools in education and training institutions, depending on the financial position of their families, and to be exempted, partly or entirely, from the payment of expenses obligatory for students according to the law, or receive permission to defer a payment obligation, or pay in instalments. The State also provides budgetary support to organizations operating non-State-owned or non-local government-owned public education institutions in an amount specified in the Annual Budget Act in accordance for the tasks of the institution. A local government or the State may also provide supplementary support in addition to the budget support if, on the basis of an agreement regulated in the Act, a

non-State-owned or non-local government-owned public education institution performs a State or local government task. No budget contribution can be allocated to the operator of educational institutions for practical vocational training in a school system if the organization operating the institution is obliged to pay vocational training contribution.

447. The amendment to the Vocational Training Act has extended the range of free services, and thus the first and second vocational exams are free during the study period. Similarly, the additional exams and the first correction exam are also free.

448. In relation to the right to education, the Constitution permits contribution according to capabilities in the present admission system. The State specifies the number of students to be financed by it each year. The entrance exams are regulated in a separate legal regulation, based on public administration. The proportion of students participating in higher education in a given age group reaches 30 per cent, and the objective of development of higher education is to increase this proportion to 50 per cent. Preferential subsidy is given to nationality training (a specialization is launched with a low number of students). Applications and scholarships are also offered to assist successful entrance examination applicants. Regarding education providing a second diploma, the State finances the second diploma in remedial teacher training for 400 individuals. In 2002, the completion of a psychology specialization was also made available for 100 teachers in a similar framework. On the basis of an application, individuals participating in training for mental hygiene, health development and supervisor training will receive higher support on the basis of an application. The Hungarian State introduced a credit system for higher education students in 2001 and offers HUF 400 million in support, based on an application, within the framework of "Chance for Learning" Public Foundation. In addition, with the Bursa Hungarica Higher Education Scholarship, the State also contributes to higher education studies of young people supported by local governments.

### **Paragraph 109**

449. The Education Act does not specifically define pregnancy, deficiency, HIV/AIDS infection or punitive judgement among the causes for exclusion from education. The Replacement Committees of the Ministry of Education provide training and education opportunities for individuals with deficiencies, pregnant girls and HIV-infected individuals, in the spirit of the Public Education Act. It is a very important human right that each child should receive education according to his/her capabilities, and that equal opportunities should be given for learning in all areas of education. Minorities with low populations, living scattered in the country, learn their native language in the framework of a so-called Sunday school, and they can also participate in "supplementary minority education".

450. In the case of disadvantaged Roma students, a mandatory element of the nursery school and school programmes is to provide a chance for schooling. It is a mandatory element of all minority education and training to develop minority culture and pass on popular knowledge. It is important that students and their parents select minority education and its forms voluntarily and freely. The central budget provides supplementary support for such tasks, representing 25-30 per cent of the basic support. It is extremely important for disadvantaged

Roma children because it increases the chances of Roma children for school education as, according to the provisions of the Education Act, the nursery school training period may be extended on the basis of an expert opinion. An individual progress schedule can be defined in the lower classes, which means that until the end of the fourth year, children are exempted from assessment. It is important, though, that by the end of the fourth year they must be able to satisfy the requirements. These measures may protect children from initial failures and can also prevent Roma children from being enrolled in schools operating with a special syllabus without a good reason. It also increases the chances of disadvantaged Roma students in school education and vocational training that students who did not complete eight years of primary school during the compulsory school attendance period can participate in a one- or two-year follow-up course in a special school, in the framework of which they can prepare for vocational qualifications.

451. The most important point of this measure is that students should not leave the public education system without qualifications. The success in education of students belonging to the Roma minority is also assisted by the Ministry of Education in the form of special programmes implemented in the framework of public applications, including support to the operation of minority education institutions and NGOs, support to popular knowledge and lifestyle camps, support to accredited post-graduate training for teachers participating in Roma minority education, research supporting Roma minority education and support to the production of teaching aids required for Romology training.

#### **Support made available from the corresponding chapter of the central budget**

Title	1996	1997	1998	1999	2000
	in HUF '000				
Education programmes	6 274	8 027	3 600	31 000	5 800
Reimbursed study costs	2 718	7 322	7 850	7 281	8 980
Supplement to operating expenses for public education institutions	5 000	5 324	14 194	3 000	2 500
Romology research and higher training	5 362	12 530	10 320	4 100	4 500
Development of training institutions	10 300	8 500	22 167	19 300	153 000
Tradition-preserving and popular knowledge camps		8 748	8 200	6 100	6 275
Post-graduate training of teachers, Romology conferences	425	655		7 600	6 900
<b>Total</b>	<b>30 079</b>	<b>51 106</b>	<b>66 331</b>	<b>78 381</b>	<b>187 955</b>

452. In order to promote successful education, the Ministry of Education announced a boarding school development programme for Roma students in 2000 for the first time, for which HUF 150 million were allocated, based on applications. Consequently, from September 2001, in total 287 disadvantaged Roma students were admitted to 16 boarding schools. In 2001, a special Roma talent support programme was launched in three secondary education institutions in the framework of the Arany János Talent Support Programme.



453. The progress of disadvantaged Roma students in school is supported with the scholarship system covering the entire school system.

**Scholarship support from the “Public Foundation for Roma People in Hungary” between 1996 and 2001**

Year	Primary education		Secondary education		Higher education		Other		
	No.	HUF '000	No.	HUF '000	No.	HUF '000	Definition	No.	HUF '000
1996/97							Support to textbooks and other school stationery for primary schools	8 039	30 000
1997/98	272	25 000							
1998/99	748	25 645	93	3 720					
1999/2000	1 933	70 900	497	17 910					
2000/01	4 285	124 895	1 720	77 920	406	43 600	Higher education abroad	9	1 190
							Technician training	9	360
2001/02 first half-year	6 995	140 530	2 838	84 320	950	57 200		24	3 085

**Scholarships provided by the Hungarian Public Foundation for National and Ethnic Minorities between 1996-2001**

Year	Secondary level		Higher level	
	No.	HUF '000	No.	HUF '000
1996/97	675	33 750	110	7 700
1997/98	401	20 050	132	9 240
1998/99	540	27 000	103	10 300
1999/2000	562	28 100	111	11 100
2000/01	662	33 000	174	17 400
Total	2 840	141 900	630	55 740

454. In accordance with Constitution Court resolution No. 1042/B/1997, the conclusion cannot be drawn from the international treaties examined that the State must provide primary education free of charge, according to the parents' choice, with regard to all organizations operating public educational institutions. It does not follow from the treaties referred to either that the State must provide the same conditions of support that it offers to organizations providing free education to everyone at the school of choice. The fact that non-State-owned and non-local-government-owned institutions may charge a fee does not involve a consequence violating the prohibition of discrimination.

455. The Parliamentary Commissioner for Civil Rights and his General Deputy conducted numerous surveys in the reporting period in relation to the implementation of the right to education:

(a) In Parliamentary Commissioner's Office report No. 3193/1997, an answer had to be found to the question whether, according to the effective legal regulations, a local government is obliged to provide access to various education and training methods in institutions run by it. The Act on local governments states that primary school education and training and secondary education are mandatory tasks for local government, but it does not contain any provisions concerning the methods. Similarly to the Act on local governments, the Public Education Act does not contain any provisions on the accessibility of training and education methods. However, the approach to the problem from the point of view of the obligation of the local government is only one of the possible methods. The other thing is to define the scope of the right to education;

(b) Parliamentary Commissioner's Office report No. 6796/1997 established that a teacher prohibiting a student from attending lessons due to his conduct infringed the provisions of the law and led to a conflict in relation to article 2 (1), article 16 and article 67 (1) Constitution;

(c) Parliamentary Commissioner's Office report No. 3143/2000 states that the Constitution declares the parents' right to select education for their children, but this does not mean that the parent can take a child out of school during the academic year without enrolling him/her in another institution;

(d) Parliamentary Commissioner's Office report No. 4004/1998. Among the documents made available by the school director, none proved that the school warned a student in writing about the consequences of uncertified absence. Therefore, since the student was not warned in advance, the procedure of the school director in determination of the studies of the child concerned infringed the applicable provisions of the decree. Educational institutions also have an obligation to promote youth protection, declared in the Constitution. Consequently, in this specific case, the school should have been obliged to duly inform the student and warn him in advance, and since these actions did not take place, the school did not fulfil its obligations laid down in the law. This negligence also imposed a risk on the full implementation of the right of the student concerned to youth protection, declared in the Constitution;

(e) Parliamentary Commissioner's Office report No. 1180/1999 states that there are no reasons in school education or training that would entitle a teacher to use physical punishment. A teacher, as an employee of a public educational institution, infringes constitutional rights in relation to the right to dignity of the person when he/she applies physical punishment to students.

### **Paragraph 110**

456. The Child Protection Act (Gyvt.) lays down the right of children to protection against violence. In addition, the Public Education Act prohibits all types of physical violence at school. It orders that schools and teachers must respect the personality of children and their right to human dignity. The Commissioner for Education Rights deals with students' petitions in public education. Each student has a right to ask the Commissioner for help, on the basis of which a procedure may be launched against decisions and faults of institutions. The Public Education Act declares the children's right to freely express their opinion. Therefore, children may express their opinion and make a proposal on all issues related to school selection and management of their affairs. The Public Education Act makes it obligatory to take into account the opinion of children in relation to decisions made in matters concerning them.

### **Paragraph 111**

457. Hungary has been participating in the European Union's Socrates education cooperation and Leonardo training cooperation programmes since 1997. Within the framework of cooperation between institutions, Hungarian schools learnt about education issues and developments taking place in member States, participate in the development of specific projects and have learnt useful experiences in the framework of individual follow-up training, while they also described Hungarian results in various international events.

458. PHARE programmes relevant in the Reporting Period:

(a) The objective of programme HU 9904-01 (1999-2003) is to support social integration of disadvantaged, primarily Roma, youths (nanny training programmes, teacher training, further training, various primary school programmes, vocational training programmes in and outside the school system, talent support programmes in secondary schools);

(b) The objective of programme HU 0008-02 (2000-2003) is to support transition to work (reduction of the number of dropouts at schools, assistance in career selection and orientation, improvement of adult training and lifelong learning opportunities);

(c) The objective of programme HU 0101-01 (2001-2004), which is the continuation of HU 9904-01, is also support to the social integration of disadvantaged, primarily Roma, youths (telehouses, training of community organizers in small regions, alternative pedagogical programmes, Romology in higher education).

### **Paragraph 112**

459. Concerning the operation of educational and training institutions of national and ethnic minorities, approximately one third of support provided from the intervention and coordination budget is used for reconstruction of education and training institutions (nursery schools, schools and dormitories), completion of capital expenditure projects, extension of institutions, procurement of equipment and other items, and supplement of operating expenses.

