

ADVANCE UNEDITED VERSION

COMMITTEE AGAINST TORTURE
Thirty-seventh session
Geneva, 6-24 November 2006

REPUBLIC OF HUNGARY

Responses to the list of issues submitted by the Committee Against Torture (CAT/C/HUN/Q/4) to be considered during the examination of the fourth periodic report of Hungary (CAT/C/55/Add.10) on 15-16 November 2006

Article 1

Question 1

1. Act No. 4 of 1978 on the Criminal Code (henceforth: Criminal Code) does not contain the notion of torture as defined under the Convention. The Criminal Code, however, meets the requirements set forth in the Convention through its provisions regulating conducts specified under the title of Crimes Related to Office, in particular through Section 226 on ill-treatment in official proceedings, Section 227 on forced interrogation and Section 228 on unlawful detention.

2. The texts of these provisions are as follows:

I. Ill-treatment in Official Proceedings, Section 226

An official person committing assault upon another person in the course of the proceedings conducted by him commits a misdemeanour, and shall be punishable with imprisonment of up to two years.

II. Forced Interrogation, Section 227

The official person who – with the aim of forcing a confession or declaration – applies violence, menace, or other similar methods, commits a felony, and shall be punishable with imprisonment of up to five years.

III. Unlawful Detention, Section 228

a) The official person who unlawfully deprives another person of his personal freedom, commits a felony, and shall be punishable with imprisonment of up to five years.

b) The punishment shall be imprisonment from two years to eight years, if the unlawful detention is committed

- (i) for a base reason or purpose,
- (ii) with the torment of the injured party,
- (iii) causing a grave consequence.”

Question 2

3. The text of Section 123 of the Criminal Code has not been amended since the entry into force of the Code (1 July 1979) and no amendment is scheduled. According to that section, the person giving the order shall be liable for the crime committed upon order as perpetrator, the person executing the order shall not be liable only in the case of not knowing that he or she commits a crime. However, it is hardly conceivable in practice that any person should not know that an act qualified as torture by the Convention is an act of crime and that he/she is punishable for committing it.

Article 2

Question 3

4. The fundamental protection of the rights of persons is secured under the Constitution of the Republic of Hungary. In its Chapter on Fundamental Rights and Duties it provides that everyone has the inherent right to life and human dignity, of which no one shall be arbitrarily deprived. It also provides that no one shall be subjected to torture, to cruel, inhuman, degrading treatment or punishment. It prohibits, in particular, to carry out medical or scientific experimentation on a human subject without his consent. In the Republic of Hungary everyone shall have the right to liberty and personal security. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are determined by law. Anyone suspected of having committed a criminal offence and taken into custody shall be released or brought before a judge within the shortest possible time. The judge shall hear the person brought to him and shall deliver, without delay, a reasoned decision in writing on the release or detention of the person. Anyone who has been the victim of unlawful arrest or detention shall have the right to compensation. Restrictions allowed by the Constitution and the enforcement of the rights of persons whose liberty is restricted or who are deprived of liberty shall be ensured in Acts.

5 Several provisions of Act No. 19 of 1998 on the Code of Criminal Proceedings (henceforth: Code of Criminal Proceedings) comply with the requirements laid down in the UN Convention:

- a) The duties and responsibilities specified under Section 28 subsection (4) ensure the legality of the investigation; according to subsection (6) the lawful implementation of

coercive measures entailing restriction or deprivation of personal liberty shall be monitored by the public prosecutor.

b) Section 43 subsections (2) and (3) list the rights which can be enforced by defendants in criminal proceedings;

c) Sections 44-50 contain the rules governing the activity of defence counsels for defendants;

d) Sections 117-118, 124 and 179-180 set forth the rules governing defendants' interrogation and confrontation;

e) Chapter 8 regulates coercive measures; it specifies the powers and rules of procedure applicable from the commencement of the detention and serving as a guarantee for the enforcement of the rights of persons who have been brought under criminal proceedings and whose personal liberty has been limited.

f) Sections 195-198 set forth the legal remedies available against a decision, a measure or an omission.

6. In addition to the Code of Criminal Proceedings, detainees' fundamental rights are governed under several laws, which comply with international law: Law-decree No. 11 of 1979 on the implementation of sentences and measures and Decree No. 19/1995 (XII.13.) BM on the order of police cells (henceforth: Decree on the order of police cells).

7. During its 2005 inspection carried out at Hungarian penitentiary institutions the Council of Europe Committee against Torture (henceforth: CPT) recommended to ensure for detainees the actual exercise of defence rights from the very start of their detention. Section 3 subsection (3) of Act on criminal proceedings provides that defendants are entitled to the services of defence counsels at any stage of the proceedings. It means that they are entitled to exercise this right from the moment when they become defendants: that is, from the moment when the charge is communicated to them. Section 48 subsection (1) of Code of Criminal Proceedings provides that if defence is mandatory and a defence counsel is to be appointed, the counsel shall – in case the defendant is detained – be appointed before the defendant is first interrogated, at the latest. Section 4 subsections (2) and (3) of Joint Decree No. 23/2003 (VI. 24.) of the Minister of Interior and the Minister of Justice on the rules governing the investigation of organs supervised by the Minister of Interior and on recording investigatory acts in a way other than minutes, contains a stricter rule when provides that the right to a defence counsel is to be ensured not from the moment when the defendant is first interrogated, but from the moment when the first procedural act is carried out.

8. The CPT was particularly concerned about Section 33 of Act No. 34 of 1994 on the Police Force. It held that the right to defence of persons taken to police stations for questioning was not clearly guaranteed under this Section since the maximum 12 hours long period – during which the status of a person taken to a police station for questioning is „committed person” – could elapse without contact with a defence counsel. In its opinion No. NF.7536/2004/3-I. issued on 7 October 2004 the department of the Attorney General's Office supervising investigations pointed out that under Section 126 subsection (5) of the Code of Criminal Proceedings any period of detention preceding the arrest – including the period spent in a police station as

„committed person”– is to be counted into the duration of the detention. It means that the period spent in a police station as „committed person” amounts to detention within the meaning of the Code of Criminal Proceedings, consequently the involvement of a defence counsel is mandatory already in this phase of the proceedings.

9. Section 17 subsection (1) of the Decree on the order of police cells provides that no one shall be placed in a police cell until examined by a doctor. It also provides that the doctor’s opinion shall be taken into consideration. Para 4 of Action No. 17/2006 (V.30.) of the Head of the Police Force implementing the recommendations of the CPT (henceforth: CPT Action) provides that detainees shall be given an opportunity to study the medical opinion issued on the basis of the preliminary medical examination and to sign it after receiving the required information. Para 5 of CPT Action provides that detainees’ medical documentation and medical files can be inspected and copied by the detainee or, upon his written consent, by the defence counsel.

10. As to contact with family members Section 2 subsection (1) *c*) provides that detainees shall have the right to correspond with family members, to have them as visitors minimum once a month and to receive parcel from them minimum once a month. This right shall be ensured not only for persons held in pre-trial detention but – depending on the duration of the detention – also for persons held in police cell. However, the right to correspondence and the right to receive visitors can be restricted in the interest of the criminal proceedings.

11. According to Section 128 subsection (1) of the Code of Criminal Proceedings the relative designated by the defendant shall be notified of the fact and place of the detention within twenty-four hours. The phrase „within twenty-four hours” indicates the latest moment of time; notification must be made prior to the expiry of that time. Thus, this period of time is not to be viewed as a delay but as a statutory guarantee ensuring that within this time the relative shall be notified. Para 9 of CPT Action imposes further restriction when it prescribes that the relative shall be notified without delay and the fact of notification shall be put into writing. [Detainees’ right to inform their relatives about their whereabouts is also ensured under Section 18 subsection (1) of the Act on the Police and under Section 77 subsection (6) of Act No. 69 on summary offences.]

12. Detention effected by the Border Guard Service in the course of carrying out immigration control tasks is governed at ministerial level. Joint decree No. 27/2001 (XI.29.) of the Minister of the Interior and the Minister of Justice on the rules of detention effected in immigration control proceedings specifies the rights and restrictions observable in the course of effecting detention. It specifies the place of detention (immigration control cell or penitentiary institution), the order of admission (necessary documents, medical examination to be carried out before admission, conditions upon which admission can or shall be denied) the placement of detainees (in cells with minimum 15 cubic metres cubic capacity per detainee and with an area of 5 square metres for movement). It specifies the rules governing access to information on detainees’ rights and duties, contacts (with whom and in what form is a detainee allowed to keep contact, control of contact), food supply, the exercise of the right of complaint about the detention. It regulates access to health services, specifies the rules pertaining to payment of compensation for damages caused during the detention, provides for keeping registries and specifies the order of supplying data and the protection of personal data.

13. The law in force does not provide for mandatory representation or involvement of a defence counsel in the immigration proceedings but civil organisations are allowed to provide legal aid on the basis of a co-operation agreement and in individual cases too. At the immigration centres and at other premises of the Border Guard Service information is provided about Hungarian human rights and humanitarian organisations offering legal aid and having a co-operation agreement with the Border Guard Service. Aliens brought under proceedings shall be informed of their rights and duties via interpreters when questioned for the first time and they shall certify by their signature that they have understood what they have been told. These statements shall be put into the case files. Information is displayed in several languages in all the buildings where aliens are detained. The prosecution authorities shall inspect the case file of the detainees every two weeks. They shall also monitor their treatment and the observance of their rights.

14. Alien detainees shall not be admitted to the cells until having undergone a medical check-up. Detainees are under continuous medical supervision thus the taking of medical pills and urgent medical intervention is ensured. Medical treatment is provided by physicians employed by the Border Guard Service or by physicians working on contracts. Local hospitals also provide medical treatment and care for the institutions. The staffs of the institutions are trained to give first aid so they can give basic medical treatment before the doctor comes or the person concerned can be taken to hospital.

15. The rules of receiving visitors are laid down in the Regulation of the immigration centres. The frequency of visits is not limited but the number of visitors present at the same time and the duration of the visits is stipulated by law (maximum 1 person for maximum half an hour at a time; if the visitor is from a foreign country, an extension of the duration of the visit can be permitted). The commander of the cell may, on an equitable basis, permit more visitors or longer visits. The time of the visits is specified in the timetable of the cells in the elaboration of which psychologists are involved and consulted. We find that a proper timetable has positive effects on the detainees and, on the other hand, the regulation of their activities ensures discipline. In justified cases the commander of the cell may permit visits at times other than the ones prescribed by the timetable. Detainees are allowed to keep contact with their legal representatives and with national organisations authorised to provide legal aid without any limitation.

16. Detainees are separated on the basis of age and sex and the Border Guard Service pay special attention to ensuring manifestations of religion in worship and to ensure different diets.

Question 4

Sub question 1:

17. *Pre-trial detention* means the judicial deprivation of a defendant of his freedom prior to the delivery of the final decision. Decisions ordering pre-trial detention shall be delivered by courts. Pre-trial detention ordered prior to filing the indictment may continue up to the decision of the first instance court during the preparation for the trial, but may never be longer than one month. Pre-trial detention may be extended by the investigating judge by three months on each occasion, but the overall period may not exceed one year counted from the date when the pre-trial detention was ordered. Thereafter pre-trial detention may be extended by the county court acting as a single judge by two months on each occasion, in compliance with the procedural rules

applicable to investigating judges. When the period of the pre-trial detention reaches three years, it shall be terminated, unless it was ordered or maintained after the announcement of the conclusive decision, or unless a repeated procedure is in progress owing to a repeal in the case. Pre-trial detention shall be terminated if the underlying cause has ceased [Section 129 subsection 1, Section 130 subsection 1 and Sections 131-132 of the Code of Criminal Proceedings]. As a rule, pre-trial detention shall be served in a penitentiary institution. In exceptional cases, justified by the need to carry out certain procedural acts, the public prosecutor may order to carry out the pre-trial detention in a police cell – for a period of maximum thirty days; After the expiry of that period the court shall – upon the public prosecutor’s motion – decide on the prolongation of the suspect’s placement in a police cell for another period of maximum thirty days. No appeal shall lie against the decision on the placement of the suspect in a police cell. [Section 135 subsections 1 and 2]

18. According to the information received from the Hungarian National Police Department at present (15 August 2006) 85 persons are held in pre-trial detention in police cells.