460. A considerable proportion of the applications for support by the Inter-ministerial Committee of Minorities is aimed at the solution or alleviation of crises in educational institutions. With support to minority schools, the danger of closure of several small schools for nationalities has been eliminated and reconstruction and other capital expenditure projects can be implemented in the schools and nursery schools concerned. In addition, the items required for high-quality education and training activities may be purchased. In the case of the Roma minority, the Committee accepted 56 applications involving approximately HUF 73 million. More than 50 per cent of the accepted applications came from educational institutions in which the proportion of Roma children is higher than 50 per cent. The support has improved the operating conditions of educational institutions, and also helped children of Roma origin to participate in daytime care, in addition to the reorientation and talent support programmes. Twenty applications from Croats living in Hungary were accepted and support of nearly HUF 43 million was allocated. The Committee allocated HUF 51 million to the 34 applications from Germans living in Hungary. Twenty applications from the Romanian minority received support in the amount of HUF 38.5 million. HUF 16 million in support was given for 13 applications from the Serbian minority. From the Slovak national minority, 27 applications were accepted by the Committee with support involving nearly HUF 43 million. In the case of Slovenes, 6 applications were given support in the amount of approximately HUF 10 million.

461. There is a PHARE programme assisting social integration of youths, in the framework of which the main stress is put on the successful attendance of Roma children in nursery schools and schools, and their vocational qualifications. In these programmes, nanny training was launched in three counties in 2001, in the framework of which 270 nannies of Roma origin were trained. Similarly, in the framework of the same programme, 130 new pedagogical programmes were developed in 270 institutions, with the involvement of 1,230 teachers and the participation of 13,350 disadvantaged and Roma children. In order to assist the successful secondary education of disadvantaged Roma children, two training centres, involving also a boarding school, were established with PHARE support.

## **2. Aims of education (art. 29)**

### **Paragraph 113**

462. Pursuant to the provisions of the Public Education Act, the tasks of a leisure-time officer also include participation in the dissemination of basic human values, national, nationality and minority traditions within the school, as well as dissemination and acceptance of cultural and ethnic differences.

463. The Ministers of Education and Environmental Protection signed a cooperation agreement "On the development of environmental education and training" on 5 June 1999. According to the agreement, each ministry provides HUF 120 million for the objectives and tasks included in the agreement.

464. The objective of the “school in the woods” is to create the right conditions so that each student can attend at least a forest school during the first eight years of studies. The objective of environmental education in secondary schools is that classes and groups should cooperate with the local community in identifying local problems, discussing the potential solutions and making a proposal for the solution. In higher education, the main objective is the development of environmental education methods applicable to the methodology of environmental training and teacher training.

465. Hungarian minorities live scattered in the country, and minority languages have been excluded from everyday use. By now, families have also lost their role in passing on minority native languages. The jobs of passing on minority languages and culture, and strengthening of identity remains with nursery schools, schools and non-governmental organizations. Minority education, as part of the Hungarian public education system, provides all services that are provided in general in public education, and also creates the necessary conditions for learning the native language and studying the culture and history of these nationalities. While the tasks of nationality education are primarily of a language and cultural nature, Roma education must be able to find an answer to problems which go significantly beyond the world of public education. Many members of the Roma population struggle with social problems and discrimination, and an everyday phenomenon is their segregation. The unemployment rate is significantly higher than average among the Roma population.

466. It is an important task for public education to try and close the gap. One of the most important ways to achieve social integration of the Roma population is schooling. However, education can only bring good results on a long-term basis, with extensive social cooperation. This is why coordinated cooperation between ministries is very important; this is laid down in a medium-term government resolution on a package of measures aimed at the improvement of the living conditions and social position of the Roma population. In order to achieve the above objectives, the Ministry of Education hopes for effective assistance from the Inter-ministerial Committee for Roma Matters, established on the basis of the government resolution. The new legal, financial and organizational conditions of minority education were formulated in the 1990s relying mainly on former structures. In the framework of this process, the various regulations provide multilateral guarantees for minorities living scattered in the country to enjoy equal rights in education. With regard to the regulation of education of the Roma minority, special attention must be paid to regulatory and financial guarantees in relation to the extra tasks in the education system within the framework of various programmes, yet the results of these regulations should not encourage separation of children, students and pupils according to origin.

467. The educational and pedagogical programmes of institutions involved in minority education and training were completed for the 1998/99 academic year in accordance with the provisions of the Public Education Act. However, during the development of local syllabi, it turned out that integration of the special subjects of nationality education, such as grammar and literature, as well as popular knowledge, caused a conflict in the weekly mandatory timetable.

468. The 13 national minorities defined in the Minorities Act can be classified into three groups for the purposes of education: (a) so-called traditional national minorities, i.e. Croats, Germans, Romanians, Serbs, Slovaks and Slovenes, who already have an education network

within the Hungarian public education system; (b) the second large group, i.e. Bulgarians, Greeks, Poles, Ruthenes and Ukrainians, who do not have an education network but teach their languages in so-called Sunday schools, i.e. within the framework of activities outside schools, or have only individual institutions; (c) the third largest group, the Roma minority, whose education and training take place in the framework of “Roma minority education within the Hungarian public education system”. At the moment, Roma minority education is organized in approximately 250 nursery schools and approximately 650 primary schools for an estimated 25,000 nursery school pupils and 55,000 primary school pupils. These days, all Roma children attend schools, and the majority of students complete primary school. It is a problem that programmes that improve the chances of disadvantaged Roma children in education take place in the framework of Roma minority education. In future, the content of the two systems must be separated. Similarly to nationality education, opportunities should be provided for minority education and training, and the conditions required for programmes to improve the chances of disadvantaged Roma children in education should be developed separately.

469. Minority secondary education takes place in Hungary in 19 elementary schools teaching in the languages of minorities, or in two languages, and in 1 Roma elementary school and 4 secondary technical schools. (Of these, 10 secondary schools teach in German, 2 in Slovak, 2 in Croatian, 2 in Romanian, 1 in Serbian, 1 in Slovenian, 1 in Bulgarian and 1 in the Roma language.) In the case of Roma students, secondary education and education at boarding schools have a preponderant role in intellectual and vocational training. These institutions have achieved significant results. These days, approximately 85 per cent of Roma students continue their studies after primary school, 16 per cent of whom study in secondary schools providing matriculation at the end of the studies. Prevention of dropouts and talent support activities in secondary education and boarding schools are of outstanding importance. This process is developed even further with the Roma boarding programme of the Arany János Talent Support scheme, which was launched by the Ministry of Education last year. The talent support programme started with 50 individuals in three boarding schools. Another important result of education during recent years is the system of scholarships offered by public foundations, formed mainly with State support, assisting Roma youths.

#### **Paragraph 114**

470. National and ethnic minority education and training contains clearly identifiable extra tasks. Since 1991, the yearly acts on the budget have provided additional support to organizations performing these tasks. The rate of supplementary support has increased year by year, although not always according to expectations, and, as a result of further differentiation, it also encouraged the development of higher-standard bilingual and minority-language education. The supplementary support provided sufficient funding for minority-related tasks. Most of the problems occurred after 1996 in the operation of nationality schools with a small number of

students. After various experiments, the Act on the budget in 2000 provided a solution. According to the regulations, local governments are eligible to twice the so-called small-settlement normative support for settlements with a population of less than 1,100, 3,000 and 3,500 people if they operate educational training institutions teaching a minority language, educating in the minority language or in two languages. This measure not only increased the abilities of small settlements to retain their institutions, but also contributed to the survival of small nationality schools and the preservation of the nationality character of particular settlements. In addition, each year a separate budget can be used (in 2000, HUF 300 million and in 2001, HUF 320 million) as supplementary support for the operation of minority nursery schools and schools accepting students on the basis of applications. The State budget primarily supports local governments operating minority education and training institutions that are not eligible for the support described above because of the size of their settlement, and because providing nationality and minority education would involve a very large burden for them. According to the experiences of the year 2000, the central budget contributed to the operation of nursery schools and schools involved in minority education and training with 80-90 per cent of their total expenditure in the form of this supplementary support. The State also considers it important to provide the physical equipment required for operation. In addition to several minority schools (Slovak, Croatian, Serbian and German) accepting students from the whole country in 12 classes and providing boarding facilities, built from the investment of the central budget, the new Romanian boarding school in Gyula was opened in September 1998. At the moment, a boarding school is being built for the German-Hungarian school centre in Pécs with support from the Ministry of Education. The construction of Gandhi Elementary and Boarding School has continued also, mainly using funds from the central budget.

### **Paragraph 115**

471. On the basis of the provisions of the Public Education Act, in addition to the State and local governments, public education may be established, maintained and operated by local minority governments, a national minority self-government, churches registered as legal entities in the Republic of Hungary, legal entities established in the territory of the Republic of Hungary and having their headquarters in Hungary, foundations, associations and private individuals. Organizations operating such institutions other than local governments are eligible for the same support as local governments.

472. In Hungary, the freedom to establish educational institutions is not limited. The quality of education and the provisions of the legal regulations concerning operations and terms must be complied with, irrespective of the organization operating the school, and a monitoring system has been put in place.

473. Sector neutrality also applies in financing, as non-State-owned and non-local-government-owned institutions are eligible for the same amount of State support as institutions owned by the State or local governments.

### **Paragraphs 116 and 117**

474. The system to monitor compliance with regulations exists. Besides control by the operators, independent institutions working as subsidiary institutions of the Ministry also monitor how the institutions function and how successful they are.

475. The Public Education Act prohibits all forms of discrimination. It sets out provisions that ensure that in the course of decisions made by the operators and by the institutions, the interest of children prevail above everything else. It also defines the conditions which guarantee that the views of children are sought and respected. Legislation defines the extent of minimum services as well as the time frame for the implementation of educational tasks. Legislation also defines the minimum facilities and tools that every institution must provide.

### **3. Leisure, recreation and cultural activities (art. 31)**

#### **Paragraph 118**

476. Pursuant to the Child Protection Act (Gyvt.), one of the roles of child welfare services is to organize leisure programmes in order to promote the physical and psychological health of the child as well as to support the upbringing of the child in a family.

477. Pursuant to the Public Education Act children and students are entitled to have their nursery school and school study schedules set up in a way that rest time, leisure time and physical exercise are included, as well as sport and meal opportunities corresponding to their age and level of development. The student is entitled to use the facilities provided in the school and in the dormitory, including sport and leisure facilities, and to join cultural, art, knowledge, sport and other groups and clubs in school. The Act also provides for the possibility to organize leisure activities in the educational institution. Where the number of students reaches 300, it is compulsory to employ a leisure-time officer.

478. The leisure-time officer helps the teachers organize leisure time for students and to develop a kind of community within the school. One of the jobs of the leisure-time officer is to prepare and organize extra-curricular activities related to the educational programme of the school and to support activities related to environmental education (such as “schools in the woods”, camps, etc.)

479. Pursuant to the Sports Act, the National Leisure Sport Association represents the interests of children’s sports vis à vis Government organizations, local governments, the Hungarian National Olympic Committee, the National Sports Association, public sports foundations and other civil society organizations; it provides opinions on sport policy issues related to sports, initiates Government action in these areas and comments on sport-related draft legislation.

480. Conditions for organized and regular physical exercise and sport activities must be provided in the public education institutions by law. No school, boarding school or nursery school can be built without a gym or an exercise room the size of which must correspond to the size of the student population. The operator of a school that has no gym must create sport opportunities for the students as provided by legislation.

481. Free access to participation in cultural life and in the arts is manifested basically in the areas of theatre, dance and music. Hungarian theatres owned by the municipalities in Budapest have children’s performances on their programmes, usually popular musical pieces played in a



long series that runs for years. Theatres owned by local governments in the countryside do the same (the Csiky Gergely Theatre in Kaposvár, nationally renowned for its high artistic standards, stands out among them with an audience more than 30 per cent of whom are children). Private theatre companies and alternative theatre workshops specialized in children's programmes and operating from funds obtained through grants also have an annual programme (the annual amount of the grant given to such theatres is between HUF 1 and 6 million, but the Merlin Theatre stands out with a grant of HUF 5 million - besides the operating costs - to implement its children's theatre programme). The average annual subsidy to puppet theatre companies is around HUF 1 million. Out of the 11 puppet theatre companies the two largest ones, the Budapest Bábszínház (Budapest Puppet Theatre) and the Kolibri Theatre, play to an audience of 90 per cent children. In the countryside, new puppet theatres are springing up. The latest one opened in Veszprém in 2000. In 2001, two new buildings were donated to the puppet companies in Kecskemét and Debrecen. Central budget grants to support local-government-owned puppet theatres increased by 26 per cent as compared to last year (HUF 185 million from the Ministry of Culture).

482. Besides the above, representatives of all genres and structures may apply for grants - to produce children's programmes - to the National Cultural Basic Programme (NKA), which put children's programmes at the top of its priority list between 1998 and 2000. (For example, Hungarian Television received HUF 3 million from the NKA special ministerial budget in 1999 to broadcast children theatre performances.) The Ministry of National Cultural Heritage (NKÖM) and the Ministry of Education (OM) jointly issued a call for applications for the so-called "initiating" theatre projects, which supports children's visits to theatres on the one hand, and on the other hand helps to put those children's performances on stage which involve the audience in the actual development of the play. One of the main jobs of the three concert agencies set up by NKÖM is to organize youth concerts. Schoolchildren can get classical music concert season tickets at a very low rate, where nationally known orchestras and especially talented musicians acquaint them with the world of music. This is built upon the school music education system, and is an organic supplement to it. Besides the theatre opportunities, films made for young people also provide a sensible way to spend leisure time. Five children's films received a total sum of HUF 775 million in the last three years by way of grants from the Cultural Ministry.

483. The National Cultural Basic Programme also gave an especially high amount from its budget to programmes related to the cultural life of children in the areas of functional applied arts and interior design. It supported the renovation of playgrounds and the creation of new ones.

484. The Ministerial Council of the Council of Europe adopted the document prepared by the Cultural Cooperation Committee of the Council of Europe on 3 February 2000, discussing the problems of education and learning and the cultural situation of Roma children. The recommendation and the preparatory working document gave Hungary as a positive example of how to solve such problems. The 2001 country report on the implementation by Hungary of obligations deriving from the European Charter of Regional or Minority Languages was a great

recognition of our minority cultural policy. This document clearly shows that the most positive area of a generally very positive total picture of the country is minority culture and public culture. It states that initiatives related to minority languages and the different forms of self-expression are motivated through various channels. These are funded through the Ministry of Culture and the Government Office for National and Ethnic Minorities, as well as through subsidies to minority self-governments, from the general central budget. Access to art in minority languages and art exhibitions and festivals are also supported by funding. Some minority self-governments operate their own culture houses and museums, but in general the Government maintains museums and theatres for the sake of minority languages.

485. NKÖM has been supporting certain national minority events and national minority camps for years, helping publish books in national minority languages and offering grants to individual national minority projects, Gypsy cultural events and events to preserve traditions. As of 2000, the budget for a medium-term package of action regarding NKÖM-related tasks was increased to HUF 70 million, and the basic budget for nationality and ethnic minority cultures was raised to HUF 120 million.

486. Large-scale events of national or regional importance, programmes involving several nationalities and programmes for the maintenance of minority-mother country relations were also priorities. The grants given to documentaries, feature films, and public or regional television and radio programmes made by Roma artists or with a Roma subject is of outstanding importance. We can say in general that all significant workshops and artists have received grants in different amounts. NKÖM provided a one-time grant of HUF 150 million in 1998 to set up the National Gypsy Information and Cultural Centre, and gave another HUF 30 million in 1999 for its operations. NKÖM provided 35 million more annually for 2000-2002 for the annual operating costs.

### **Paragraph 119**

487. Besides the programmes provided by the leisure-time officers in schools, the operation of the network of boarding schools guarantees the above-mentioned rights of the child. One of the major tasks of public education is to reduce social, economic, and cultural inequalities. One of the most efficient arenas where this could be achieved is the boarding schools. The creation of the National Basic Programme for Boarding School Education and its approval by the profession signify the renewal of the content of boarding school education. The Government set up the National Boarding School Public Foundation in 2000, which started to operate in January 2001.

488. Cultural institutions operating under the Municipality of Budapest (Budapesti Művelődési Központ, Petőfi Csarnok Ifjúsági Szabadidő Központ) guarantee the rights of children to rest, to leisure and to cultural activities.

489. The Parliamentary Commissioner for Civil Rights highlighted in his report OBH 2196/2000 that sport is a basic tool for national health development; it is a socially useful way to spend leisure time and plays an important role in the moral and physical education of children as well as in the shaping of their personalities. Spreading an attitude expressing the

usefulness and need for an exercise-rich lifestyle, the up-grading of the existing facilities and the creation of new ones contribute to orienting the lives and the leisure activities of young people towards a desirable direction. If conditions for safe sports are created, parents are happier to let their children do sports.

490. In a petition neighbourhood residents complained that the basketball games in the nearby playground disturbed the tranquillity of the neighbourhoods. The Parliamentary Commissioner pointed out that activities that disturb others are prohibited only if the disturbance is unnecessary. Thus, if the disturbance is inevitable, the activity is not unlawful. The disturbance caused by sport activities at the playground is inevitable, and the residents must put up with it.

## **H. Special protection measures**

### **1. Children in situations of emergency**

#### **(a) Refugee children (art. 22)**

##### **Paragraph 120**

491. The Constitution declares that in accordance with the conditions established by law, the Republic of Hungary shall, if neither their country of origin nor another country provides protection, extend the right of asylum to foreign citizens who, in their native country or the country of their usual place of residence, are subject to persecution on the basis of race or nationality, membership of a specific social group, religious or political conviction, or whose fear of being subject to persecution is well founded.

492. The goal of the Asylum Act is to define the rights and obligations related to asylum provided within the territory of the Republic of Hungary, to guarantee the protection of human rights and fundamental freedoms through providing legal guarantees in the procedure of the asylum authorities, and to guarantee the prohibition of discrimination due to race, religion, nationality or political views.

493. As corresponds to the goal of the Convention relating to the Status of Refugees, asylum regulations guarantee the special protection of asylum-seekers authorized to stay in Hungary and recognized refugee children. Besides specific local regulations, refugee children enjoy the same rights as Hungarian children in education, health care, welfare services and aid, as provided by the relevant legislation.

#### **Distribution of asylum-seeking children by age on 1 March 2002**

Age	Number
0-14 years	65
14-18 years	116
Total	181

**Distribution of asylum-seeking children accommodated in  
reception centres and other contracted accommodation  
by nationality**

Nationality	0-14 years	14-18 years
Afghani	18	29
Bangladeshi	-	18
Ghanaian	-	1
Georgian	2	-
Yugoslavian Hungarian	2	-
Yugoslavian Croatian	1	-
Yugoslavian Serbian	3	1
Yugoslavian Albanian	-	1
Indian	-	3
Iraqi	19	13
Iranian	-	1
Cameroonian	1	-
Chinese	-	3
Macedonian	1	-
Moldovan	-	1
Mongolian	2	-
Nigerian	-	19
Pakistani	-	2
Sierra Leonean	-	15
Sri Lankan	-	1
Somali	5	6
Turkish	10	1
Ukrainian	1	-
Vietnamese	-	1

494. The legal guardian of an asylum-seeking minor arriving with the parents is the person who exercises parental rights. In case of unaccompanied minors, if the legal representative cannot take part in the procedure, the asylum authorities appoint a case guardian without delay the moment the procedures start. The case of a minor under the age of 18 is handled together with that of the parent providing legal representation and exercising parental rights. All asylum-seeking children are entered into the asylum registry. Fingerprints may be taken in the course of the asylum procedure only from minors over the age of 14. Children arriving with the family can be interviewed on the conditions of flight only if they are over 14 years of age and if the interview is necessary in order to clarify the situation. Parents and legal representatives receive multilingual written information on their rights and obligations; they are also informed verbally through an interpreter. A three-tier legal remedy system is available in the asylum procedure. Those who, in the course of the interview, mention any kind of torture or inhuman and humiliating treatment will have the opportunity to get in touch with the Cordelia Foundation, consisting of psychiatrists, for treatment. The same accommodation must be allocated to immediate relatives (children and parents) at the reception centres or at other contracted accommodation. Children must not be accommodated at detention centres.

## **Paragraph 121**

495. Asylum-seeking children are entitled to three meals a day at the reception centre, a sanitary package every month, and a child's clothing package upon arrival. Food for infants depends on their special needs. Asylum-seekers above the age of 14 are entitled to some pocket money as of the third complete month of stay. Great care is taken to organize leisure-time activities for children during the period they stay at the reception centres. Social workers of the reception institution and of the NGOs work with the children. There is a nursery school functioning at every reception centre. The head of the accommodation and the social and information teams that coordinate joint activities keep in touch with the cultural and service-providing institutions operating in the locality.

496. A special accommodation centre is being established for unaccompanied minors, after the example and experience of EU member States. The Office of Immigration and Naturalization of the Ministry of the Interior, the local municipality, an NGO and the Hungarian Representation of the Office of the United Nations High Commissioner for Refugees cooperate on this project.

497. Pursuant to the Asylum Act and for the sake of family unification, the immediate family members of the alien must also be recognized as refugees if they submitted their applications together, or if a family member submitted the application with the consent of the asylum-seeker before the decision is made on his/her status. The Search Service of the Hungarian Red Cross is available every time the Office gets information on the possible whereabouts of the parents of unaccompanied minors. Before the introduction of compulsory education for asylum-seekers on 1 January 2001, education had been organized for children at reception centres if there were many of them speaking (or understanding) the same language. When there were small numbers of school-age children speaking a certain language, it was difficult to provide a teacher. Organizing school for children in English, Russian or Serbo-Croatian was no problem.

498. The Office for Immigration and Naturalization initiated the introduction of compulsory education with the Ministry of Education in June 2001. An amendment to the Public Education Act extended compulsory education to cover asylum-seekers as well. Educational institutions in Békéscsaba had, even before the introduction of compulsory education, undertaken to provide a suitable place (for lack of a proper classroom) to teach the children, which was funded for years from donations given by the International Children's Safety Service.

499. Based on Government Decree 25/1998, the Office for Immigration and Naturalization finances the total costs of education for unaccompanied minors. The same applies to children who are authorized to stay. It was also the Office for Immigration and Naturalization that initiated the in-service training of teachers teaching refugee, asylum-seeking and authorized-to-stay children. From among the different forms of support included in the Government Decree, children are also entitled to the aid for living expenses received by their parents. The amount of housing aid depends on the number of children; it increases with every child. Aid to start school can be given once a year if the family is in need, unless the notary had granted such aid to the child pursuant to the Welfare Act (Szt). In case of refugees and authorized-to-stay aliens, it is the responsibility of the parents to comply with the obligation of education.