Sub question 3:

19. The measures applicable in the trial phase or prior to the trial phase as alternatives to pre-trial detention are governed under the Code of Criminal Proceedings under the chapter titled Coercive Measures:

20. Taking the defendant into *custody* means a temporary deprivation of the defendant of his freedom. Custody may be ordered and terminated by the court, the prosecutor or the investigating authority. If the defendant has been taken into custody on the order of the investigating authority, it shall advise the prosecutor thereon within twenty-four hours. The defendant may be retained in custody for a period of maximum seventy-two hours. After the lapse of this period, the defendant shall be released, unless the court has ordered his pre-trial detention. The defendant shall be released if the court has not made a decision concerning his pre-trial detention during the period of the custody. [Sections 126-128]

21. The *prohibition to leave the place of residence* restricts the defendant’s right to free movement and free choice of dwelling; the person under prohibition to leave the place of residence may not leave the specified area or district nor may he change his place of residence or stay without permission. Prohibition to leave the place of residence may be ordered if in light of the nature of the criminal offence, the personal circumstances and family conditions of the defendant – with special regard to the health condition or old age of the defendant – or his conduct during the proceedings, the objectives desired to be attained through pre-trial detention can be realised in this way too.

22. The prohibition to leave the place of residence is ordered by the court. If ordered prior to filing the indictment the prohibition may continue up to the decision of the court of first instance during the preparations for the trial. The prohibition shall terminate if its term has expired and has not been extended, if the investigation has been terminated, if its maximum period has expired without extension, or if pressing charges have been postponed. It shall be terminated if the cause for its order has ceased to exist. Up to the time of filing the indictment, the prohibition to leave the place of residence may also be terminated by the prosecutor. [Section 137]

23. *House arrest* restricts the right of free movement and the right to choose freely the place of residence. In the event of house arrest the defendant may only leave the place of living designated by the court and the enclosed area attached to it for the reason, at the time and within the distance specified in the court decision, thus especially for the purpose of complying with everyday basic necessities or medical treatment. House arrest can be ordered if in view of the nature of the crime, the duration of the criminal proceedings or the defendant's conduct performed during the procedure the aim sought to be attained by the pre-trial detention can be ensured by this measure as well. The order, period, maintenance and termination of house arrest as a coercive measure shall be governed by the provisions pertaining to the order, extension, maintenance and termination of pre-trial detention. [Section 138]

24. A *restraining order* restricts the defendant's right to free movement and his right to choose freely his place of residence. A person under a restraining order must leave the flat specified in the order according to the rules prescribed by the court and must stay away for the period specified by the court. He shall stay away for the period of time specified by the court from the person specified in the order, from the dwelling place and workplace of the person, from the educational and health institutions and from the place of worship regularly attended by the person. He shall refrain from directly or indirectly contacting the person specified in the order. Restraining orders shall be issued by the court for a period lasting from ten to thirty days. [Sections 138 A-138/B]

25. *Bail* is an amount of money specified by the court and aimed at securing the defendant's attendance at a procedural act. In certain cases the court may omit the order for the pre-trial detention of the defendant and may terminate the previously ordered pre-trial detention, if – considering the criminal offence and the circumstances of the person – there is probable cause to believe that the defendant's appearance at the different procedural acts can be ensured by the deposit of bail. The amount of bail specified by the court in a final decision shall be deposited in cash at the court or its deposit shall be certified in a manner specified under separate law. Thereupon the detainee shall be released without delay. The court may order the pre-trial detention of a defendant who is at liberty or has been released on bail, if the defendant has failed to appear at a procedural act when summoned without giving sufficient reasons thereof in advance or if after the cessation of the obstacle he fails to provide sufficient justification thereof, without delay. The defendant shall lose his right to refund of the bail if his pre-trial detention has been ordered for the above reason. In other cases the amount of bail shall be refunded to the defendant. [Section 147]

Question 5

26. Under Section 36 subsection (1) *e*) of Law-decree No. 11 of 1979 on the implementation of sentences and measures detained „women and juveniles shall be entitled to special protection”.

27. Section 39 subsection (1).*c*) of Decree No. 6/1996 (VII.12.) of the Minister of Justice on the implementation of pre-trial detention provides that juvenile detainees shall be placed separately from adult detainees. This important requirement is fully observed in the institutions. In the placement of juveniles further differentiations are made on the basis of their age, the gravity of the offence committed, the sentence imposed, the conduct of the juvenile, etc. In criminal proceedings a juvenile is a person who has not completed his 18th year at the time of perpetrating a crime, so it can occur that pre-trial detainees under and over 18 years are

accommodated in the same cell in the course of the procedure. If somebody is sentenced to imprisonment as a juvenile, and he completes his 21st year during the execution of the punishment, he is accommodated with adults, but until that time he is placed with persons under 18 years.

Question 6

28. The Criminal Code governs conducts related to sexual violence under the title of crimes against sexual morals. The following conducts are governed:

I. Rape, Section 197

- a) A person who by violent action or direct menace against life or limb forces a woman to have sexual intercourse, or uses the incapacity of the woman for defence or for the manifestation of her will for sexual intercourse, commits a felony and shall be punishable with imprisonment between two to eight years.
- b) The punishment shall be imprisonment from five years to ten years, if
 - (i) the victim is under twelve years of age,
 - (ii) the victim is under the education, supervision, care or medical treatment of the perpetrator,
 - (iii) more than one person have sexual intercourse with the victim on the same occasion, knowing about each other's acts.
- c) The punishment shall be imprisonment between five to fifteen years if the provisions of Paragraph b) or c) of Subsection (2) also apply to rape committed against a victim under twelve years of age."

II. Assault against Decency, Section 198

- a) A person who by violence or direct menace against life or limb forces another person to engage in sodomy or to the endurance thereof, or uses for sodomy the incapacity of another person for defence or for manifestation of will, commits a felony and shall be punishable with imprisonment between two to eight years.
- b) The punishment shall be imprisonment from five years to ten years, if
 - (i) the victim is under twelve years of age,
 - (ii) the victim is under the education, supervision, care or medical treatment of the perpetrator;
 - (iii) if several persons sodomize the victim on the same occasion, knowing about each other's act.

c) The punishment shall be imprisonment between five to fifteen years if the provisions of Paragraph b) or c) of Subsection (2) also apply to the sexual assault committed against a victim under twelve years of age.”

III. Seduction, Section 201

a) The person who has sexual intercourse with a person who has not yet completed his fourteenth year, as well as the person who has completed his eighteenth year and engages in fornication with a person who has not yet exceeded his fourteenth year of age, commits a felony and shall be punishable with imprisonment from one year to five years.

b) That person who has completed his eighteenth year and strives to persuade a person who has not completed his fourteenth year, to have sexual intercourse or to fornicate with him, commits a felony and shall be punishable with imprisonment of up to three years.

c) The punishment shall be imprisonment from two years to eight years, or from one year to five years, respectively, if the injured party of the crime defined in subsections (1) or (2) is a relative of the perpetrator, or is under the education, supervision, care or medical treatment of the perpetrator.

IV. Section 202

a) The person who induces a person who has not yet completed his fourteenth year, to have sexual intercourse or to fornicate with another person, commits a felony and shall be punishable with imprisonment from one year to five years.

b) The person who has completed his eighteenth year and strives to persuade a person who has not yet completed his fourteenth year, to have sexual intercourse or to fornicate with another person, commits a felony, and shall be punishable with imprisonment of up to three years.

c) The punishment shall be imprisonment from two years to eight years, or from one year to five years, respectively, if the injured party of the crime defined in subsections (1) or (2) is a relative of the perpetrator, or is under the education, supervision, care or medical treatment of the perpetrator.”

V. Incest, Section 203

a) The person who has sexual intercourse or fornicates with his relative in direct line, commits a felony and shall be punishable with imprisonment from one year to five years.

b) The descendant shall not be punishable, if he has not yet completed his eighteenth year of age on perpetration of the act.

c) A person who has sexual intercourse with his or her sibling shall be punishable for a misdemeanour offence with imprisonment of up to two years.”

VI. Promotion of Prostitution, Section 205

- a) The person who makes available a building or another place for prostitution to another person, commits a felony and shall be punishable with imprisonment of up to three years.
- b) The person who maintains heads a brothel, or makes available financial means to the functioning thereof, commits a felony and shall be punishable with imprisonment of up to five years.
- c) The punishment shall be imprisonment from two years to eight years, if
 - (i) any person who has not yet completed his eighteenth year engages in prostitution in the brothel,
 - (ii)
- d) The person who persuades another person to engage in prostitution, shall be punishable in accordance with subsection (1).”

VII. Living on Earnings of Prostitution, Section 206

The person who lives wholly or in part on the earnings of a person engaging in prostitution, commits a felony, and shall be punishable with imprisonment of up to three years. Banishment may also take place as a supplementary punishment.”

VIII. Pandering, Section 207

- a) The person who solicits another person for sexual intercourse or fornication for somebody else in order to make profit, commits a felony, and shall be punishable with imprisonment of up to three years.
- b) The punishment shall be imprisonment from one year to five years, if the pandering is business-like.
- c) The punishment shall be imprisonment from two years to eight years, if the pandering is committed
 - (i) to the injury of a relative of the perpetrator or of a person under his education, supervision or care or who has not yet completed his eighteenth year of age,
 - (ii) with deceit, violence or direct menace against life or limbs.
- d) The person who agrees on the perpetration of pandering defined in subsection (2) commits a felony and shall be punishable with imprisonment of up to three years.”

IX. Obscenity, Section 208

A person who exposes himself before another person in an indecent way for the satisfaction of his or her sexual desire, commits a misdemeanour, and shall be punishable with imprisonment of up to two years, labour in the public interest, or a fine.”

X. Interpretative Provision, Section 210

For the purposes of Sections 197, 198 and Section 200, the person who has not yet completed his twelfth year of age shall be deemed as incapable of defence.”

XI. Section 210/A

a) Prostitution is pursued by the person who has sexual intercourse or fornicates striving to make regular profit.

b) For the purposes of this Title, fornication is: any gravely indecent act with the exception of sexual intercourse, which serves the stimulation or satisfaction of sexual desire.”

29. Torture, cruel, inhuman or degrading treatment is prohibited under the Constitution and under several international agreements ratified by Hungary. Act No. 4 of 1978 on the Criminal Code prohibits for official persons to commit to the injury of detainees abuse of authority (Section 225), ill-treatment in official proceedings (Section 226), forced interrogation (Section 227) and unlawful detention (Section 228). Crimes related to sexuality (crimes against sexual morals) are also governed under the Criminal Code, but the prohibition of torture and forced interrogation is a general rule, not gender-specific. Therefore we have no data on the proportion of women to men among the persons having been victims of such crimes. The UN Convention against torture or other cruel, inhuman or degrading treatment – promulgated in Hungary under Law-decree No. 3 of 1988 – does not contain gender-specific differentiation either. Also, since the relevant decision of the Constitutional Court was adopted in 1990, there has been no possibility of classification on the base of ethnicity.

Question 7

30. The Hungarian Ombudsman - Summary of history, organisation and experiences relating to torture, inhuman and degrading treatment

Summary of the institution

A. History and basics of the Hungarian ombudsman

31. There are three levels of Hungarian legislation concerning the institute of the ombudsman. *The Hungarian Constitution* (Act No 20 of 1949) establishes the institute of the ombudsman and defines its responsibilities. The Constitution specifically mentions a parliamentary commissioner for civil rights and a parliamentary commissioner for the rights of national and ethnic minorities.

32. The Parliamentary Ombudsman for Civil Rights is responsible for investigating or initiating the investigation of cases involving the infringement of constitutional rights which come to his attention and initiating general or specific measures for their remedy.

33. The Parliamentary Ombudsman for the Rights of National and Ethnic Minorities is responsible for investigating or initiating the investigation of cases involving the infringement of the rights of national or ethnic minorities which come to his attention and initiating general or specific measures for their remedy.

34. The second level of legislation is the Law on the Ombudsman, passed in 1993 (Act No. 59 of 1993), which defines the legal status, procedures, and measuring authority of ombudsmen. This law established the position of deputy parliamentary commissioner. Being a general regulation, its validity extends to all ombudsmen.

35. Particular laws governing specific ombudsmen constitute the third level of legislation and define special rules beyond those defined in the Law on the Ombudsman. Such laws are the Law on the Protection of Personal Data and Public Access to Data of Public Interest (Act No 63 of 1992), which established the institute of the ombudsman for data protection, as well as the Law on the Rights of National and Ethnic Minorities (Act No 77 of 1993).

36. Parliament elected the first Hungarian Ombudsmen in 1995 for a six-year period. The first parliamentary commissioners, who took office on July 1 1995, had no previous experience with the institution of ombudsman. They had to integrate a new and vital constitutional institution into the Hungarian political and legal structure. Fulfilling the mentioned task, they had to face the surviving remains of the previous dictatorial legal and social structure and, thus, the parliamentary commissioners and their staff gained valuable experience. These utilised their investigations and the preparation of draft legislation in order to delineate their mandate.