**Paragraph 122**

500. A Government Decree on the care and support of aliens covered by the Asylum Act provides the opportunity to refugee children studying in basic (elementary) or secondary education institutions to participate in Hungarian language courses free of charge to bring them up to the necessary level. The same for authorized-to-stay children was financed by UNHCR until 2001. In 2001, contracts were signed with five educational institutions belonging to the municipalities to provide such catch-up language courses.

**Paragraph 123**

501. A problem with school-age asylum-seeking children is that most of them do not speak or understand Hungarian. This fact makes the organization of catch-up language courses necessary. However, children stay in Hungary usually only for a few months, and they are unable to learn enough Hungarian and become integrated into a Hungarian school during such a short period of time. Elementary and secondary schoolteachers are usually not trained to teach Hungarian as a foreign language; thus, the education of asylum-seeking children is not very successful. The problem is even more severe because most of these children suffer from traumas requiring special training (in psychology) on the teacher's part. The families usually have no assets whatsoever which could cover expenses arising in the course of schooling. These problems are also typical for refugee and authorized-to-stay children, with the difference that their stay is usually long enough to learn Hungarian and - especially in cases of recognized refugees - employment of the parents can ease the financial difficulties of the families.

502. The Parliamentary Commissioner for Civil Rights discussed the condition of the community shelters in several reports. His reports also covered some discrepancies related to children's rights. These shelters lacked among other things the necessary conditions and tools for a longer-term, civilized stay and activities for children, facilities to bathe smaller children, or trained personnel to take care of the children. (See Parliamentary Commissioner's reports OBH 3020/1998, OBH 3524/1998, OBH 5551/1998, 5935/1998, 6359/1998.)

**(b) Children in armed conflict (art. 38), including physical and psychological recovery and social reintegration (art. 39)****Paragraphs 124-132**

503. Act CX of 1993 on national defence, article 70, provides that based on universal conscription, all men of Hungarian citizenship and all men who live in the territory of the Republic of Hungary are liable to military service. Universal conscription starts at the age of 17. Thus, Hungarian legislation complies with the provisions of the Convention. The Representative of the Republic of Hungary signed the Optional Protocol to the Convention of the Rights of the Child on 11 March 2002.

504. There has been no armed conflict in Hungary since 1956, but as for our international relations, we proceed (in issues related to children) as provided by the Convention. Hungary has ratified the relevant conventions. Of these the major ones are: Act X of 1998 on the ratification

and promulgation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction; law-decree 20 of 1989 on the promulgation of Additional Protocols I and II to the Geneva Conventions of 12 August 1949, on the protection of the victims of war; Act XXXIX of 1996 on the implementation of obligations arising from the Statute of the International Criminal Tribunal for the Former Yugoslavia; Act XXVII of 2001 on the promulgation of Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour adopted at the International Labour Conference.

## **2. Children involved with the system of administration of juvenile justice**

### **(a) The administration of juvenile justice (art. 40)**

#### **Paragraph 133**

505. Pursuant to the Penal Code (Btk.), a juvenile is a person who, at the time of committing the criminal act, has reached the age of 14 but is not yet 18. In the Hungarian legal system, juvenile penal law is an integral part of penal law as a whole, yet it is to some extent independent. This relative independence is manifested in the structure of the relevant legislation. Penal substantive, procedural and executory laws stipulate provisions that are different from those for adult perpetrators. The reason is that the critical, moral and intellectual development of a juvenile is still taking shape. When sanctions are chosen, it is not retaliation one should apply for a juvenile, but tools of education. Hungarian penal law does not have any special code for juvenile perpetrators; rather, it opts for the solution that penal standards applying to this category of accused should differ in a number of aspects from the general rules. Special provisions on juveniles are included in a separate chapter in the Penal Code (Btk.) and in Criminal Procedures (Be). The Statutory Regulation on the Execution of Penalties and Measures also includes provisions that differ from or complement the general rules.

506. Act XXXIV of 1994 on the police also stipulates certain rules applicable to juveniles that differ from the general ones, for instance: the legal representative of the juvenile must be informed about the detention of the juvenile without delay; no technical testing (by polygraph) of the juvenile is permitted; no firearm can be used to prevent the escape of or to capture a juvenile. The Penal Code provides the guarantee that criminal procedures against a juvenile must be carried out in a manner that promotes the development of the juvenile in the desired direction; this must also be taken into account in the course of exercising the rights of the juvenile. If necessary, the order to implement protective measures is to be requested for the sake of the juvenile, or measures against the person who failed to duly educate, take care or supervise the juvenile.

507. During criminal procedures against a juvenile, a prosecutor for the juvenile appointed by the senior prosecutor shall proceed in the prosecution. In the first and second instance courts it is the appointed board that proceeds in criminal cases - except in the Supreme Court - while in offence cases in the first instance it is the appointed judge who acts (as a juvenile court). One of the lay judges of the juvenile board in the first instance court shall be a teacher.

**Paragraph 134**

508. Pursuant to the Criminal Procedures Act, the principle of *nullum crimen sine lege* is a guaranteed rule, and so is the presumption of innocence. Also, the accused is entitled to defence.

509. In the course of criminal procedure against a juvenile, continuous attention must be paid to the requirement that in this category of accused, education goals are the priority goals and punishment is secondary. This principle must prevail at all the stages of the procedure (investigation, prosecution, trial). The dignity and the sensitivity of the juvenile are protected by a provision of the Act which stipulates that the public can be excluded from the court not only for the usual reasons, but also for the sake of the interests of the juvenile. The court may order certain parts of the trial that might have a negative impact on the correct development of the juvenile to take place in the absence of the juvenile, and inform the juvenile of the essence of this part of the trial afterwards. Pursuant to the Penal Code, a defence lawyer must participate in a procedure against a juvenile. The Penal Code also stipulates that in case the accused juvenile has no authorized lawyer, a defence lawyer must be appointed when informing him/her that he/she is under suspicion. This legal regulation makes the presence of the defence lawyer possible beginning at the first interrogation. The legal representative (parent, guardian, professional guardian) has a similar legal status, and has the right to exercise a wide range of procedural rights and thus provide help, in addition to the help of the defence lawyer, to the juvenile suspect or accused in presenting a proper defence. The law also recognizes that the interests of the juvenile and the legal representative might be contradictory in certain cases, or the juvenile might not have a legal representative, or the legal representative might not be able to be identified. In such cases a case guardian is to be appointed with the rights of the legal representative. The defence lawyer and the legal representative (case guardian) are independently entitled to legal remedy against the investigating authorities, the prosecutor and the ruling of the court. Though there are no special provisions for juveniles regarding the ruling on the appeal against measures restricting personal liberty, general provision set tight deadlines. Thus, in case of appeal against ordering remand in police custody and its extension, the court must send the documents without delay, but within three days at the latest, to the competent court. The second instance court rules on these types of appeals within five days. Regarding rulings of the court on the case, among them rulings on appeals against the restriction of liberty or a sentence, the general provisions of the law also apply for a juvenile. In the case of police custody, the procedure must be anticipated; otherwise, the first instance court shall submit the documents to the second instance court without delay, but within 15 days at the latest, and that court shall set the date of the court session or trial within 30 days of the receipt of the documents.

510. The law guarantees free exercise of religion to the detained. Thus, all inmates in the penitentiary institutions must be able to participate in masses or other religious services, and they must also be given the opportunity to receive care from a priest or another representative of the church. As for the juvenile correction centre, the juvenile can freely exercise his/her religion at a time and in a way which are defined in the house rules. The juvenile can keep contact with the representatives of the church without supervision.



### **Paragraph 135**

511. Pursuant to the penal law, children are not liable to punishment. The Penal Code defines the legal fact of being under 14 years of age at the time of committing the criminal act as a factor that rules out culpability. Legislators felt that the physical and intellectual development of a child of that age - especially since children normally finish elementary education around this time - reaches a level that makes it possible to make them liable for their actions.

512. As for children, the police can use only police arrest as a measure of deprivation of liberty and only if the child escapes parental supervision, the guardian's care or institutional care without permission. Such behaviour on the part of the child is not a crime - for want of a subject - but it does not rule out the possibility of putting the child in basic care within the (institutional) childcare system or of action by the authorities against the child. If a crime is committed by a child, the guardianship authorities may put the child under their protection. The purpose of protection is to help the parents to raise the child, to adjust the child's behaviour, and to prevent another crime being committed by the child. If protection is ordered, the guardianship authorities appoint a family visitor for the child whose job is to act together with the parents and the child in developing an education and care plan in which they define the tasks of the family visitor, the parents and the child, so that it leads to the elimination of the child's vulnerability and to the prevention of another act of crime. At the time the child is put under protection, the guardianship authorities may set certain rules for the behaviour of the child in order to change the unwanted behaviour, or may oblige the parents to visit a child welfare institution (e.g. educational counsellor) where they can get help in changing the child's behaviour. This action is taken if the child has committed a crime, but the family visitor feels that taking the child out of the family is not necessary. If the family visitor and the guardianship authorities feel that the act of crime by the child can be linked to such a high degree of vulnerability that the child must be removed from the family, the child is taken into temporary care by the guardianship authorities. The child in temporary care is accommodated with a foster parent or in a children's home, or, in case of a child struggling with severe behavioural or integration problems, with a specially trained foster parent, or in a specialized children's home where the trained staff will try to change the behavioural and integration problems.

### **Paragraph 136**

513. The various types of punishments and actions make it possible to handle the child or juvenile perpetrator according to his/her age and depending on the severity of the crime committed. Pursuant to the Penal Code, confinement of the juvenile must be executed in a juvenile prison which has two levels, first (*börtön*) and second (*fogház*). Hungarian law prohibits the use of the most severe type of prison, the third-level penitentiary (*fegyház*), for juveniles. The confinement must take place in the first-level juvenile prison if the juvenile was sentenced to two years or more in prison, or one year or more to a juvenile correction centre because of recidivism or a wilful act of crime. In all other cases the confinement takes place in the second-level juvenile prison. If the perpetrator is 21 at the time of commencement of the sentence, or reaches this age during the prison sentence, the court decides on the level of prison for the rest of the sentence. A special penal action for juveniles is a sentence in the juvenile

correction centre which can be given for one to three years, and which is executed in a girls' or a boys' correction centre. Juveniles may spend their prison sentences in a correction centre if other necessary conditions are present. Based on the amended penal legislation, police custody can take place also in a juvenile correction centre, as of 1996.

514. In the case of juvenile perpetrators, supervision by the probation officer is compulsory if probation is ordered or bringing charges is postponed and if the sentence is suspended, but in such cases the juvenile does not have to be taken out of his/her environment. Probation of juveniles functions within the child welfare system, and the probation officers are employed by the county guardianship authorities. Services supporting probation work still need enhancement. The purpose of probation is to help the juvenile to reintegrate into society and to supervise compliance with general behavioural standards and with standards set by the judge or the prosecutor. The person on probation is obliged to keep regular contact with the probation officer, present him/herself at the designated times, inform the probation officer as needed - especially on any changes of place of residence or stay, of jobs or of educational institution, as well as any changes in the family situation. The person on probation is obliged to have a job, if he/she is capable of working, or to do some income-earning activity. This rule does not apply if the juvenile on probation is a day student in an educational institution, or if he/she takes part in a course preparing for employment and is supported by the family or in an institution. The point behind the legal institution of postponement of charges is that in the case of crimes punishable by not more than five years of prison, the prosecutor may, for the sake of a desirable development of the child, postpone bringing charges against the juvenile by one to two years. The juvenile is under probation during this time. If the probation is successful, the criminal procedure is terminated.