37. In 2001 the Hungarian Parliament elected ombudsmen for the second time, which indicates that the institution has found its role in the legal system and is supported by the vast majority of society and politicians.

38. The Hungarian Parliamentary Commissioners are independent public officers, who are not subordinates of one another, but work in a common office.

B. Functioning of the Office of Parliamentary Commissioners and order of proceedings

39. The offices of the Commissioners both for financial and practical reasons have been integrated into a common organisational structure, which ensures the conditions of independent decision-making and performing the tasks of the Commissioners. The Parliament elected Dr. Barnabás Lenkóvics for Parliamentary Commissioner and Dr. Albert Takács as his General Deputy in 2001. The commissioners are independent and responsible exclusively to Parliament. They take their measures exclusively on the basis of the Constitution and of the law.

40. Anybody who feels that in consequence of a proceeding, decision or the omission of the measure listed below caused the violation of any of his or her constitutional rights or the threat of this is immediate, may apply to the ombudsman:

- a) organs fulfilling a task of state power, state administration;

- b) any other organ acting in its jurisdiction of state administration;
- c) the armed forces;
- d) the police, law-enforcement organ;
- e) the services of national security;
- f) inquiry authorities;
- g) local governments and minority local government;
- h) public bodies with obligatory membership;
- i) notary public;
- j) county or autonomous brokers

41. The constitutional rights may be injured by:

- a) unreasonably long procedures
- b) discrimination
- c) inaccurate, or wrong information provided
- d) inequitable personal treatment
- e) unreasonable refusal of information dissemination
- f) unlawful decision
- g) other omission

42. A complaint can be filed if the complainant has already exhausted the available possibilities of administrative legal remedies, or no legal remedies ensured.

43. According to Section 21 subsections (1)-(3) of the Act No 59 of 1993 if, in accordance with the available data, the organ bringing about the abuse in connection with constitutional rights is able to terminate this abuse within its own competence, the ombudsman may initiate the remedy of the abuse with the *head of the organ* concerned. Such initiative may also be made directly (by telephone, verbally etc.); in such case the date, way and essence of the initiative shall be laid down on the document on file.

44. The organ concerned shall inform the ombudsman within thirty days of receipt of the initiative of his standpoint on the merits of the initiative and/or of the measure taken.

45. If the organ requested does not agree with the initiative, he shall present it together with its opinion to its supervisory organ within the deadline indicated in subsection (2). The supervisory organ shall notify the ombudsman within thirty days of receipt of the presentation of its standpoint, and/or of the measures taken.

46. According to Section 20 subsection (1), if the ombudsman comes (on the basis of the investigation completed) to the conclusion that an abuse concerning constitutional rights exists, he may make a *proposal* for remedy to the *supervisory organ* of the organ having brought about the abuse – with the simultaneous information of the organ concerned. The supervisory organ shall notify the ombudsman within thirty days of receipt of the proposal of his standpoint on the merits formed in connection with the proposal and/or of the measures taken.

47. If according to the standpoint of the Ombudsman an abuse relating to constitution rights is the result of the superfluous, not unambiguous provision of a legal rule or of some other legal instrument of state direction, or that of the absence (insufficiency) of the legal regulation of the given issue, in order to avoid the abuse in the future he may propose to the organ entitled to legislation or to the issue of some other legal instrument of state direction the amendment, repeal or issue of a legal rule (some other legal instrument of state direction). The organ requested shall notify the Ombudsman of its standpoint, and/or of his eventual measures within sixty days (Section 25 of the Act on the Parliamentary Commissioner for Civil Rights).

48. The ombudsman is not entitled to conduct proceedings in the following cases:

- a) Procedure begun before 23 October 1989
- b) Non-appealable decision was passed more than one year ago
- c) Legal proceeding is pending or already *res judicata*
- d) Parliament, the President of the Republic of Hungary, the Constitutional Court, the State Audit Office, or the state attorney's office act (except investigation office of the state attorney)
- e) Complainant needs an attorney at law or legal advise

49. In the interest of protecting the rights of national and ethnic minorities, Parliament elected Dr. Jenő Kaltenbach as Parliamentary Commissioner for national and ethnic minority rights, exclusively responsible to Parliament.

50. The present Parliamentary Commissioner for Data Protection and Freedom of Information, Dr. Attila Péterfalvi heads an office of about forty persons including senior experts and a secretarial staff.

51. The operating procedures of the Parliamentary Commissioners are not regulated in detail by the Act; instead, they themselves adopted their procedures. Accordingly, if their competence does not cover the subject matter or if there are other procedural obstacles to their assessment, the complaints are generally rejected by issuing a so-called notice of information. The same applies to instances where judicial proceedings have been commenced in the same matter or

where the complainant has not exhausted the available public administrative legal remedies, or where he was late submitting his complaint.

C. Ombudsman and constitutional rights

52. The Parliamentary Commissioners try to assess the problems submitted to them carefully and sensitively, with an intensive interpretation of fundamental rights. They are capable of indicating different and new consequences of the application of fundamental rights in accordance with their role to protect and develop the law.

53. The unity of basic rights is reflected in the clause on the rule of law contained in Section 2 subsection (1) of the Constitution. The principles belonging to the concept of the rule of law, such as legal certainty, right to fair procedure, prohibition of arbitration, objective institution protection obligation of the state are requirements that can be directly accounted in the practices of authorities.

54. Parliamentary Commissioners have no general authorisation to review the legality of the proceedings of public administration bodies as there are other entities empowered to do so (public prosecutors, public administration offices on county and metropolitan level). Their job is to investigate grievances relating to constitutional rights and to take the necessary measures to redress them. However, the interpretation of constitutional rights is fairly broad as they include not only the human and civic rights declared in the Constitution of the Republic of Hungary but also fundamental rights relating to the basic principles of the economic, social and political system as well as rights based on international instruments having a binding effect on Hungary.

55. Pursuant to their obligation set forth in the Constitution and in Act No 59 of 1993 on the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioners render an account in their report of the position of constitutional rights, the acceptance of their initiatives for its improvement and for remedying the discovered constitutional improprieties as well as the outcomes thereof.

56. Based on the analysis of the position of the protection of the various constitutional rights, it can be mentioned that democracy and the rule of law are firm and on the whole these rights are enforced. No such flagrant cases of conduct or omission by authorities were discovered which would have violated or jeopardised the fundamental framework of the rule of law. Within that stable framework, however, constitutional principles, the values enshrined in the Constitution and in particular the rights and legitimate interest of citizens are still often infringed in the course of the “practical operation” of the rule of law, both in legislation and in enforcement.

57. In the increasingly complicated system of general and special legal regulations, the task of the Parliamentary Commissioners to monitor the enforcement of the various fundamental rights enshrined in the Constitution has become more and more difficult.

58. The offices of the Commissioners and the common ancillary departments employ a staff of 148 persons at the moment. 50 persons work in the office of the Parliamentary Commissioner for Civil Rights and his General Deputy, 18 persons in the office of the Parliamentary Commissioner for national and ethnic minority rights, 43 persons in the office of the Parliamentary Commissioner for Data Protection and Freedom of Information and 37 persons in the common office. The annual budget of the institution was 1,282,300 thousand HUF in the

year of 2006, while it was 1,306,000 thousand HUF in 2005. The budget is presented to the Parliament by the Government and the Ministry of Finance which has been disputed by the ombudsmen for a long time as a procedure which could endanger the functioning of the ombudsman institution.

Experiences of the Parliamentary Commissioner for Civil Rights and his General Deputy

59. The Parliamentary Commissioner for Civil Rights and his General Deputy received a total of 75,165 complaints between 1 July 1995 and 31 July 2006. 12,422 (16.5 %) of these complaints ended with an investigation.

60. The number and type of cases where inhuman and degrading treatment could emerge are the following from the total number of the complaints received:

- a) 1139 (1.52 %) misdemeanours,
- b) 7209 (9.59 %) criminal cases,
- c) 2146 (2.86 %) police proceedings,
- d) 397 (0.53 %) immigration control cases,
- e) 659 (0.88 %) guardianship and care cases, cases of boarding institutions,
- f) 2200 (2.93 %) child protection, child welfare,
- g) 1342 (1.79 %) cases of educational institutions.

61. The Parliamentary Commissioners carried out 2725 inquiries concerning the above-mentioned types of cases (i.e. 21.9 % of the total inquiries), but only in a fraction of these cases (0.7 %) did they find violation of law concerning the prohibition of inhuman and degrading treatment. These violations of law occur more frequently relating to authorities applying different means of coercion, but there are also a few examples in boarding and educational institutions of special humanitarian character which are looking after the most disaffected people of the society.

62. The main types of cases can be presented as follows:

- I. Criminal and penal cases, police proceedings
 - a) 12.45 % of the submissions concern *criminal proceedings and the functioning of investigative authorities*. The lawful coercive measures applied by policemen may also violate the right to human dignity. The application of coercive measures which is not justified by the target wished to be achieved is inappropriate and collides with the prohibition of cruel, degrading and inhuman treatment regulated by Section 54 subsection (2) of the Constitution.
 - b) The Parliamentary Commissioner for Civil Rights found in several cases that physical compulsion applied with unnecessary violation and brutality or applied after the termination of the defiance – especially in cases where the number and dominance of the

acting policemen do not make it necessary – violates the right to human dignity of the concerned ensured in Section 54 subsection (1) of the Constitution. Constitutional impropriety can also be established in case of this kind of compulsion because torture, inhuman and degrading treatment are prohibited by the Constitution, by international conventions and the Act on the police.

- (i) The identities of the school-mates of a wanted person's child were checked by plain-clothes policemen in order to quest the place of residence of the concerned person. Apropos of a coercive measure applied against a grammar school teacher who protected her students objecting to the action of the policemen, the Parliamentary Commissioner proposed that the Minister of Justice initiate the modification of the Act on criminal proceedings and asked for the Chief of National Police Headquarters to provide that the checking of the identity by policemen be done according to legal regulations, only with the aim of identification observing the requirements of the "aim-attached principle". The Minister of Justice agreed with the proposed modification of the Act on criminal proceedings regarding minors, but found the maintenance of the provision in force is necessary in case of the juvenile. The Chief of National Police Headquarters accepted the recommendations and gave several instructions to the heads of territorial police organs the execution of which promotes to avoid similar cases.
 - (ii) The complainant was assaulted by policemen during an action against the disorderly conduct of Hungarian and guest football fans after a football match. As a result of the policemen's action the complainant suffered serious injuries healing after eight days. The use of baton, drubbing and kicking applied against the complainant and his fellows violated the requirement of proportionality defined by the law. It became clear during the investigation that the use of coercive measures had been unjustified and unlawful from the moment when the resistance of the persons under action ended and especially from the moment they fell on the ground. The General Deputy established that violating the rule of law and the right to human dignity defined in Section 54 subsection (1) of the Constitution the police caused constitutional impropriety with the application of coercive measures against non-resisting persons in a manner of exceeding proportionality and performed a crime with this action in itself.
- c) During the investigation of a criminal proceeding against a mentally handicapped person and his detention in relation to such proceedings the General Deputy found that the human and procedural rights of the mentally handicapped suspect had been violated after his arrest by the police. It is a general phenomenon that the rights of persons with disabilities – particularly persons with mental handicap – are exercised only in a limited range during the criminal proceeding and such persons are in a disadvantageous position in comparison to other people in detention. One reason for this is that the criminal law has not been harmonized with the Act on the rights of people with disabilities, and lower level legal regulations are also focusing only on a certain group of people with handicaps. The Deputy Ombudsman proposed that the Minister of Justice should – with the involvement of the National Council for the Disabled and other social organisations concerned – initiate modification of the legal regulations on criminal proceedings and detention that will meet the requirements of the Act on the rights of persons with disabilities and on their equal opportunities.

d) Concerning an ex officio investigation launched by reason of the maltreatment of juveniles suspected with burglary, the General Deputy underlined that torture and inhuman and degrading treatment are prohibited by several international conventions, the Act on the police and the rules of the criminal proceedings as well. The judgement of this crime was aggravated by the fact that it had been committed to the injury of juveniles and minors and the chief of policemen had also participated in the maltreatment. The action of policemen violated the requirement of legal certainty and caused a grief constitutional impropriety concerning the constitutional rights to life and human dignity. Since the responsibility of the offender had been also established by the court and the Chief of the Departmental Police Headquarters had executed the necessary personnel measures, the General Deputy did not make a recommendation in this case, but sent his report to the Chief of National Police Headquarters. He expressed his deep concern about the occurrences of incidental reprisals after the announcement of illegal actions since the data procured during the investigation showed that man had to calculate on the incidental revenges, reprisals and intimidation behaviours and measures of those people concerning the known crimes of similar character.

e) The Parliamentary Commissioner for Civil Rights launched an investigation concerning a brutal police act presented in a TV show. According to the “speakers” policemen terrorise the population for years and maltreat them. The maltreatment by policemen caused a dangerous head injury in one case. The sergeant suspected with the commission of the crime was warranted for one month pre-trial detention by the court. The assaulting policeman, however, was resettled to service by the Head of the Police Headquarters after his release from detention. The Head of the Police Headquarters did not acknowledge the charges brought against him in the TV shows. He did not dispute, however, that the court had applied suspended imprisonment or pecuniary penalty for coerced confession and maltreatment against ten policemen of the Headquarters who had been in service in the period of the events as well.