### **Paragraphs 137 and 138**

515. As for the timing of criminal procedures, it is evident that some of them (complicated cases with many participants, serial crimes) are delayed; this is either justified or not because of the unfortunate slow action of the authorities. Some investigating authorities do not always stick to the special provisions of the law applicable to juveniles, leading to additional investigation orders, which again results in delays. Just as before, procedures in juvenile cases were often delayed in 2001; the number and proportion of orders for additional investigations increased (by 9 per cent). A similar increase can be seen in ordering complementary investigations. At present there are three institutions available for the custody of male juvenile convicts. The goal is to establish another two juvenile prisons so that juveniles can serve their sentences near their places of residence in a modern institution built with attention to international recommendations. Before defining the most important tasks of the penitentiary system, the situation had been analysed; a development plan was worked out with the goal of eliminating shortcomings and to create the real bases for development.

516. In case of child perpetrators who are not of competent age, and if the child does not live in his/her own family, the amended Child Protection Act (Gyvt.) already provides for the accommodation of the child in a specialized children's home where the necessary professional programmes and trained personnel are available. The amendment also opens up the possibility for the local government or for NGOs to organize, in the form of services, day supervision or activities for children over the age of 10 who are just hanging around or who are vulnerable for other reasons (e.g. child perpetrators).

**(b) Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))**

**Paragraphs 139-142**

517. The principle set out in the Criminal Procedures Act that only prejudices defined in the court ruling and in law can be applied against the convict is a special guarantee. The Reasons section of Constitution Court resolution 13/2001 points out that State power to punish, which is manifested in the prison system, is not unlimited; thus, the convicted person is not totally defenceless. The convict is not the object, rather a subject of the penitentiary, and has certain rights and obligations. The Constitution Court established the principle that the constitutional limits of penitentiary action are set on the one hand by the right to human dignity and to personal safety, and on the other hand by the prohibition of torture and merciless, inhuman and humiliating treatment.

518. Detention and police custody of a juvenile are considered to be the last resort in the Criminal Procedure Act. A restricting rule limits the possibilities of application of such action. This provides that a juvenile can be detained or remanded in police custody only if the severity of the crime justifies it, even if the general legal reasons are present (hiding, the risk of repeated crime, endangering criminal procedures). This restricting rule is well used in legal practice. About 3-4 per cent of juvenile perpetrators are remanded in police custody. The number of juveniles in police custody or in detention was 1,132 and 444, respectively, in 2001. Detention may last at the most 72 hours for juveniles as well as adults; the law currently in force does not set a time limit for police custody for either. However, the law provides that the authorities must attempt to keep people in police custody for the shortest possible time and the court shall periodically review its justification. The new Criminal Procedure Code enacted on 1 January 2003 does set a time limit on police custody, which cannot be more than two years for a juvenile.

519. Police custody of a juvenile accused can take place either in a police jail, in a penal institution or in a juvenile correction centre. At present there are three of the latter institutions, two of them in Budapest, for boys and girls separately, while the third one, located in the eastern region of the country, is for boys. These institutions are under the supervision and direct control of the Ministry for Social Welfare and Family Affairs. Unlike in police jails and prisons, there are no uniformed guards in the correction centres; instead plain-clothes staff members supervise the detained juveniles with the help of technical facilities. Police custody as a security measure is not aimed at education. However, all the very complex problems of juveniles are handled from the moment of arrival in the correction centre by educational and psychological methods. Some 50 per cent of juveniles in police custody are accommodated in juvenile correction centres. Long-term plans include the establishment of more correction centres in other regions of the country. Taking international expectations into account and to accommodate juveniles closer to their homes, a regional penal institution was established in the eastern region of the country in 1997. Since 27 March 2002, another penal institution has been available for prison sentences or police custody for juvenile males.

520. The Penal Code declares that the purpose of punishment and action against juveniles is to help in the correct development of the juvenile. The law differentiates between those who have already reached 16 years of age and those who have not, when setting the possible prison sentence limits. The provision of the law that a sentence can be given to a juvenile only if the action taken does not lead to results, and deprivation of liberty or a punishment can be used only if the purpose of punishment cannot be achieved by other action or through any other means, is working well in practice.

#### **Actions to deprive a juvenile of liberty**

Action to restrict liberty	1999	2000	2001
Confinement	1 223 persons	1 127 persons	1 132 persons
Remand in police custody	478 persons	418 persons	441 persons
Prohibition to leave the locality of residence	22 persons	17 persons	13 persons
Total	1 723 persons	1 562 persons	1 586 persons

521. Courts have ordered probation in about half of all juvenile cases, and some 3-4 per cent of them were sent to juvenile correction centres.

#### **Paragraph 143**

522. The Penitentiary Act declares that the human dignity of the condemned must be respected, he/she must not be tortured, no merciless, inhuman or humiliating measures may be used against them, no medical experiment or scientific study can be done on him/her without his/her consent. The detained person exercises his/her rights personally or through his/her legal representative or a proxy. The institution must provide the opportunity to the detainee to become familiar with the rules pertaining to his/her rights and obligations. The protection of the civil rights of the detainee must be guaranteed during the detention by the penal institution and other participating or supporting organizations and persons. In case of deprivation of liberty of a juvenile, special attention is paid to educational, personal and physical development.

#### **Paragraph 144**

523. The basic principles and rules of detention are defined in a law decree on the execution of punishments and actions. This piece of legislation has a separate chapter on the special rules applicable to juveniles for police custody, deprivation of liberty and stay in a correction centre. This legislation provides that detailed rules of police custody must be established based on principles applicable for all penal institutions. Thus, the Ordinance of the Minister of Justice on the rules of deprivation of liberty and police custody has special provisions on the rules of detention and police custody applicable for juveniles. Detailed regulations for education and stay in the juvenile correction centres are defined in the Ordinance of the Minister of Welfare on the Regulations on the juvenile correction centres, the amendment to which provides for the use of the juvenile correction centre for boys located in the eastern part of the country.

524. The above legislation guarantees a wide scale of possibilities for the juvenile to keep contacts with the family and relatives. Correspondence, packages, visits and telephone calls are available in all institutions. Another possible way to keep contacts during a sentence in a juvenile correction centre is leave or absence allowed for shorter or longer periods. The right of the juvenile to keep contact can be restricted during police custody by the prosecutor before the indictment is submitted and afterwards by the court, for the sake of a successful criminal procedure. The different forms of contact can be checked by the institution from the perspective of the security aspects. However, the right of the juvenile in police custody to contact the defence lawyer is different; it cannot be restricted or supervised. The law provides that juveniles in police custody must be separated from adults. This provision is significant especially when police custody takes place in a police jail or in a penitentiary institution, because adults are also detained in these institutions. Juveniles serving their sentences are separated from adults. Separation applies to everything: institutions, sections, parts of sections and cells or rooms. The law also provides that adult convicts can be put into a juvenile penitentiary institution only for the purpose of the operation of the institution (skilled work).

525. Juveniles (in police custody or convicted) are also entitled to file a complaint. There is a two-instance legal remedy system. The inmates can turn directly to the commander or director of the institution. The inmates can also turn to the prosecutor or the military prosecutor with his/her complaint. Juveniles can also file their complaints with the Parliamentary Commissioner for Civil Rights or with the Parliamentary Commissioner for the Rights of National and Ethnic Minorities if their civil rights are infringed, or to the Parliamentary Commissioner for Data Protection if their rights related to handling of their personal data or their right to have access to public data are infringed.

526. Pursuant to the Act on the Prosecutor's Office, the prosecutor can, at any time, inspect compliance with the legality of detention, remanding in custody and deprivation of liberty procedures in police jails, in the penal institutions and in juvenile correction centres. Inspection focuses especially on the entry of the accused, on the documents serving as the basis for the procedure, on the implementation of the provisions of the documents, on observing the time limits of custody, on the observation of the inmate's rights and responsibilities, on supplies and health care, on awards and punishments, on education and training and on observing the rules of employment. Compliance with the rules on the treatment of the inmates is especially inspected. The prosecutor draws up minutes of the statutory inspection and sends them to the head of the institution. The heads of the inspected institutions must comply with the orders of the prosecutor in connection with lawful procedures and the conditions of confinement of people in police custody. The heads of the concerned institutions may file a complaint against the orders of the prosecutor with their superiors, but this has no delaying force. In the course of inspection of a police jail, penal institution or in juvenile correction centre, the prosecutor interviews the juvenile inmates. If there is a complaint by an inmate of inhuman treatment, the prosecutor enters this fact in the minutes and takes the necessary steps. If the complaint implies a well-founded suspicion of crime, the prosecutor initiates criminal procedures. Based on regular inspections by the prosecutors, we can say that the treatment of inmates - including juveniles - is generally lawful and complies with international expectations and with the provisions of the

legislation in force. Juvenile inmates can receive their visitors outside the area of the institution if the court has relaxed the rules of detention for them. It is also possible to permit the transportation of the juvenile to an institution near his/her home so that he/she can receive visitors.

527. Pursuant to the Public Education Act, teaching and education in penal institutions can be done on the basis of an education programme which corresponds to the given circumstances; deviation from the schedule and order of a regular school year is permitted.

528. During the course of a criminal procedure by the police, the juvenile spends police custody time either in a police jail or in a juvenile correction centre. The Police Jail Service Regulations provide for the treatment of detainees in the police jail. Regulations also cover rights to meals, health care, personal hygiene, keeping contacts and complaints. Accordingly, a medical doctor monitors the health of the detainees at regular intervals, and takes steps towards medical care and supply of medication. The investigating authorities, the head of the institution or in their absence the acting head must guarantee the rights of the inmates to keep contacts and receive visitors. Receiving and sending of packages are also authorized by the institution. The detainee may file his/her complaints with the institution or with the prosecutor's office, which exercises statutory supervision over police procedures. The law stipulates that medical care must be provided to the juveniles in police jails, in penal institutions and in juvenile correction centres. They get medication free of charge. Juvenile detainees can use medical services and treatment within the institution, but if necessary preventive treatment may take place outside the institution too.

529. During police custody, school type of education and training goes on only in the juvenile correction centres. The purpose behind education and training of the juvenile inmates in penal institutions during deprivation of liberty and in the juvenile correction centres for boys and girls during confinement in the correction centre is to make up for the missed school education, to continue schooling and to provide training to help entry into the labour market. Juveniles can take part in elementary and secondary education as well as in vocational training. Schooling must be provided to disabled juveniles in accordance with their disability. In the course of education in the correction centre, the director of the centre may give permission to the juvenile to study outside the institution if the juvenile and his/her legal representative request it jointly and if the public education institution or the vocational training school assumes responsibility for the juvenile. Juveniles in police custody may not participate in education, training or employment outside the institution. The juvenile sentenced to stay in the correction centre is entitled to care and supervision corresponding to his/her needs related to age; to health and psychological care; to correspondence with people named by the juvenile and permitted by the institution (the frequency and length of letters are not limited); to receive visitors in accordance with the rules of the institution; to packages, the content of which may be inspected; to freely practise religion according to his/her own conscience; to mainstream or out-of-school education and training; to receive remuneration for his/her work as corresponds to the quantity and quality of the work done; to participate in leisure activities that correspond to his/her interests; to use the cultural and sports facilities of the institution; to freely express his/her views, to be heard and informed on issues related to his/her person; to file information, complaints or petitions of public interest to the institution or to any other non-related organization.