Considering the discovered violations of law, the Chief of National Police Headquarters launched a complex investigation. According to the conclusions of the inquiry the Headquarters, which generally operates lawfully, nevertheless has many significant deficiencies. The Chief of National Police Headquarters made the necessary measures for the elimination of the identified deficiencies and the Chief of the Departmental Police Headquarters executed these orders.

The measures of the Chief of National Police Headquarters taken in his own competence in this case were not always considered sufficient by the Parliamentary Commissioner. He recommended therefore

- (i) to the Chief of National Police Headquarters to arrange that during his actions policemen refrain from every actions against persons under police proceedings which could be evaluated as the violation of the prohibition of degrading and inhuman treatment.
- (ii) to the Chief of the Departmental Police Headquarters to order the policemen under his command the periodic studying and examination of the Act on the Police and that of the service regulation; to call the attention of the competent governing staff to the strict observance of the prefectorial obligations; to order an investigation in order to establish how the provisions of the Act on criminal proceedings

(particularly the rules on the obligatory recording of hearings) prevail in police headquarters subordinated to the National Police Headquarters during the execution of investigatory actions; and to discuss the report on the investigation in a meeting of the chiefs of police headquarters.

- f) According to the Parliamentary Commissioner the acting policemen violated the prohibition of inhuman and degrading treatment when transported the persons arrested to the headquarters in the boot of a police car or in the “rear end” of a minibus without seats not formed for passenger transport. In his recommendation the Commissioner asked for the action of the competent Chief of Departmental Police Headquarters to order that policemen transport the arrested persons in every case in car seats and abstain from every kind of omission colliding with the prohibition of degrading and inhuman treatment. The recommendation was accepted by the Chief of the Departmental Police Headquarters.
- g) In a petition received by the Parliamentary Commissioner for Civil Rights the complainant found it injurious that his seriously ill father had been guarded in cuffs attached to the bed in the prison hospital. The public prosecutor underlined during the examination of the legality of handcuff use that a so-called “handcuff to an object” had happened in the case of the complainant’s father. Handcuffs had been used not as coercive measures but by security reasons, as a measure restricting the movement of the suspected since there were no bars on the windows of the hospital room. Handcuffs had been removed during medical examinations. According to the Public Prosecutor the regulation of “handcuff to an object” is not adequate because the relative legal provisions in force do not determine the guarding mode of police detainees in a civil medical institution and do not regulate the application of handcuff as an instrument restricting the movement. The Public Prosecutor therefore initiated the Minister of the Interior to amend the regulation of prison hospitals.
The Parliamentary Commissioner stated that handcuffing the complainant’s father to the hospital bed caused constitutional impropriety concerning the constitutional prohibition of cruel and inhuman treatment. A detainee can be handcuffed to an object only by particular reasons; the guarding of the detainee should have been ensured in a different manner. Considering all these facts the ombudsman asked the Minister of the Interior to review the legal provisions in force relating to the application of handcuffs.
- h) The Parliamentary Commissioner for Civil Rights investigated the accommodations of foreigners residing in public quarters maintained by the Border Guards. As a result of his inquiry several common quarters, also the premises of a former stable building used for arrest, were considered as inappropriate for human residence. Making the foreigners waiting under these circumstances – the duration of which could even reach 12 hours – could be qualified as inhuman and degrading treatment. The Parliamentary Commissioner therefore:
 - (i) recommended to the Minister of the Interior to amend the Act on the Entry and Stay of Foreign Nationals in order to develop a system of guarantees which would make it possible to revise the duration of staying at the assigned place, the justification of its maintenance and the extent of freedom restriction determined by the proceeding authority. He also asked the Minister to regulate the proceeding of the assignment of the obligatory place of residence, the requirements of the

establishment of a public quarter along with the size of floor space for one person stipulated in the government decree on the policy of public quarters, the obligatory medical examination and separation of foreigners and the professional preparation of the staff in service. He also asked the Minister for the extraordinary closure of one of the public quarters.

(ii) also made several recommendations to the Chief of National Border Guard to create conditions and circumstances which are worthy to human beings in each public quarter.

- i) Two petitions were received concerning penal cases that complained about maltreatment causing injuries committed by detainees to the injury of their fellows. The continuous maltreatment causing injuries – considering the fact that the prevention of these actions is the legal obligation of the prison's employees – caused an impropriety concerning the requirement of legal certainty deriving from the rule of law and the constitutional right to life and human dignity.
The Parliamentary Commissioner called the attention of the Chief of the national penal institution to pay particular attention to the actions of detainees committed to each other resulting in injury and the examination of their reasons. He further asked to investigate the responsibility of the institution's commanding officer because of the increase of maltreatment in this concrete case. The recommendation was accepted by the authorities.
- j) In 2005 the General Deputy investigated the execution of disciplinary separations in penal institutions as well. As a result of his inquiry he established serious impropriety concerning the prohibition of inhuman treatment in a case where there was no water ensured for a whole day for a detainee in separation and the disciplinary separation was not executed in a cell in compliance with the legal provisions. The General Deputy established that the disciplinary separation must not be a preliminary punishment; its aim is just the clarification of the disciplinary responsibility. If a disciplinary cell is used for the execution of the separation that cell must be furnished with furniture and running water must also be ensured. As a result of the Commissioner's recommendation the Chief of the national penal institution sent a circular in order to implement the lawful execution of the separations in the future.
- k) The Parliamentary Commissioner for Civil Rights launched an ex officio investigation concerning the circumstances of female detainees, particularly those of the education and employment of juvenile prisoners. The ombudsman underlined that the biological needs and mental carrying capacity of female detainees differs from those of male detainees. Lodgement and detention circumstances which are viewed proper for men could qualify as degrading treatment in case of women and seriously endanger the preservation of their human dignity and personality. The lack of basic hygiene requirements run against the prohibition of inhuman and degrading treatment. The Parliamentary Commissioner therefore established the constitutional impropriety in this case.
He also pointed out that the security separation of a detainee in an environment which is dangerous to him/her and to the public as well, shall not collide with the prohibition of torture, cruel, inhuman and degrading treatment; the restriction shall not have a criminal character and shall not be applied to the reprisal of disorderly conduct or to

discipline. It is required that the restriction correspond to the criteria of necessity/proportionality so it shall be applied only in a definitely justified case – in case of a directly endangering behaviour of the detainee towards himself or other persons – and shall be maintained only until the averting of danger. The lack of lighting and seats in the separation cell and the impossibility to relieve nature in a human manner violates the right to human dignity and collides with the prohibition of cruel, inhuman and degrading treatment.

The Parliamentary Commissioner recommended to the Minister of Justice to examine the establishment of special cells serving as premises for security-based separation of persons detained in a penal institution, to secure their correspondence with the requirements of constitutional and human rights provisions. He further recommended fixing the detailed and controllable rules of the placing in special cells, the mode of the documentation of lawful placement from which at least the name of the detainee, the cause, the beginning and the end of the placement, the identity of the ordering person and the doctor's opinion can be found out. He recommended to the Chief of the national penal institution to make the necessary actions to improve the circumstances of placement, cleaning and other hygienic needs and medical care of female detainees.

The established good co-operation between the ombudsman and the Chief of the national penal institution contributed to the fact that the Parliamentary Commissioner's recommendations have been adequately accepted, the modernisation of the institutional system has started as a result of which detention circumstances have improved in several institutions, even if the overcrowding of the institutions has not been reduced in a perceptible manner.

II. Boarding institutions

63. Persons who are obliged to live in health centres due to social and medical causes or by reason of their age or other special situation are not able to (or are able only to a restricted extent) enforce their constitutional rights. From this standpoint they are more defenceless than their other fellow-men. Regrettably, in almost every year the ombudsman has received a number of complaints concerning maltreatment and psychical or spiritual "aggression", disapproving treatment applied intra families. At the same time, the overwhelming majority of these submissions proved to be unfounded. During his ex officio investigations in case of the suspect of the violation of the habitant's constitutional rights the Parliamentary Commissioner has discovered several times different types of punishments and measures restricting liberty (net-beds, withdrawal of day off and clothing, pecuniary penalty).

a) A fire case ended with a tragedy in a psychiatric institution when a patient who had been guarded in a net bed closed with a lock died because of smoke poisoning and his burned traumas. Although the Minister of Social and Family Affairs took action in a methodological letter in January 1998 concerning the rollout of net-beds in psychiatric institutions, the content of this letter could not be – or not indefinitely – known by the institutions concerned. There were still 9 net-beds in the institutions when the fire accident happened. The ombudsman established that the bed and the overdosed tranquilizers which are called "chemical straitjacket" were used as measures restricting the free movement in the case of the deceased while the continuous control of the condition of patients closed into net-beds was not ensured. The premise developed for the patient's permanent installation is essentially solitary. The constitutional right to free movement and personal security of the patient and the constitutional

principle of the prohibition of torture and cruel and degrading treatment were violated by reason of his installation.

A criminal proceeding aiming at the establishment of eventual personal responsibility had already been initiated in this case, the Commissioner therefore did not request any corresponding extra action. He asked, however, the Minister of Social and Family Affairs to publish the referred methodological letter in the official journal.

During the post-investigation of the institution performed in 2003, the ombudsman positively considered that the 9 net-beds were rolled out. The termination of the format documenting the use of coercive measures, however, is still a serious problem. Fixation (bind) was used instead of net-beds which is also a coercive measure. Fixation without documentation means the direct threat of constitutional impropriety concerning psychiatric patients.

The Parliamentary Commissioner established the violation of legal certainty and as a result of this, he established the existence of the direct threat of the violation of the right to life and human dignity. He further established the constitutional right to personal freedom of psychiatric patients (in a psychiatric ward or health centre for psychiatric patients, addicts and disabled persons) and those of the constitutional prohibition of torture and cruel and degrading treatment. The ombudsman recommended to the Minister of Health, Social and Family Affairs to issue a decree containing the detailed rules of restrictive measures concerning psychiatric patients according to his authorisation given in the act on public health. He also asked the director of the institution to take actions to introduce the format documenting the use of coercive measures and to use it regularly.

b) During his several investigations the Parliamentary Commissioner found that the practice to sanction the breach of discipline with a penalty in case of people living with disabilities qualifies as an especially serious impropriety. In case of the institutions concerned the ombudsman initiated the maintainers to take actions in order to terminate the unlawful situation, to establish the personal responsibility and in one case to close the examined institution.

III. Maltreatment of children

64. Maltreatment in violation of the constitutional rights of the child may occur in families and in educational institutions as well. Latency is extremely high in this area. In 1999 the ombudsman launched a complex investigation to disclose if the proceedings of authorities in children maltreatment cases ensure the respect for constitutional rights. He found that children learning or living in certain educational institutions were maltreated. This is a serious impropriety, particularly in cases where corporal punishments were regular and often rested without any consequences. It occurred that the teachers of a school humiliated and spiritually and physically racked the pupils and the municipal council of the maintainer self-government did not launch any disciplinary proceedings qualifying the act as of minor weight. The Commissioner maintained his observations according to which the violation of the character, personality and human dignity of a pupil is a grave violation of law because of his unprotected character given by his age and his defencelessness in the hierarchic structure of the school. The ombudsman, however, was not empowered to take any actions in this case due to his lack of competence. There is a contrary example, when the institution's maintainer launched a disciplinary proceeding against the director of a primary school and suspended him until the termination of the proceeding because of regular maltreatment and his vulgar statements. For this behaviour the proceeding disciplinary council punished him with "the prolongation of the waiting period in the career system with one year". Considering this fact the Parliamentary Commissioner did not make a recommendation in this concrete case and dismissed his proceeding.