530. Boys and girls must be separated in the course of stay in a juvenile correction centre. Young people can be put into groups according to age, health and educational level. Special attention must be paid to the treatment of juveniles who need special education or who suffer from personality disturbances, and special care and education must be provided to them. In the course of stay in the juvenile correction centre, care must be taken about suitable accommodation, supervision, meals, clothing and health care for the juvenile, the conditions for modern education and training, community life, culture and sport. The director of the juvenile correction centre informs the legal representative of the juvenile upon the entry of the juvenile into the institution. The right of the legal representative to educate and to raise the child is discontinued during the time spent in the juvenile correction centre, and it is transferred to the director of the institution.

#### **Paragraphs 145 and 146**

531. The Criminal Procedures Act provides for the compulsory presence of the legal representative of the juvenile in the course of the procedure. Furthermore, the presence of the defence lawyer is also obligatory in the procedure.

#### **Paragraph 147**

532. The European committee for the Prevention of Torture and Inhuman or Degrading Treatment visited Hungary for the second time in 1999 and recognized the significance of the supervisory activities of the prosecutors carried out in order to ensure lawful treatment. After the Committee's visit, the Deputy General Prosecutor defined further tasks for the prosecutors in a special circular. Thus, prosecutors inspect all penal institutions at least twice a month regarding the conditions of detention, the legal situation and the treatment of inmates. Monitoring the legality of treatment of juveniles is a priority. It is checked, besides the supervisory prosecutors of the penitentiary and the legal prosecutors, by the child and juvenile welfare prosecutors as of 2001, based on the orders of the General Prosecutor, in all penal institutions and police jails.

#### **(c) The sentencing of juveniles, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37 (a))**

#### **Paragraphs 148 and 149**

533. The main purpose of punishment and action against juveniles is to help in the correct development of the juvenile and to make him/her a useful member of society. A sentence can be given to a juvenile only if the action taken does not lead to results, and deprivation of liberty or a punishment can be used only if the purpose of punishment cannot be achieved by other action or through any other means. All the primary and secondary measures can be used in case of a juvenile - except for confiscation of assets - which are used for adults, with some differences. Confinement in a juvenile correction centre is the only action which can be used only against juveniles. The usual minimum limit of deprivation of liberty is one month; the upper limit can be 5, 10 or 15 years, depending on whether the juvenile is under or over 16 years of age; it is executed in a juvenile prison of the first or second levels. Pursuant to the law, no life sentence can be given to a juvenile.

**Breakdown of juveniles sentenced to stay in the juvenile correction centre  
by age and time spent there (on 31 December 2000)**

Line No.	Item	14-	15-	16-	17-	18-	(19)	Total (a)-(f)	
		year-old inmates							
		(a)	(b)	(c)	(d)	(e)	(f)		
1.	In the given year	1	22	51	63	25		162	
2.	Number of years spent in the Institution before the given year	1	1	7	18	12		38	
3.		2			3	9		12	
4.		3				2		2	
5.		4						0	
6.	Total count on 31 December (from 1-5)		1	23	58	84	48		214
7.	Of the total (of No. 6)	temporary care	1	6	18	20	1		45
8.		long-term care		1	1	2	1		5

**Breakdown of juveniles in police custody by age and  
time spent there (on 31 December 2000)**

Line No.	Item	14-	15-	16-	17-	18-	(19)	Total (a)-(f)	
		year-old inmates							
		(a)	(b)	(c)	(d)	(e)	(f)		
1.	In the given year	10	29	41	37	10	3	130	
2.	Number of years spent in the Institution before the given year	1		2	6	1		9	
3.		2						0	
4.		3						0	
5.		4						0	
6.	Total count on 31 December (from 1-5)				44	43	11	3	139
7.	Of the total (of No. 6)	temporary care		4	6	6			18
8.		long-term care		1	1	1			3

**(d) Physical and psychological recovery and social reintegration of the child (art. 39)**

**Paragraphs 150 and 151**

534. Education and vocational training programmes organized for juvenile convicts are mostly catch-up programmes to bring them up to the necessary level (teaching illiterates), elementary education (grades 1-8), language skills, IT skills, secondary school education (for private students), vocational secondary education, vocational training, computer operator courses, language courses, skilled worker training, teaching flower arrangement, motor bike mechanics, bricklaying, organizing study circles, programmes for the sensible use of leisure time, gardening, housekeeping, first aid, literature circle, model making, art circle, basket-weaving circle, music circle, sport circle. Another important point is the organization of celebrations related to anniversaries and important dates, quizzes and sport competitions.



535. A temporary mother-and-baby section was established for nine persons in the Bács-Kiskun County penal institution and probably by the end of this year a new section with a capacity of 20 will be ready to accommodate mothers and their children.

536. Precedent-based judicial practice applied the principles of the Convention in the reporting period in cases listed below, among others:

(a) BH1997.16.I. The ruling on the continuation of the detention of the juvenile after indictment is to be annulled if one of the lay judges of the court board was not a teacher;

(b) BH2001.465. If the court does not take note of the fact that the primary accused is a juvenile and carries on with the procedures which apply to adults, the procedure is annulled;

(c) BH2001.418. If the accused is in police custody, the procedures must be carried out in anticipation. The rule of anticipatory handling requires that priority be given to cases of detained people over those accused who are not detained. This is especially important in cases where a juvenile is involved;

(d) BH1997.12.I. An accused juvenile may not be interrogated without the presence of a defence lawyer; if a ruling is made based on the interrogation of the accused in the absence of the defence lawyer, it must be annulled by the second instance court. This new provision of the law may contribute to the real exercise of the right of the juvenile to a defence if detention is proposed, and also allows the defence lawyer, if he/she is present, to bring up substantial arguments when exercising the right to legal remedy;

(e) BH1999.495.I. The provision in the Criminal Procedural Act according to which a defence is compulsory in the case of an accused juvenile does not mean that the presence of the defence lawyer is required at all stages of the procedure and in all actions. The presence of the defence lawyer is not compulsory in investigative actions, even in case of compulsory defence;

(f) BH2002.297. If a juvenile perpetrator commits a relatively minor crime, had no previous criminal record and lives under normal family conditions, as can be seen from the file, a prison sentence is unjustified as being a serious case of retaliatory punishment, which is unlawful. This is because the purpose of punishment is not retaliation but the prevention of another crime committed either by the accused or by anyone else. And in the case of a juvenile the main objective is, as was very correctly pointed out by the municipal court in question, to channel the development of the accused into the right direction and to make him/her a useful member of society;

(g) Report of the General Deputy to the Parliamentary Commissioner for Civil Rights OBH 4650/1999. Persons under criminal investigation are at a disadvantage with respect to the official bodies. The need to compensate for this disadvantage is even more pressing in the case of juveniles. One of the many reasons is that the juvenile accused, due to age, judgement, or any other circumstance cannot defend his/her own rights and interests as effectively as adults. So it follows that if a juvenile cannot personally defend him/herself effectively, he/she has the right to a defence lawyer, even if he/she is an appointed one. Therefore, the actual presence of a defence lawyer, the right to a defence, and the fundamental constitutional rights that must be guaranteed

to all accused in practice at every stage of the procedure, are even more important in the case of juveniles. Guaranteeing a defence does not only mean the obligation of the appointed lawyer to be present at the trial; it also includes the obligation to keep continuous contact with the accused, which is crucial for an effective defence. At the time of investigation, a juvenile girl was held in police custody and was not visited by the appointed defence lawyer at all during the period of police custody. The court set the date of 7 October 1999 for the appeal trial. The preliminary documents sent to her bore the name of defence lawyer Dr. ... , who did not get in touch with her either. This infringement of the rules of the legal profession, the failure to provide a defence to a defenceless person in custody and under criminal investigation, and the failure to keep in touch jeopardize the right to a defence as stipulated by the Constitution, article 57 (3), thus creating an irregularity;

(h) OBH report 2485/1998. The plaintiff complained that he had wanted to file a complaint against his landlord for unlawful entry. It took about an hour and a half at the police station to write everything down, and he and his family (three children aged 2, 4 and 6) were made to wait for hours; after midnight they were told that not even with regard to the three children would immediate action be taken. He also said that he had complained about this at the local municipal prosecutor's office, but got contradictory answers there too. Considering the right of the three minors to protection and care as stipulated in the Constitution, article 67 (1), the hours of waiting in the middle of the night directly endangered the children's constitutional right to the rule of law and security in law, as well as to normal care. The Budaörs Police are not excused from the obligation to fully guarantee these rights, even if a serious crime was committed in the area under their jurisdiction which required immediate action from the police officers on duty. Not even the excuse given by the police that the complainant and his family stayed at the station voluntarily and could have left freely at any time is acceptable;

(i) OBH report 5919/1999. The police had well-founded suspicions that minors P.Á. and Sz.L. had caused a fire; interviewing them was thus justified in order to clarify the situation. However, taking them to the police station infringed the provisions of the Police Act because article 33 (2) provides that persons suspected of a crime can be taken to the police station; however, since children cannot be the subjects of a crime, taking them to the station is out of the question. The police would have acted lawfully if the children had been summoned together with their legal representatives to be interviewed, or, without a summons, they could have been interviewed in their schools. Even in this case the interview must take place in the presence of the children's legal representative or a case guardian. The fact that the restriction of personal liberty lasted only for a short time does not lessen the level of legal infringement; as a matter of fact, it was even more severe because it concerned children, who can be frightened easily due to their age, who do not know their rights and cannot defend themselves alone. The rulings of the prosecutors also stated the fact of legal infringement. Based on the above, the General Deputy ruled that the police officers acting in the case infringed the provisions of the Police Act, as well as those of the Act on the promulgation of the Convention on the Rights of the Child, and through this they caused constitutional irregularities in connection with the rule of law and security in law declared in the Constitution, article 2 (1), as well as in connection with the right to personal liberty;

(j) According to report by the General Deputy to the Parliamentary Commissioner for Civil Rights OBH 2783/2001, legal regulations related to detention in a penal institution, to penal procedures and to special measures to protect juveniles were infringed in a Budapest penal institution by putting the 16-year-old T.M. into a cell where mostly adult detainees of much stronger build were also held, and no preventive action was taken to avoid severe abuse. The disregard of the requirement to separate him infringed the requirement of security in law derived from the rule of law stipulated in the Constitution, article 2 (1); furthermore it created irregularities in connection with the constitutional right defined in the Constitution, article 54 (1): the right to life and to human dignity. The failures of the investigating authorities infringed the rights of the juvenile T.M. and his legal representative as regards the right to legal remedy under the Constitution, article 57 (5), and the unreasonable delay in the procedure endangered the security in law derived from the rule of law declared in the Constitution, article 2 (1). The conditions of the case imply that the actions taken by the concerned authorities were not in compliance with the provision of the Convention on the Rights of the Child that stipulates that detention, arrest or deprivation of liberty of a child can be used only as a last resort, and even then only for the shortest possible time. The six-month detention of a 15½-year-old juvenile and the initiative to transfer this juvenile to a penal institution three weeks before the end of the detention - especially with a kind of supervision which, together with an unlawful accommodation, was not capable of guaranteeing even the physical integrity and safety of the juvenile - were not disproportionate to the crime committed by the juvenile, and the time of detention could not be considered as the shortest possible time;

(k) Statement of the Parliamentary Commissioner for Data Protection on the supplement related to data protection of the report of the Parliamentary Commissioner for Civil Rights OBH 553/2000. "In my view, the rights of minor witnesses might be infringed because the Criminal Procedure Act (Be) allows for the presence of the guardian or of the teacher during the interrogation only if permitted by the authorities."