Experiences of the Parliamentary Commissioner for National and Ethnic Minority Rights

65. The respect for the rule of law is one of the most important responsibilities of the Hungarian Ombudsmen. According to Act No. 59 of 1993 on the Parliamentary Commissioner for Civil Rights, Section 16 subsection 1, anybody may apply to the Ombudsman if in his/her opinion he/she has suffered injury as a consequence of the proceedings of any authority or of any organ performing a public service.

66. The Ombudsman for National and Ethnic Minority Rights performs similar functions in the field of the guarantees given, particularly by Act No. 77 of 1993 on the Rights of National and Ethnic Minorities. The National Assembly of Hungary adopted a solemn declaration in the preamble of this Act, according to which it considers the right to national and ethnic identity as part of universal human rights. Other important Acts are also in effect in connection with the guarantee of minority rights, including Act 65 of 1990 on Local Self-Governments, Act 79 of 1993 on Public Education, as well as Act 1 of 1996 on Radio and Television (Media Act).

67. Since 1995, the Ombudsman for National and Ethnic Minority Rights has dealt with 4991 complaints, 10 percent (487) of which were filed against police organs and penal authorities. The ombudsman conducted investigations in each of the cases. No complaints have been filed until now about cases of torture committed by the police, but a relatively high number of complaints have been received concerning misbehaviour of police staff and other law enforcement staff, with complainants reporting that they have suffered inhuman treatment or degrading behaviour. In all these cases investigations have been carried out and as a result, in some of them criminal procedures have been initiated. The main difficulty in this field is that there are a high percentage of cases in which no evidence has been found against police officers due to the special nature of such situations. That is why the Ombudsman for National and Ethnic Minority Rights has initiated some measures of a more general nature to improve the situation. Firstly using the reputation of the institution, the Ombudsman for National and Ethnic Minority Rights generated public discussion about this problem through the media. In this debate he recommended that amendments be made to the law to make police procedures more accessible. One of the main problems is that there is no institutionalized civil review system supervising police procedures. The only supervisory authority is the Public Prosecutor, who is an independent authority, still, as it is part of almost the same branch of the jurisdiction it can not be regarded as a fully independent and impartial authority.

68. Secondly, as the main potential victims of police ill-treatment belong to the Roma minority, projects have been launched to improve relationships between the Roma community and the police. Two methods have been applied: Roma organizations and police authorities have established "official" relationships by signing documents which provide representatives of Roma communities with easier access to the criminal documents of the police in "Roma" cases. Also, teaching materials have been introduced in the training of the police about the Roma. The teaching of anti-discrimination legislature has been intensified in police training.

69. Although the situation has improved slightly there is still no reason to be satisfied. The institutionalized civil review of the police could not be established, and the attitudes of the public remain mainly negative towards Roma. Police misbehaviour against members of the Roma community is not always met with the condemnation of the general public.

Article 3

Question 8

70. No such action was taken.

Question 9

71. There are no examples for such cases concerning refugees.

Question 10

72. Since 1 January 2002 the asylum authority is no longer authorised to grant the status of temporarily protected person, but in its decisions on the merits it is obliged to decide on the question of expulsion. Asylum seekers are granted the status of temporarily protected person under a formal decision taken by the immigration authority issued on the basis of the decision of the asylum authority or, upon appeal against the dismissing decision of the asylum authority, on the basis of court decision.

73. **The number of instances between 2002 and the first half of 2006 when expulsion to the country of origin was prohibited:**

Nationality	2002	
	person	case

Afghan	731	565
Algerian	2	2

Angolan	3	3
Azerbaijan	1	1
Burundian	1	1
Ethiopian	1	1
Stateless person	1	1
Iraqi	399	366
Iranian	21	21
Yugoslavian	2	1
Cameroonian	5	3
DRC	2	2
Liberian	1	1
Nigerian	23	23
Armenian	1	1
Russian	9	6
Pakistani	3	3
Palestinian	6	6
Sierra-Leonean	4	4
Syrian	1	1
Somali	33	28
Sudanese	48	47
Turkish	6	6
Total:	1304	1094

Nationality	2003	
	person	case
Afghan	359	307
Algerian	13	13
Azerbaijan	1	1
Egyptian	1	1
Ethiopian	1	1
Georgian	17	15
Guinean	1	1
Stateless person	1	1
Iraqi	208	178
Iranian	47	41
Yugoslavian	1	1
Cameroonian	2	2
Chinese	2	1
Congo Brazzaville	1	1
Liberian	2	2
Libyan	1	1
Macedonian	1	1
Nigerian	5	5
Russian	43	16
Armenian	5	2
Pakistani	1	1
Palestinian	6	6
Sri-Lankan	4	4
Syrian	7	2
Somali	24	23
Sudanese	12	12
Togolese	0	0
Turkish	4	4
Ukrainian	1	1
Zimbabwean	1	1
Total:	772	645

Nationality	2004	
	person	case
Afghan	39	38
Algerian	1	1
Angolan	2	2
Azerbaijan	0	0
Belorussian	1	1
Bissau Guineans	0	0
Bosnian	0	0
Burkina	0	0
Burundian	1	1
Ecuadorian	1	1
Egyptian	0	0
Ivory Coaster	1	1
Eritrean	0	0
Ethiopian	7	7
French	0	0

Gambian	0	0
Ghanaian	0	0
Georgian	8	8
Iraqi	33	29
Iranian	4	1
Yugoslavian	13	5
Cameroonian	3	2
Chinese	1	1
Congo-Brazzaville	1	1
DRC	1	1

Nationality	2006 (first six months)	
	person	case
Afghan	8	8
Azerbaijan	1	1
Bosnian	1	1
Egyptian	2	2
Ethiopian	2	2
Georgian	1	1
Iraqi	7	3
Iranian	1	1
Liberian	1	1
Nepalese	1	1
Russian	1	1
Armenian	7	2
Pakistani	1	1
Serbian-Montenegrin	17	9
Somali	1	1
Sudanese	1	1
Tanzanian	0	0
Tibetan	8	7
Turkish	4	4
Total:	65	47
Cuban	4	4
Liberian	1	1
Moroccan	1	1
Moldavian	1	1
Nigerian	6	5
Russian	3	3
Armenian	3	2
Pakistani	1	1
Palestinian	5	5
Syrian	6	3
Somali	7	7
Sudanese	1	1
Swaziland	1	1
Tanzanian	2	2
Togolese	0	0

Turkish	8	8
Ugandan	1	1
Ukrainian	8	1
Vietnamese	1	1
Total:	177	148

Nationality	2005	
	person	case
Afghan	10	6
Algerian	0	0
Bosnian	1	1
Ivory Coaster	1	1
Ethiopian	1	1
Georgian	6	5
Iraqi	7	7
Iranian	6	3
Unknown	1	1
Cameroonian	4	4
Congo Brazzaville	2	2
Moldavian	1	1
Nepalese	3	1
Nigerian	5	5
Russian	4	4
Pakistani	11	11
Serbian-Montenegrin	18	11
Syrian	2	2
Somali	2	2
Sudanese	4	4
Tibetan	0	0
Turkish	3	3
Tunisian	1	0
Turkmen	0	0
Zimbabwean	1	1
Total:	95	77

74. Number of asylum seekers in 2002-2006 whose requests for asylum were dismissed but who were not expelled from Hungary as their expulsion would have violated the rule of non-refoulement. Figures are based on the statistics of the immigration authority:

Nationality	2002 (person)	2003 (person)	2004 (person)	2005 (person)	2006 (first six months) (person)	Total (person)
Afghan	40	11	9	11	8	79
Algerian	1	1	0	0	0	2
Angolan	2	2	4	1	0	9
Azerbaijan	1	0	0	0	0	1
Belorussian	0	0	1	0	0	1
Bosnian	0	0	0	1	3	4
Burkina	1	0	0	0	0	1
Burundian	0	0	1	0	0	1
Comorian	1	0	0	0	0	1
Egyptian	0	1	0	0	2	3
Ivory Coaster	0	1	1	0	0	2

Ethiopian	3	1	0	0	2	6
Ghanaian	0	0	0	1	0	1
Georgian	0	1	6	4	3	14
Stateless	1	1	1	0	0	3
Iraqi	65	17	1	5	8	96
Iranian	2	2	1	6	4	15
Cameroonian	4	0	3	5	1	13
Chinese	0	2	1	1	9	13
Congolese	2	1	5	3	0	11
Cuban	1	0	2	0	0	3
Liberian	0	1	2	0	0	3
Libyan	0	1	0	0	0	1
Macedonian	0	1	1	0	0	2
Moroccan	0	0	1	0	0	1
Mauritanian	0	0	1	0	0	1
Moldavian	0	0	1	1	0	2
Nepalese	0	0	0	2	1	3
Nigerian	6	3	5	12	3	29
Russian	5	17	1	4	3	30
Armenian	11	3	3	4	0	21
Palestinian	9	0	2	1	0	12
Pakistani	0	0	1	5	1	7
Romanian	2	2	2	2	0	8
Sierra-Leonean	8	0	6	0	0	14
Senegalese	0	0	0	1	0	1
Serbian-Montenegrin	289	7	73	36	25	430
Syrian	3	0	9	4	0	16
Somali	1	8	17	4	2	32
Sudanese	20	2	4	6	3	35
Swaziland	0	0	0	1	0	1
Tanzanian	0	0	1	1	0	2
Togolese	1	0	0	0	0	1
Turkish	3	2	9	4	3	21
Ugandan	0	1	1	0	0	2
Ukrainian	3	0	8	8	8	27
Vietnamese	0	0	0	1	0	1
Zairian	0	0	0	1	0	1
Zimbabwean	0	1	0	1	0	2
Total (person)	485	90	184	137	89	985

75. The significant differences that can be perceived between the figures contained in the statistics of the asylum authority (under para 1 of this Appendix) and the figures contained in the statistics of the immigration authority (under para 2 of this Appendix) can be explained by the fact that the proportion of two nations (Afghans and Iraqis) in asylum seekers falling under the rule of non-refoulement and later disappearing is extremely high. In these cases the rule of non-refoulement was applied but since these persons thereafter disappeared they were not recognised in immigration proceedings as temporarily protected persons.

76. The number of illegal migrants in 2002-2006 having applied for refugee status and not expelled as their expulsion would have violated the rule of non-refoulement.

Nationality	2002	2003	2004	2005	2006	Total
-------------	------	------	------	------	------	-------

					(first six months)	(person)
Georgian	1	0	0	0	0	1
Chinese	0	0	1	0	0	1
Congolese	1	0	0	0	0	1
Iraqi	1	0	0	0	0	1
Serbian-Montenegrin	2	0	0	0	0	2
Total (person)	5	0	1	0	0	6

Article 4

Question 11

77. In 2005 six persons were condemned for a sentence of imprisonment for forced interrogation and ill-treatment committed in official proceedings. The Public Prosecution Service supervises annually all over the country, if the treatment of prisoners is lawful. The examinations cover the crimes violating the legality of treatment from which every crime against life (homicide: Section 166 of the Criminal Code, beating causing life danger: Section 170 subsection (5) of the Criminal Code), ill-treatment in official proceedings (Section 226 of the Criminal Code), forced interrogation (Section 227 of the Criminal Code), unlawful detention (Section 228 of the Criminal Code) and some abuse of authority (Section 225 of the Criminal Code) are qualified as torture crimes. In 2005, 216 criminal proceedings were initiated because of the above-mentioned crimes from which 6 cases ended by establishing the criminal responsibility of the accused person.

Article 5

Question 12

78. There is no example.

Question 13

79. Section 3 of the Criminal Code:

a) Hungarian law shall be applied to crimes committed in Hungary, as well as to acts committed by Hungarian citizens abroad, which are crimes in accordance with Hungarian law.

b) The Hungarian law shall also be applied to criminal acts committed on board of Hungarian ships or Hungarian aircraft situated outside the borders of the Republic of Hungary.”

80. Section 4 of the Criminal Code

a) Hungarian law shall also be applied to acts committed by non-Hungarian citizens abroad, if they are

(i) criminal acts in accordance with Hungarian law and are also punishable in accordance with the law of the place of perpetration,

(ii) it is a criminal act against the state (Chapter X), excluding espionage against allied armed forces (Section 148), regardless of whether it is punishable in accordance with the law of the country where committed,

(iii) crimes against humanity (Chapter XI) or any other crime, the prosecution of which is prescribed by an international treaty.

b) Espionage (Section 148) against allied armed forces by a non-Hungarian citizen in a foreign country shall be punishable according to Hungarian penal law, provided that such offence is also punishable by the law of the country where committed.

c) In the cases described in Subsections (1)-(2) the indictment shall be ordered by the Attorney General.”

Article 10

Question 14

81. In the curriculum of high schools specialised in police training and in the curriculum of the Police Academy the teaching of human rights is a priority. Students are expected to be able to guarantee respect for human rights and minority rights while taking actions or carrying out procedural acts.

82. Human rights and minority rights are taught for the staff of the institutions in special trainings whose length and content may vary according to the needs indicated by the regional organs. Human rights and minority rights are also taught in trainings organised by the Institute of Policing and Crime Prevention.

83. Our objective is to achieve that respect for human rights form an evident, automatic part of the everyday conduct of the staff and not just another set of rules to be taken into consideration while performing their duties. Therefore, in addition to providing a sound theoretical basis simulation is also introduced in the training.

84. Following the CPT's 1999 visit to Hungarian prisons commanders have been obliged to draw the attention of the staff before entering service to the requirement of proportionality and the prohibition of torture, forced interrogation and cruel, inhuman or degrading treatment. Commanders will also regularly remind the staff that coercive measures shall not be applied if no further opposition is met and if the success of the police action can be ensured in lack of coercive measures as well.

85. The most important trainings are as follow:

„*The Roma population and policing*”: training for police officers organised since 2002 by the Policing Manager Training and Research Institute.

Course description: The social history, culture and sociology of the Roma population. Conflict prevention and conflict management. Negative stereotypes attached to the Roma and the possibility of fighting against these stereotypes. Actual problems of the Roma population and their management from a social, economic and policing point of view. Lawful action devoid of prejudice and negative discrimination.

„*Training organised for the staff of immigration centres and immigration control cells*”: financed from the Schengen Fund.

Objective: To prepare the staff for Schengen type detention and the application of Schengen standards; conflict management; tactics; information on national, religious, legal background and customs of non-Europeans to be treated by the staff.

Requirements: theoretical and practical knowledge concerning:

- a) laws governing the activity of the Immigration Centres and the immigration control cells,
- b) rules on placement, detention and transfer of persons held in custody,
- c) treatment of non-Europeans, prevention of conflicts resulting from differences of nationality, ethnicity, religion and customs,
- d) tactics and self-defence enabling to prevent the occurrence of extraordinary events.

86. In the re-trainings and further trainings emphasis is put on human rights issues and on measures applied in proceedings involving Roma and other vulnerable persons deprived of liberty. Ways of avoiding the application of torture and cruel, inhuman or degrading treatment are also taught.

87. Judges, public prosecutors, witness protection experts and members of charitable organisations are regularly invited to deliver lectures so as to ensure a comprehensive approach to the different aspects of the problems discussed.

88. The Border Guard Service organise trainings on legal and psychological issues as well. In these trainings – held in the International Training Centre of the Ministry of Interior – cell staff is trained in communication and conflict resolution, with the help of Menedék (Asylum) - Association for Providing Aid for Migrants. The material of the training, together with the cases discussed, is due to be published in September 2006.

Question 15

89. Forensic physicians shall have taken forensic medical exam in order to perform their activity. According to Appendix No. 2 of Decree No. 66/1999 (XII.25.) of the Minister of Health on the required qualification of medical specialists, dental specialists, specialised pharmacists and clinical psychologists candidates sitting for forensic medical exam shall have practice in internal medicine, psychiatry, traumatology and as prison doctors. They shall also perform forensic expert tasks which includes the examination of living persons.

100. Para 6 of the European Convention for the Prevention of Torture provides that the person to be admitted in a cell shall be asked to make a statement as to the origin of any outward signs of injury perceived by the doctor during his examination. If the detainee declares that his injuries have been the result of ill-treatment or cruel, inhuman treatment committed by an official person the doctor will record his statement in the medical report and shall instruct the detainee to sign the report. Thereupon a copy of the medical report shall be forwarded to the public prosecutor's office, by observing the rules of data protection, through official channels.

101. Moreover, the CPT measure obliges officials responsible for detention to check regularly, but minimum once a month, the lawfulness of detention and to make sure that the rules prohibiting ill-treatment and cruel, inhuman or degrading treatment are preserved.

102. Any physician is able to recognise signs of ill-treatment or the torture of a person admitted as in-patient into the Central Hospital and its Institutions (KKI) or signs arising suspicion of ill-treatment or torture. Doctors are under the duty of reporting injuries caused by other persons to the police, via the management of the hospital.

103. If a deceased person is taken to the Central Hospital and its Institutions, the pathologists of the Department of Pathology shall proceed according to the relevant rules.

Article 11

Question 16

104. The issues raised under Question 16 are governed under Act No. 5 of 1972 on the Prosecution Service. According to its provisions, the public prosecutors responsible for the execution of punishments supervise the legality of treatment in all places of detention at least twice a month.

Question 17

105. There are no data available on arbitrary detention or ill-treatment of minors by police officers. According to the examinations of the Office of the Chief Public Prosecutor, it can be ascertained that the occurrence of the mentioned events is not characteristic in Hungary; penal institutions do not hold any minors.

106. If rules of separation are adhered to fully, it is completely impossible for adults to harm juveniles in institutions which hold both categories of inmates. Despite this, isolated incidents may of course occur. In such cases the institution's administration will launch an inquiry into the case and take the necessary steps to prevent similar cases from occurring in the future.

107. Taking into account the fact that we cannot and thus do not maintain records of the religion and ethnic origins of inmates, we are not in a position to substantiate statements according to which Roma inmates are overrepresented in the inmate population.

Articles 12 and 13

Question 18

108. We would like to indicate that the reference under this question to Section 139 of the Code on Criminal Proceedings has no bearing on the question. The reference was probably meant to refer to Section 139 of Act No. 1 of 1973 which became Section 190 (termination of the investigation) under the new Act on criminal proceeding

109. In the context of preventing the arraignment of persons probably having been victims of torture (within the meaning of the crimes defined under the Criminal Code.) the following provisions of Section 190 of the new Act on criminal proceeding have relevance:

“The prosecutor shall terminate the investigation in a decision, if

- a) the action does not constitute a criminal offence;
- b) the criminal offence was not committed by the suspect;
- c) a ground for the preclusion of punishability exists (coercion or menace).”

110. Examining the results of criminal proceedings it is to be admitted that the number of cases finished by ceasing investigation is fairly high. This is primarily because of the difficulties concerning evidence. The perpetrators making use of their positions are able to create favourable circumstances of committing crimes, and this makes proving extremely difficult (e.g. there are no impartial witnesses etc.). The offended persons are unable or unwilling to justify their statements appropriately. Therefore, in most of the cases, investigations are ceased by the competent authorities because the commission of the crime cannot be proved. It also occurs that an investigation is ceased for lack of crime.

Questions 19-20

111. Military and other crimes committed by the prison staff in connection with service are investigated and prosecuted by the Military Prosecution Service belonging to the Public Prosecution Service and judged by the Military Court Division, which form part of the general system of courts of justice.

112. In 2004, 16 members of the prison service had to face a criminal proceeding because of a well founded suspicion of ill-treatment in official proceedings. Only one of these resulted in a court ruling in which, in light of the slight weight of the act committed, thus the low qualified threat to society, the court decided not to impose a sentence and issued a court admonition instead. Proceedings against 9 officers were closed: no investigation was carried out or

indictment proposed, because in the case of 6 officers it became evident during the investigation phase that no crime was committed, whereas in 3 cases the crime alleged to have been committed in the complaint could not be proved.

113 Proceedings against 6 persons are still underway. The number of criminal proceedings started in 2005 because of well founded suspicion had doubled, but condemnatory sentence was handed out only against one person, who was fined HUF 50,000 by the military court.

114. More than half of the investigations ordered in 2005 have been terminated, due to the absence of a crime committed in 7 cases and the lack of evidence in 10 cases. Investigations started in 2005 for the well founded suspicion of ill-treatment are still underway against 14 persons.

115. The above shows that more than half of the proceedings started because of suspected ill-treatment have been terminated. The reason for this is that very often inmates will lodge a complaint against a prison officer without reason, when the officer demands strict observations of the prison rules and initiates a proceeding against those in breach. By lodging complaints inmates will in many cases succeed in having the officer transferred to another assignment, or have the officer request a transfer themselves in order to evade the discomfort of criminal proceedings. In cases when ill-treatment of an inmate is substantiated, the prison governor will apply strict disciplinary sanctions, if the officer in question does not during the course of the proceeding voluntarily request a termination of his service, as was the case in the one instance mentioned above.

116. Taking into account the fact that documentation on the criminal proceedings are handled by the Military Prosecutors' Offices, the prison service does not have data on the gender, age of those lodging a complaint. It is forbidden by the law to keep records of ethnic origins.

Disciplinary offences committed against fellow inmates

117. Decisions were passed on 13 cases (8 in national prisons, 5 in county prisons) of assault against decency in 2005. This act in itself implies the commitment of a crime; luckily, however, figures show a low volume of occurrence: 9 cases in 2004, 21 in 2003, 10 in 2002, 6 in 2001, 10 in 2000, 19 in 1999, 15 in 1998, 23 in 1997. This number seems relatively realistic, since due to the brutal nature of this act, inmates will generally report it to the prison staff if it occurs.

118. This is not the case, however, in the case of crimes committed to the detriment of the other inmates. This is one of the characteristic, accepted and often the only way of inmates' resolution of problems. Such acts will only be reported on rare occasions, because the person reporting it risks being relegated to the lowest level of the inmate population, that of the "whistleblowers". Latency is further increased by the fact that accidents and "games" that can cause visible bodily harm (such as rolling off a bed, blindfolding) are very frequent according to inmates.

119. **Brawl:** 340 cases in 2005 (217 national prison (np), 123 county prison (cp)). The number of incidence has risen since the previous year (275 cases in 2004 (170 np, 105 cp), 441 in 2003, 426 in 2002).

120. **Ill-treatment of fellow inmate:** The 698 (217 np, 123 cp) cases occurring in 2005 show a constant increase (638 cases in 2004 (455 np, 183 cp), 569 in 2003, 634 in 2002, 387 in 2001).

121. Brawl and ill-treatment of a fellow inmate are disciplinary offences which can only be distinguished with difficulty, since brawl itself will encompass ill-treatment of a fellow inmate. Aggregate data of 1029 in 2005, 913 in 2004, 1010 in 2003, 1060 in 2002 give a ratio of around 11% of all disciplinary sanctions, which shows a relative consistency despite the fluctuation of the number of inmates held.

	2002	2003	2004	2005
average inmate population	17,875	17,320	16,523	16,410
brawl + ill-treatment of fellow inmate	1,060	1,010	913	1,029
impact	5.9%	5.8%	5.5%	6.3%
% of total disciplinary sanctions	11%	12%	11%	11%

121. Disciplinary sanctions for **extortion:** 41 (31 np, 10 cp) in 2005, 36 in 2004 (24 np, 12 cp), 24 in 2003, 34 in 2002, 34 in 2001.

123. Disciplinary sanctions for **verbal abuse of a fellow inmate:** 62 (50 np, 12 cp) in 2005, 78 in 2004 (69 np, 9 cp), 74 in 2003, 95 in 2002, 85 in 2001.

125 Disciplinary sanctions for **destruction or theft of property belonging to a fellow inmate:** 27 (19 np , 8 cp) in 2005, 22 in 2004 (18 np, 4 cp), 32 in 2003, 25 in 2002, 29 in 2001.

126. Disciplinary sanctions for **cruel treatment of a fellow inmate:** 32 (16 np, 16 cp) cases. This figure shows stagnation because of its low proportion in relation to other sanctions (37 in 2004 (24 np, 13 cp), 31 in 2003, 24 in 2002, 27 in 2001).

127. Disciplinary sanctions for **voluntary participation in impairing the health of a fellow inmate** were ordered on 2 occasions.

128. **Total number of disciplinary sanctions by age of offenders:**

Age (juvenile/ adult)	Sanctions in 2005	Number of inmates on 15.02.2006	% of those sanctioned in the group	Sanctions in 2004	Number of inmates on 31.01.2005	% of those sanctioned in the group
14 -15 j	91	26	350%	75	26	288%
16-17 j	478	124	385%	470	231	203%
18-21 j	164	319	51%	142	194	73%
18-21	835	950	88%	709	1002	71%
22-29	3636	4777	76%	3454	5195	66%
30-39	2866	5701	50%	2647	5705	46%
40-49	971	2924	33%	852	2972	29%
50-59	213	1147	19%	202	1087	19%
60-	38	221	17%	41	227	18%
Total	9292	16189	57%	8592	16639	52%

129. With age, inmates will, be less and less likely to commit disciplinary offences. The number of disciplinary offences per inmate in the under-16 age group is 3.5. 13% of disciplinary sanctions were applied for those above 40 (26% of the inmates). In their case only every second person had committed a disciplinary offence.