### **3. Children in situations of exploitation, including physical and psychological recovery and social reintegration**

#### **(a) Economic exploitation of children, including child labour (art. 32)**

##### **Paragraphs 152 and 153**

537. The right of the child to protection against economic exploitation, any possibly dangerous work, or any work that interrupts school studies or is a hazard to the health or physical, mental, moral or social development of the child is guaranteed by several acts, among them the Labour Code, the Public Education Act, the Child Protection Act (Gyvt.) and the Labour Safety Act. The Vocational Training Act regulates training conditions accordingly, so that the principles of the Convention also prevail. Pursuant to the Labour Code (Mt), a young employee must not be sent to do a job that might have negative consequences on his/her physical condition and development. The range of jobs that cannot be done by young employees, or can be done only if certain conditions are guaranteed, or if a preliminary medical examination allows it, is defined by legislation.

538. Pursuant to the Decree on medical examination, young people, among others, belong to the vulnerable category. The Decree stipulates that employment of trainees necessary for the practical learning of the profession cannot last longer - under working conditions that have health risks - than what is necessary to learn the profession. The list prohibiting employment of young people in a regular job, or allowing it only with certain conditions, can be found in annex 8 of the Decree; the list of working conditions for which risk analysis by aptitude test is necessary if a young person is to be employed can be found in annex 9/A.

539. Pursuant to the provisions of the Labour Protection Act, an employee can be employed for a job only if his/her health, physical integrity, or the development of a young employee is not affected negatively. The law also provides that within mainstream education students must be acquainted with the bases of safe living, and safe working that does not endanger one's health. Participants in vocational training are to be taught the health and safety requirements of the jobs they can do with the given qualifications.

540. Pursuant to the amendment to the Decree on the operation of educational institutions, if the parents decide to comply with the compulsory education requirement for their child through private studies, the principal of the school shall obtain the opinion of the competent child welfare authorities within three days of receipt of the notice of the above in order to decide whether this solution is to the child's advantage. The child welfare service shall send its answer within 15 days. The purpose of this provision is to prevent any unreasonable action to take the child out of school, for example in order to involve him/her in the family division of labour.

#### **Paragraph 154**

541. The Labour Code provides that people above the age of 16 can be employed in regular employment. Also, people above the age of 15 studying in the day session of elementary school, vocational school or secondary school can also be employed during the summer holidays. The consent of the legal guardian of young employees under the age of 16 must be obtained for employment. The Labour Code has a separate section for regulations on young employees that are different from the general provisions. The maximum working time for a young employee is 8 hours a day, 40 hours a week. In case of a young employee, a work cycle longer than one week cannot be used. If the daily working time of a young employee is over 4½ hours, at least 30 minutes of break must be guaranteed during work. The shortest period of continuous daily rest for a young worker is 12 hours. Young employees cannot be assigned to night shifts or extra shifts; he/she is entitled to five additional days of leave a year, the last time in the year he/she turns 18 years old.

542. The Act on Labour Inspection provides that labour inspection also covers compliance with provisions related to the employment of young people. Pursuant to the Government Decree on certain infringements, the employer who infringes the provisions related to the employment of young people can be fined up to HUF 100,000. In case of the crime of jeopardizing a young person, the Penal Code provides for aggravating circumstances and stipulates that a sentence of two to eight years of deprivation of liberty can be given to the adult person who forces a minor to work (forced labour).

### **Paragraph 155**

543. Hungary has ratified ILO Convention No. 182. National legislation includes Act XXVII of 2001 on the immediate action to prohibit and eliminate the worst forms of child labour, Act LXIX of 2000 on the lowest age limit of employment, Act L of 2000 on the medical examination defining the aptitude of children and young people to do non-industrial work, Act XLIX of 2000 on the medical examination defining the aptitude of children and young people to do industrial work, Law-Decree 9 of 1976 on the promulgation of the International Covenant on Economic, Social and Cultural Rights, Law-Decree 18 of 1958 on the promulgation of the Protocol amending the Slavery Convention, as well as on the promulgation of the Supplementary Convention, on the abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

### **(b) Drug abuse (art. 33)**

### **Paragraphs 156-158**

544. Pursuant to the Penal Code, drug abuse is liable to punishment. Often, children and young people are on the demand side; thus, cases in this area are quite complex. The adult perpetrator who commits this crime with the involvement of a person under 18 years of age, or in the course of which such persons gain possession of drugs, can be sentenced severely, from 5 to 10 years of deprivation of liberty; the same punishment is stipulated by law if the crime is committed in the area or in the vicinity of educational or child welfare institutions or buildings of public culture. The crime of generating addiction defined by law also serves the interests of minors, since the adult perpetrator who provides help to a person under the age of 18 in the use and abuse of hazardous narcotic substances not considered to be drugs is also liable to punishment.

545. The Health Act defines the special roles of the youth health service: to consult with the parents in providing advice on hazardous circumstances, drugs or alcohol abuse that would jeopardize the integrated physical and mental development of the child, or to initiate action if necessary. The youth health-care service also covers, among other things, checking compliance with provisions on the consumption of alcohol, drugs, other psychotropic substances and tobacco products.

546. Under Act XLII of 1999 on the Protection of Non-Smokers and Particular Rules of Consumption and Distribution of Tobacco Products, no area for smoking shall be marked in rooms used by students in public education institutions, or rooms open to users of daytime or permanent boarding facilities in child welfare or child protection institutions.

547. The Government Decree No. 4/1997 (I. 22) on the Operation of Shops and the Conditions of Pursuing Domestic Trade Activities prohibits the selling of alcoholic drinks in public areas within 200 metres of the entrance to institutions of primary and secondary education and health care, childcare and youth protection institutions, except for catering establishments serving warm meals. It also prohibits selling alcoholic drinks, among others, in institutions of students' sports federations and school sport facilities. Government Decree No. 218/1999 (XII. 28) on Law Infringements provides that persons making juveniles wilfully drunk in public areas or places may be fined up to HUF 50,000.

548. Decree No. 11/1994 (VI. 8) of the Minister for Culture and Public Education on the Operation of Educational Institutions prohibits the sale and consumption of unhealthy luxury articles in educational institutions and at events organized for children and students outside educational institutions.

549. Government Decree 1036/2002 defines the Government's tasks in connection with the implementation of the short- and medium-term National Strategic Programme for the reduction of the drug problem. The resolution highlights that the Government puts special emphasis on youth having the necessary information on the negative impacts of drug use through the necessary number and quality of health development and drug prevention programmes. Accordingly, the Government calls upon the concerned ministers to develop general drug prevention and health development programmes for their sectors to be implemented outside education institutions, and to ensure that they are applied in practice.

550. The Government established the Drug Affairs Coordination Committee the members of which are representatives of the competent ministries performing their coordinating and cooperative work by coordinating the measures taken to build up anti-drug programmes, making particular age groups aware of the dangers and mitigating the harm caused by drug abuse. The programmes must cover the widest scope of youth and vulnerable groups, including those participating in public education and higher education, drop-outs, unemployed youth, other groups with psycho-social problems, pregnant women and drug-addicted newborn infants, drug users susceptible to HIV and hepatitis, others suffering psychiatric problems, young conscripts and inmates of juvenile penal institutions.

551. The document National Strategy to Fight the Drug Problem was adopted by the Hungarian Government in first reading on 22 February 2000. After that it was debated. In the course of the debate 1,054 Government and Church institutions and non-governmental organizations presented their views. Experiences gathered during the debate were incorporated in the final document, which was adopted on 11 June 2000 by the Hungarian Government. The document (Parliament Resolution No. 96/2000 (XII. 11)) came into force in December 2000 as a parliamentary resolution. The document, pursuant to international recommendations, reflects an approach from among the various interpretation models of this phenomenon, which takes several disciplines into consideration. Related to the ways of tackling the problem, it reflects an approach based on the equilibrium of reducing supply and demand. The general objective of the National Strategy is as follows: "At the verge of the Third Millennium we are lead by the vision of developing a free, self-confident and productive society. For this society human dignity, mental, physical and social well-being as well as creativity are of highest priority. To safeguard and improve these factors the society shall be able to handle the health, social and criminal hazards and disadvantages resulting from the abuse and distribution of drugs. The drug problem affects us all and calls for joint action. The State and its institutions shall play a significant role in carrying out joint actions."

552. The illicit use of drugs and the related personal and social problems have become serious in Hungary. The number of young people and schoolchildren trying drugs is constantly growing, as is the number of drug users, drug addicts and carriers of drug-related infectious diseases. The

Ministry of Education, having recognized the severity of the problem as outlined above, is determined to support health education above all, and within that to promote prevention and related events and actions aimed primarily at schoolchildren of 12-18 years and the teachers working with them. Accordingly, an Action Plan for 2000-2001 was drawn up to achieve the goals set by reaching the mentioned groups with the help of NGOs in order to reduce drugs at all levels.

553. Amendments to the Public Education Act and to the Ministry of Education (OM) decrees were needed in 1999 and in 2000, respectively, in order to implement the above. The Public Education Act defines compulsory health education tasks for schools and compels them to integrate these into the curriculum. As for nursery schools and schools, child and youth welfare tasks are compulsory. The Public Education Act also set certain provisions on the local curricula derived from the national frame curriculum. The frame curriculum includes drug prevention in the following areas: 8th grade biology and health, 10th grade chemistry, 11th grade biology and home room classes in 5th to 12th grades, within which the school must spend 30 per cent (10 hours at least) of the lessons delegated to education for a healthy life. The Ministry of Education also amended MKM Decree 11/94 which covers drug prevention activities as a compulsory action by the institutions. According to the Decree, the role of the youth welfare officer is to help to organize and to monitor school education programmes, including health education programmes that cover drug prevention; to initiate action with the principal; and to provide information to students, parents and teachers. The job of the leisure-time officer is to organize special leisure-time activities related to healthy living, to the prevention of addictions and to the reintegration of recovered formerly addicted students.

554. The establishment of a national data collection network related to drug prevention has started. In the first stage a two-part questionnaire has been developed which was sent out to all schools. This questionnaire served as the basis for the questionnaire for the call for applications issued in 2000 jointly by the Ministry of Youth and Sports (ISM) and the Ministry of Education (OM).