Article 14

Question 21

130. Under Hungarian law victims of crimes are treated uniformly in respect of the form of assistance: there are no separate forms of aid for victims of ill-treatment in official proceedings (Section 226 of the Criminal Code) or of forced interrogation (Section 227).

131. Government decree No. 209/2001 (XI. 31.) – which was in effect until 31 December 2005 – on mitigation of damages to be afforded to victims of certain violent crimes contained an exhaustive list of the crimes whose victims could be compensated. It provided that if the facts of a given case amounted to one of the above mentioned two crimes the victim was entitled to mitigation of damages provided that his bodily integrity or health had been seriously damaged (Section 4 o).

132. Act No. 135 of 2005 on the assistance to be afforded to victims of crimes and on the mitigation of damages by the state (henceforth: Act on assistance to victims) – which entered into force on 1 January 2006 – uses the category of „intentional violent crime committed against a person” to denote the crimes entitling victims to mitigation of damages by the state. Victims of the above mentioned two crimes also fall in this category. In addition to mitigation of damages by the state, the Act also specifies victim supporting services available for victims of any crime. Therefore, neither the Public Foundation for A Safe Hungary, nor the Victim Assistance Service of the Budapest Office of Justice have separate data on the number of victims of these two crimes and on the financial support afforded to them.

133. In the period between 7 July 1999 and 1 January 2006 the Public Foundation for a Safe Hungary received altogether 1728 requests for mitigation of damages. The Foundation granted financial support in 1146 instances in an amount of altogether HUF 322,738,898.

134. Since 1 January 2006 the decision-making body of the Victim Assistance Service of the Budapest Office of Justice adjudicates requests for mitigation of damages in administrative procedure. In the first half of 2006, 276 requests were admitted and in 55 instances altogether HUF 13,883,780 were paid out for mitigation of damages.

Question 22

135. The medical and psychosocial rehabilitation of victims takes place within the framework of the national social security system. The staff of the Victim Assistance Service will help victims of crimes to avail themselves speedily of health services.

Question 23

136. Measures taken to implement the Views of the Committee on the Elimination of All Forms of Discrimination against Women

I. Concerning the author of the communication

(a) Take immediate and effective measures to guarantee the physical and mental integrity of A. T. and her family

(b) Ensure that A. T. is given a safe home in which to live with her children, receives appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm undergone and to the gravity of the violations of her rights;

137. The Republic of Hungary received the recommendations of CEDAW concerning the communication of A.T. in February 2005. The Ministry of Social Affairs and Labour (formerly: Ministry of Youth, Family, Social Affairs and Equal Opportunities) contacted A.T. and organised a meeting. However, A. T. did not accept the help offered by the Ministry.

138. The Republic of Hungary did her best to find a reasonable solution to A. T.'s housing problems. During the meeting held on 12 May 2005 with the participation of A.T., the head of the Department for Gender Equality of the former Ministry of Youth, Family, Social Affairs and Equal Opportunities and the competent town clerk of the 9th District of Budapest, a flat was offered by the town clerk to A.T on behalf of the local municipality. The Author refused the offered flat claiming, on the one hand, that her seriously disabled son has to be accommodated in an accessible flat and the offered one did not meet this requirement and, on the other hand, she was concerned about leaving the possession of her current flat and not being able to return there later. The flat in which A. T. lived with her children was on the third floor and therefore was not an accessible one either; although A. T. disputed this fact.

On the above-mentioned meeting, the town clerk, dr. Istvan Oszvari promised to submit to the district council the request of A.T. for paying the residue of purchase of the flat (HUF 2,000,000) of A.T. and her former partner L. F.. The 9th District Council refused the request on its session held on 21 June 2005 (Decision No. 291/2005 (VI. 21.)). As the right to decide on the above request falls within the exclusive competence of the district council, the Government does not have the right to influence this matter.

Neither the local self-government nor the Government of the Republic of Hungary had the right to interfere in the court case concerning the property of the flat used by A.T. and her former partner L. F. Thus the Government of the Republic of Hungary and the competent local self-government took all the steps provided by Hungarian law.

Pursuant to Act No. 78 of 1993 on the rent and alienation of flats and other premises, the flats owned by local self-governments must be allocated upon demand. As A. T. refused the help offered by the local self-government without any reason which means that she did not request the offered flat, the competent local self-government could not make a formal decision on this matter.

139. According to Act No. 80 of 2003 on legal aid, the State shall pay a party's legal service fees if the monthly net income per capita in the person's family does not exceed the current minimum retirement pension. The State shall advance the party's legal service fees if the monthly net income per capita in the party's family does not exceed the minimum wage. Irrespective of

their income and financial situation, a party who receives regular social assistance, public healthcare or whose entitlement to medical services has been established, who is a homeless person spending nights at temporary lodgings, who is a refugee or temporarily protected person or a person seeking recognition as a refugee or temporarily protected person and, on the basis of their statement regarding their income and financial situation, is entitled to the care and benefits they have been granted, shall be considered in need.

Thus after the entry into force of the Act, A. T. had the right to free legal assistance, although we have no information whether she made use of this possibility.

140. Pursuant to Act No 135 of 2005 on the assistance and compensation of victims of crimes, the State shall promote the enforcement of the victim's rights and provide prompt financial and legal aid to every victim. As stipulated in the Act, the victim assistance service of the Office of Justice helps the victims to enforce their basic rights and to make use of health services and health insurance services. The scope of prompt financial help covers housing, clothing, catering, travel, health and funeral costs if the victim is not able to meet them.

141. As far as we know the housing problems of A.T. have been solved. The flat used by the Author and her former partner was sold and the sum received has been divided between them. A. T. currently lives in a rented flat with her children to whom L. F. is obliged to pay financial support.

II. General

(a) Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;

(b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;

(c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;

142. The Constitution of the Republic of Hungary prohibits all forms of discrimination, including on the basis of gender.

143. On the basis of Section 70/A of the Constitution the Hungarian Parliament adopted Act No. 125 of 2003 on the equal treatment and promotion of equal opportunities (hereinafter: **Equal Treatment Act**) on 22 December 2003. The purpose of the Act is to define the beneficiaries and responsible parties, as well as the meaning of equal treatment with regard to the whole legal system and also to provide effective remedy to the victims of discrimination. Thus, one of the most important elements of the Act is the definition of the concept and scope of discrimination. The Equal Treatment Act generally prohibits discrimination based on gender, marital status and maternity (pregnancy).

The Act includes, beside the rules of equal treatment, the basic rules of equal opportunities. A formal equal treatment of disadvantaged groups would lead to the preservation of their disadvantaged situation. In order to promote the advancement of disadvantaged groups not only equal rights but also positive measures are needed to eliminate disadvantages.

The Act also defines the notion of harassment, separation and retaliation and prohibits such behaviour. It introduces *actio popularis* in cases of discrimination, which ensures the right to sue in cases of violations of personal or labour-related rights for the public prosecutor, the Equal Treatment Authority and non-governmental organisations if the violation of rights concerns a larger and indefinable group of victims.

144. The Equal Treatment Act established the **Equal Treatment Authority**, which started its work on 1 February 2005. The Authority has national competence to implement equal treatment. It is controlled by but not under the instructions of the Government, thus its decisions can only be challenged in court. The Equal Treatment Authority examines the violation of the principle of equal treatment in individual cases either on request or *ex officio*.

Also, it has consultative rights: it can express its opinion on draft legal regulations, can propose governmental decisions and regulations, and annually informs the Government and the public about the status of equal treatment. It also takes part in the elaboration of the Government's reports to the Council of Europe and the European Commission.

Pursuant to the Act, violations of equal treatment can be examined either by the Equal Treatment Authority or in public administration procedure, chosen by the victim.

145. The Parliament's Resolution No. 45/2003 (IV. 23.) on the **development of a national strategy to prevent and effectively manage domestic violence** rejects all forms of violence within families, including verbal abuse. It highlights the priority of protecting human rights, to which everyone is entitled; underlining that violence within families cannot be considered as a private matter. The resolution recognizes that a national strategy has to be developed in order to prevent domestic violence. The resolution also states that the activities of social institutions are indispensable in prevention, victim assistance and education, and calls for co-operation between governmental agencies and NGOs.

146. One of the five priorities of Parliamentary Resolution No. 115/2003 (X.28.) on the **National Strategy of Social Crime Prevention** is the prevention of violence within the family. Government Resolution No. 1036 of 2005 (IV. 21.) on the short, medium and long term responsibilities in 2005 and 2006 concerning the Parliamentary Resolution on the Social Crime Prevention Strategy defines the governmental tasks related to the prevention of domestic violence. Paragraph II/C sets tasks for government agencies primarily on training of experts working with the victims of domestic violence. It also stresses the importance of assisting the operation of help-lines and developing crisis centres and shelters for abused women and children. The Resolution also urges the elaboration of aggression-management programs for abusers.

An important task of the commissioner responsible for the principal matters of criminal policy is to prepare annual reports on the implementation of the strategy to the National Crime Prevention Committee. The Government also annually reports to Parliament on the implementation of the Strategy. The elaboration of the annual report is the common responsibility of the members of the National Crime Prevention Committee.

147. The conducts identified in the recommendations of the Committee are regulated in the **Criminal Code** among the crimes against sexual morals and sexual freedom, the crimes against the integrity of the person, the crimes against marriage, family and youth and finally the crimes against public order and crimes against property. Hungarian criminal law does not differentiate between assaults against women and men. Before 14th September 1997, the spouse of the

perpetrator could not be considered a victim of rape, pursuant to Section 197 of the Criminal Code. Act No. 73 of 1997 amended this regulation and at present rape is recognised between husband and wife. Furthermore, pursuant to the amendment, rape against a male victim is equally punishable.

Act No. 132 of 2004 on the amendment of the Act on Criminal Proceedings introduced an urgent procedure that also concerns domestic violence. The introduction of the urgent procedure is justified in cases of serious assault and crimes against sexual morals committed against children and also in cases of the crime of endangering a minor. Regarding these crimes, there is a serious interest to conduct these procedures as quickly as possible as they affect children.

The Criminal Code defines crimes involving physical, psychological and sexual abuse. The measures foreseen by the Code ensure criminal protection of the integrity of the person, regardless of the victim's gender. Thus, the various forms and manifestations of violence against women are punishable in Hungary. In our view the fact that there is no specific provision prohibiting domestic violence against women does not hinder the conviction of perpetrators committing domestic violence.

148. Act No. 31 of 1997 on the protection of children and on guardianship governance (hereinafter: **Child Protection Act**), amended by Act No. 136 of 2004, states that children have the right to human dignity and to protection against physical, psychological and sexual abuse and neglect, as well as informational harm. Children cannot be subjected to torture, corporal punishment or other cruel, inhuman or degrading punishment or treatment. By the amendment, the prohibition of child abuse has been incorporated into Hungarian legal system.

Pursuant to the Child Protection Act, all child protection authorities and all other authorities dealing with families in a situation of danger are obliged to notify the competent child welfare service of the endangering circumstance.

Under the Child Protection Act a child welfare service must be maintained in all settlements. The main responsibility of the child welfare service is to follow the endangered families with attention and to prevent and manage crises. In acute crisis situations, if the abused family members have to flee from their home, the temporary family homes provide them accommodation and comprehensive help. Since 1 July 2005, in terms of the amendment of the Child Protection Act, settlements with more than 30 thousand inhabitants are obliged to maintain temporary family homes in order to reinforce this network.

a) Take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto to judges, lawyers and law enforcement officials;

149. Since 2000 the Ministry of Social Affairs and Labour (formerly: Ministry of Employment Affairs and Labour) has organised trainings for judges in the field of labour and private law and sponsored publications on the implementation of anti-discrimination legislation.

150. The Ministry of Social Affairs and Labour (formerly: Ministry of Youth, Family, Social Affairs and Equal Opportunities) published on its website the Convention and the Optional Protocol in order to meet the recommendation of the Committee. The Government Office of Equal Opportunities published the printed version of the Convention and the Protocol, which are continuously disseminated, just like the 4th and 5th Consolidated Country Reports to the Committee. On 17 May 2006 Hungary submitted its 6th country report to the Committee.