555. The Ministry of Education encourages in-service training for teachers on health development topics in order to have at least one teacher in every school who can do drug coordination and health education jobs. In the academic year 2001/02, an in-service training programme along the lines of drug prevention training for teachers started with the participation of 700 secondary schoolteachers, which was totally funded by the Ministry of Education.

556. Within the drug prevention call for grant applications announced jointly by ISM-OM in December 2000, supporting secondary education institutions, ISM and OM granted from their own budgets some HUF 220 million for the year 2000 and also a significant amount of organizational expenses for secondary level health development projects in secondary education institutions, with special emphasis on drug prevention activities. The grant provides funds for the per capita norm of HUF 1,200 for over 180,000 students in 300 secondary schools participating in programmes developed jointly by the two ministries and implemented in 2001 by the schools with the help of experts chosen from the list of experts published on the home pages of the ministries.

557. The Report of the Parliamentary Commissioner for Civil Rights OBH 444/1999 pointed out that “it is well known that without the will and cooperation of adult addicts, no successful recovery is possible. This is true for children and youth too. In the case of minors the responsibility of society is greater because of their yet undeveloped judgement; they must be saved, in spite of themselves, from the negative environmental impacts, and very often from their own selves”. In the case of young people addicted to alcohol or drugs, the difficulty is that there are very few boarding institutions in the country that specialize in treating them.

**(c) Sexual exploitation and sexual abuse (art. 34)**

**Paragraphs 159 and 160**

558. The Penal Code (Btk.) chapter on crimes against marriage, family, youth and sexual decency provides punishment for acts that have a negative impact on the sexual development of youth and are dangerous for society. Penal Code (Btk.) mentions, among crimes against sexual decency, the act of forced intercourse (rape) and the act of indecent assault, which are liable to a punishment of two to eight years in prison. Pursuant to the law, victims of intercourse or lewd acts who are under 12 shall be considered as victims of a coercive act even if the passive subject had consented to the act. Furthermore, it makes unnatural acts of lewdness (i.e. an adult over the age of 18 who engages in lewd acts with a younger person of the same sex) a crime punishable by three years of deprivation of liberty, and unnatural coerced lewd acts (forcing a person of the same sex or a person unable to defend him/herself, by physical force or threat against life or physical integrity, to commit lewd acts or to suffer such acts committed upon him/her) punishable by two to eight years of deprivation of liberty. Constitutional Court ruling 37/2002 annulled the legal concept of lewd acts and coerced lewd acts, which have consequently been void since 4 September 2002.

559. People who have intercourse with children under the age of 14, and adults over the age of 18 committing lewd acts with children under the age of 14 commit a crime and are liable to one to five years of deprivation of liberty, since they commit the crime of abuse of the child.

560. Taking into consideration the expectations of the Convention, Act LXXIII of 1997 complemented the Penal Code (Btk.), article 195/A, in order to guarantee a healthy sexual development of minors and to prevent their sexual exploitation by declaring the making of banned pornographic recordings a crime. Another step was to amend it once again to punish any abuse of pornographic recordings, a provision which has been in force since 1 April 2002. Accordingly, a person making a pornographic video, film or still picture or any other kind of image of a minor, or obtaining such pictures and keeping them, is liable to three years of deprivation of liberty. Those who offer or hand over such pictures are liable to five years of deprivation of liberty; those who make, sell, trade in or make such pictures accessible to the public are liable to two to eight years of deprivation of liberty. Accordingly, those who make minors appear in pornographic performances are also liable to punishment. Persons providing financial means to commit the above two crimes are liable to two to eight years of deprivation of liberty. The Act also defines the concepts of pornographic pictures and performances as ones that depict sexuality with an openness that severely violates decency and which clearly aim at arousing sexual desire.



561. With respect to the Penal Code, the crime of trafficking in humans is aggravated if it is done with the purpose of committing lewd acts or intercourse. Another aggravating circumstance is if it is done to make illegal pornographic pictures; as a matter of fact, punishment can go up to life imprisonment if the crime of making pornographic images is committed against a child under the age of 12.

562. Another aggravating condition is defined in the law in connection with the crime of promoting or helping prostitution. Acts of prostitution committed by a person under the age of 18 in a brothel are considered to be serious and are liable to more severe punishment.

563. A Hungarian delegation participated at the Second World Congress Against Commercial Sexual Exploitation of Children held in Yokohama, Japan in December 2001. The qualitative research carried out by the Research and Education Centre for the Rights of Women and Children and the British Council within their child welfare programme on the mistreatment of children stated the following regarding the sexual violence/abuse of children: most criminal procedures were too lengthy, an average of three years elapsing between the beginning of the procedures and the legally binding ruling. Sometimes even four-five years after the rape of a teenager the victim had to testify in court and recall the horrible event, sometimes as a grown-up, married woman. The rule seems to be that perpetrators of this serious crime can continue to remain at large, and in case of violence in the family the abusive parent or relative can continue to rape the child while remaining under the same roof with the victim, the authorities being completely aware of the situation.

**(d) Sale, trafficking and abduction (art. 35)**

**Paragraphs 161-163**

564. Though the Penal Code does not use the concept of “abduction of a child”, kidnapping/abducting a child is liable to punishment within the crime of abduction as such.

565. In compliance with international law and the provisions of the Constitution, Act LXXXVII of 1998 added the crime of trafficking in humans to the Penal Code on 1 March 1999. The Act actually names the crime, thus creating the legal basis for the fight against trafficking in children. Former pieces of legislation guaranteed protection of children against this type of act within the concepts of the crimes of changing a child’s family status and jeopardizing a minor.

566. The crime of trafficking in humans also takes into account and includes the requirements set out in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. The legal concept provides that the person who sells, purchases, transfers or takes over someone else in exchange for something, as well as a person who recruits people, transports, accommodates, hides and obtains them for others for this very purpose is liable to three years of deprivation of liberty. If the act is committed for the purpose of making pornographic pictures, or if the victim of the crime is under the age of 12, or if the perpetrator is someone who teaches or is responsible for the care, supervision or medical care of the child, a heavier sentence is pronounced.

567. Hungary and Europol cooperate on trafficking in humans, the sexual exploitation and jeopardizing of minors, and the trafficking in abandoned children. These forms of exploitation include the making, sale and distribution of child pornography.

**(e) Other forms of exploitation (art. 36)**

**Paragraphs 164 and 165**

568. The Ministry of Children, Youth and Sports signed an agreement with the representatives of the media to reduce violence broadcast in the media, thus contributing to the healthy development of children. If programmes containing elements which are undesirable for children are broadcast, they are scheduled at a time when children probably do not watch it, or there is a suitable sign during broadcasting stating this fact.

569. The International Child Safety Service has organized conferences twice in the reporting period on the "Impact of the Media on Children and Youth". There was a joint closing statement issued at the end of both events. The conferences were organized by the Service, by the National Radio and Television Board (ORTT) and by the General Deputy to the Parliamentary Commissioner for Civil Rights. The proceedings of the conference were published in the form of a book, and the publication was supported by the Ministry of Children, Youth and Sports. The publications were sent by the organizers to experts and institutions working on this topic.

570. The Health Act and Decree No. 23/2002 of the Minister for Healthcare provides for medical research involving human beings. Both pieces of legislation include special provisions related to research involving incompetent persons and persons with diminished capacity, i.e. children. The Act provides for the conditions, for carrying out such research. The Decree specifies further rules for these cases, inter alia the obligation of information and the right of consent; it states, among other things, that in the course of informing minors persons with pedagogical experience shall be involved that persons with diminished capacity and incompetent persons shall not be involved in research as healthy volunteers.

**4. Children belonging to a minority or an indigenous group (art. 30)**

**Paragraphs 166 and 167**

571. The Constitution defines the place of national and ethnic minorities in Hungarian society and provides that "national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State". The Constitution guarantees them collective participation in public affairs, the establishment of local and national self-governments, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages.

572. The Act on the rights of national and ethnic minorities guarantees individual and collective rights - the right to establish person-based autonomy and self-governments - to the 13 minorities living in Hungary. The Act defines the concept of national and ethnic minorities. According to the law, the Bulgarian, Gypsy (Roma) Greek, Croatian, Polish, German,

Armenian, Rumanian, Ruthene, Serbian, Slovak, Slovenian and Ukrainian minorities are recognized in Hungary. The institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities has been established by the Constitution. Citizens can appeal to the Parliamentary Commissioner in all cases when, in their judgement, their constitutional rights are infringed in the course of a procedure by an authority, or if the danger thereof is imminent.

573. Pursuant to the Act on radio and television, public service media have the duty to make programmes on minority cultures and lives. Public service radio and television guarantee the regular making and broadcasting of ethnic minority programmes. In areas where minorities live, the State promotes - including via international agreements - the reception of radio and television programmes broadcast from the mother countries. Minority communities have the right to establish bilingual or mother-tongue nursery, elementary, secondary and higher education schools.

574. The Act on the protection of cultural heritage and museum institutions, on the supply of public libraries and on public culture defines as a job for the entire society, the preservation and continuation of national and ethnic minority cultures; the improvement of the personnel, intellectual and financial conditions for community and individual cultural education; the promotion of activities improving citizens' quality of life; and supporting institutions and organizations established for the implementation of the foregoing.

575. The Minority Act regulates the individual and community rights of minorities, which includes those of children. Persons belonging to a minority are entitled to have minority traditions pertaining to family relations respected, to foster family relations, to hold family celebrations and events in their native tongues and to request the related church ceremonies in their native tongues. Furthermore, they are also entitled to freely choose their own and their children's first names, to have their first names and last names kept by the Registrar according to the rules of their native languages and to write them in official documents - within limits as defined by law - in that manner. If requested, birth certificates and other official documents can be bilingual.

576. Persons belonging to a minority are entitled to become acquainted with their native tongue, history, culture and traditions, to foster them, develop them, transfer them to future generations and participate in education and culture in their own native tongues. The Bulgarian, Gypsy (Romani and the Beah) Greek, Croatian, Polish, German, Armenian, Rumanian, Ruthene, Serbian, Slovak, Slovenian and the Ukrainian languages are considered to be minority languages in Hungary. Education in or on the native language for minorities can be provided in minority nursery schools, schools or classes, or in a group, depending on local possibilities and demand. If the parents or legal representatives of eight children of the same minority request it, a minority class or group must be organized and operated. The extra costs of minority education in or on a native language shall be borne by the State or by the local government. The minority education institutions can be used by persons not belonging to the given minority only if the institutions have extra places after all the requests of the minority have been complied with. Teaching Hungarian is a must in minority education institutions. A minority library network provides native language literature. The State provides for the publication of textbooks necessary for

native language education, as well as educational tools and instruments. The State supports the collection of traditional objects of minorities as well as the foundation and growth of public collections; publication of minority books and periodicals; laws and announcements of public interest in native languages; and religious services of the churches in native minority languages. The Government provides additional per capita normative amounts, as provided in the budget law in force, to native language education in schools. A public foundation must be established with the purpose of preserving the identity of Hungarian minorities, to foster and transmit their traditions, to foster and develop their language, to preserve their intellectual heritage and traditional objects, to preserve their collective memory, and to reduce the cultural and political disadvantages arising from belonging to a minority.

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