151. In order to prevent domestic violence, model programs were launched in 2000 for physicians, lawyers, social workers and police officers in charge of victim assistance. Also on the issue of domestic violence, trainings were held for policemen organised by the National Police Headquarters and for public prosecutors and judges organised by the National Council of Justice. The National Police Headquarters launched a capacity building training for policemen for the development of social skills in 2004. The curricula of vocational police schools include the issue of non-discriminative action vis-à-vis women and children and action vis-à-vis women in the context of migration. The Police Academy holds regular further education for the police.

152. The Department of Education and the Department of Civil Relations and Equal Opportunities of the Ministry of the Interior held an international conference entitled “The educational aspects of non-discriminative police action”. One of the conference’s topics was discrimination against women. As a result of the conference the dissemination of relevant experiences and the methodological work have started.

a) Implement expeditiously and without delay the Committee’s concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee’s recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters;

153. The Ministry of Social Affairs and Labour (formerly: Government Office of Equal Opportunities) opened the first pilot crisis management centre in January 2004. After the modernisation of the centre, the **National Crisis Management and Information Help-Line** started to operate in April 2005. The Help-Line provides assistance to victims of domestic violence 24 hours a day free of charge all over the country. If needed, it takes immediate steps to help victims. Where immediate intervention is not needed, the Help-Line provides relevant information.

154. Victims (parent with child) of domestic violence can be accommodated in the **temporary homes** of children and families in the right of the child. That is why facilities for victims without children had to be developed in the existing institutions. Thus the necessary facilities were established in 7 regions of the country and in Budapest in the first half of 2005 within the framework of the pilot project “Regional Crisis Management Network”. The members of the pilot project work in close co-operation with the National Crisis Management and Information Help-Line and also with child protection and other relevant authorities.

At the beginning of 2006 a secret shelter was opened especially for the victims of domestic violence fleeing from home with or without children. At the moment shelters operate in 7 regions and in Budapest. The network can accommodate 40 persons on average, which is supplemented by the 26 spaces of the secret shelter.

In most cases women and children are accommodated in the centres. In the first half of 2005 altogether 159 persons were accommodated, of which 12 were women without children. In the first half of the year 95 children stayed in the centres. In 18.4% of cases the accommodation was the result of an acute crisis situation. In the second half of 2005, 316 persons were accommodated. Both the numbers of children and women without children increased; 74% of accommodations were the result of an acute crisis.

The members of the network provide the victims with psychological, social and legal assistance as well.

155. The Ministry of Social Affairs and Labour (formerly: Ministry of Youth, Family, Social Affairs and Equal Opportunities) organises on a regular basis workshops and training for professionals working with victims of domestic violence in order to facilitate effective work and continuous co-operation.

156. Act No. 91 of 2005 on the **amendment of the Criminal Code** introduced **restraining** as a rule of conduct under the supervision of the probation officer. According to Section 82 subsections (1) and (2) the court, in case it suspends the sentence on probation, suspends the carrying out of the sentence of imprisonment on probation, or releases the person sentenced to imprisonment on parole, may prescribe obligations and prohibitions as rules of conduct for the person under supervision of a probation officer. According to the amendment, the judge or the prosecutor may order that the person under supervision shall keep away from the victim of the crime or his/her home, workplace or school.

The amendment of Act No. 19 of 1998 on Criminal Proceedings, adopted on 13 February 2006, includes the restraining order as a new coercive measure. Pursuant to the Act, restraining can be ordered in cases where there is suspicion beyond reasonable doubt of a crime to be punished with imprisonment. At present the Criminal Code contains 27 crimes of that type. If it is assumed that in case the perpetrator remains in the residence he/she will influence or threaten the witness of the crime, thereby defeating or making the evidentiary procedure more difficult or would commit the previously attempted or arranged crime against the victim or would commit another crime punishable by imprisonment against the victim, restraining can be ordered instead of pre-trial detention.

Depending on the provisions of the decision of the court, the perpetrator under restraining order has the following obligations:

- a) must leave the residence and keep away from it during the determined time period;
- b) must keep away from the person in question, as well as this person's residence, workplace, school, health institute and place of worship;
- c) must abstain from communication with the person in question.

157. The court can order restraining for a period of minimum 10 and maximum 30 days which cannot be prolonged. In case of breach of the above rules, the perpetrator may be placed in pre-trial detention or in case that is not necessary, a fine may be imposed.

The basic aim of restraining is to provide the victims with immediate and effective protection and also promote the success of the proof during the procedures even if the procedures last longer.

158. In connection with the institution of restraining, Act No. 34 of 1994 on the Police and Act No. 69 of 1999 on Infringements are also going to be amended. Under the present draft, those who commit the infringements of slander, disorderly conduct or rowdiness to the injury of a family member living in the same household could be arrested for a period of eight hours. The

amendment seeks to facilitate immediate intervention and the removal of the perpetrator and also helps the abused partner to make decisions such as reporting the perpetrator.

The amended Act on Infringements will include stalking and, specifically, stalking within the family as an aggravated form, as well as restraining as an infringement coercive measure. The perpetrator of an infringement within the family could only be restrained if it seems necessary for the successful evidentiary procedure or if it is presumed that the perpetrator might commit an offence against the victim again.

159. Act No 130 of 2005 on the amendment of Act No 3 of 1952 on Civil Procedure (Section 287) entered into force on 1 January 2006. The amendment introduced a transitional measure for matrimonial procedures as regards the tenancy of the spouses' common residence. According to the present judicial practice, the spouses' residence is 'subjectively indivisible', which means that as a general rule the spouse cannot be removed from the residence, except where the common use of the residence causes an injury to the other spouse or their child. Under the new act the court will have the power to decide on the division of the tenancy of the residence as a transitional measure already in the course of the procedure. The aim of this provision is to prevent tragic situations.

160. The amendments already in force and those under elaboration meet the recommendations of the Committee.

a) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;

161. Order No. 13/2003 (III. 27.) of the Head of National Police Headquarters sets the tasks of the specific police units in order to prevent and eliminate domestic violence. Thus the crime prevention units have to regularly monitor the situation of families in risk and have to report to the units in charge of protection of the public order and of public security. According to Act No 34 of 1994 on the Police and the above order in acute crisis situations the police unit has to intervene immediately in order to interrupt the crime and protect the life and safety of the victims.

162. The Integrated Administration and Processing System of the Police called "Robocop 2000" and the Netcop System are now able to process data according to the above Order No. 13/2003 (III. 27.) of the Head of National Police Headquarters. Data from the database of Robocop and Netcop are used for the elaboration of maps of criminal cases. These databases enable cases of domestic violence to be used for research. According to a report by the Supervision Department of the National Police Headquarters, on the basis of data from the above databases, in 2004 investigation was ordered in 2010 cases which fall under the concept of domestic violence (in terms of Section 2 of the Order of the Head of National Police Headquarters). Most of the investigations were ordered in Budapest (274), Pest County (212) and Hajdú-Bihar County (184). According to this research Vas, Zala and Fejér counties are the least affected with the problem of domestic violence. During the examined period 455 investigations were submitted to the Office of the Public Prosecutor with a proposal of accusation: 66 cases in Jász-Nagykun-Szolnok County, 53 in Budapest and 34 in Szabolcs-Szatmár-Bereg County. The investigation was discontinued in 274 cases nation-wide: 32 in Budapest, 19 in Pest County. In most cases corresponding to domestic violence the crimes committed belonged to the category of "crimes against marriage, family, youth and sexual morality" (935 cases). This is 47% of all

reported crimes falling under domestic violence. The share of crimes against the integrity and health of the person is 33% (669 cases). 14% of the crimes concerned belong to the category of “crimes against public order” and the ratio of “crimes against property” is 6%.

163. Beside the reports of the National Police Headquarters, the Integrated Database of the Police, the Public Prosecutor and the Courts is the other official database of domestic violence cases. The following table contains relevant data from this database.

164. **Relationship between the perpetrator and the victim (relationship between the victim and the perpetrator involved in the reported crimes regarding the relevant categories):**

	2000	2001	2002	2003	2004	2005
All crimes (all relationships that could be estimated)	55573 (100%)	52687 (100%)	53611 (100%)	50763 (100%)	55413 (100%)	No data
- <i>relative</i>	3016 (5%)	3049 (6%)	3108 (6%)	3048 (6%)	3557 (7%)	
- <i>spouse</i>	2179 (4%)	2055 (4%)	2121 (4%)	2430 (5%)	2509 (5%)	
- <i>close acquaintance</i>	7249 (13%)	7419 (14%)	7885 (15%)	7471 (15%)	8095 (15%)	
- <i>occasional acquaintance</i>	4924 (9%)	4922 (9%)	5418 (10%)	5176 (10%)	5855 (11%)	
Crimes against the integrity of the person	7568 (100%)	7262 (100%)	7553 (100%)	7316 (100%)	7961 (100%)	
- <i>relative</i>	953 (13%)	969 (13%)	951 (13%)	950 (13%)	1047 (13%)	
- <i>spouse</i>	1187 (16%)	1135 (16%)	1104 (15%)	1227 (17%)	1281 (16%)	No data
Homicide	336 (100%)	385 (100%)	357 (100%)	363 (100%)	355 (100%)	
- <i>spouse</i>	90 (27%)	95 (25%)	73 (20%)	90 (25%)	91 (26%)	
Assault	5433 (100%)	5055 (100%)	5321 (100%)	5084 (100%)	5472 (100%)	
- <i>spouse</i>	885 (16%)	847 (17%)	849 (16%)	920 (18%)	953 (17%)	
Sex offences	604 (100%)	562 (100%)	614 (100%)	584 (100%)	585 (100%)	
- <i>relative</i>	79 (13%)	55 (10%)	89 (15%)	76 (13%)	92 (16%)	
- <i>spouse</i>	36 (6%)	24 (4%)	45 (7%)	40 (7%)	46 (8%)	

Crimes against property	35038 (100%)	32486 (100%)	31709 (100%)	28728 (100%)	30551 (100%)
- relative	24 (1%)	24	28	21	23
- spouse	5 (0.3%)	8 (0.5%)	9 (0.5%)	17 (1%)	10 (0.5%)
Violent and rowdy crimes	19290 (100%)	19050 (100%)	20714 (100%)	30676 (100%)	22742 (100%)
- relative	1397 (7%)	1401 (7%)	1484 (7%)	1461 (5%)	1651 (7%)
- spouse	1590 (8%)	1488 (8%)	1545 (7%)	1807 (6%)	1859 (8%)

a) *Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation;*

165. A Victim Assistance Office has been operating within the Ministry of Justice and Law Enforcement (formerly: Ministry of the Interior) since 1998. At present 46 victim protection offices operate in Hungary, maintained in co-operation of the local self-governments, the police and non-governmental organisations. These offices provide victims of domestic violence with assistance as well.

166. Within the framework of the “People’s Advocate” programme, the Ministry of Justice and Law Enforcement (formerly: Ministry of Justice) established legal assistance offices in every county town which provide information on basic legal matters. In more difficult cases a counsellor is assigned who provides information and takes part in drafting official applications, petitions. The competence of the office covers cases concerning housing, employment, social benefits, property, certain administrative procedures and legal protection of victims of crime. However, it does not have the right to draft contracts.

a) *Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.*

167. Since April 2006, a complex “train-the-trainers” training has been launched for social workers by the Ministry of Social Affairs and Labour (formerly: Ministry of Youth, Family, Social Affairs and Equal Opportunities) in order to tackle domestic violence. The aim of the program is to prevent the crisis and thus prevent the necessity of restraining, by working out the ways of reactions and reparation through so-called family-groups, with the involvement of professionals and family members (victim, perpetrator, relatives, friends, other acquaintances).

Article 15

Question 24

168. The legality of evidence is governed under Section 77 of Act on Criminal Proceedings According to this Section evidence shall be traced, gathered, secured and used in compliance

with the provisions of this Act. Specific methods of performing certain acts in the evidentiary procedure, examination and recording of means of evidence, and the conduct of the evidentiary procedure may be stipulated by law. While performing the procedure human dignity, personality rights and the right to respect of those involved shall be respected and unnecessary disclosure of data on privacy is prohibited. Section 78 provides that facts derived from evidence obtained by the court, the prosecutor or the investigating authority by having committed a criminal action, by other illicit methods or by the substantial restriction of the procedural rights of the participants may not be admitted as evidence.

169. Section 4 provides that the prosecutor shall prove the charge. Facts not proven beyond reasonable doubt may not be used to the detriment of the defendant. Section 76 subsection 1 provides that in the course of the proceedings true facts shall be clarified thoroughly and completely but the court shall not be obliged to obtain and examine means of evidence in support of the charge if the prosecutor has failed to make a motion to that effect.

170. In 2005 a great number of criminal proceedings were initiated because of allegations containing information on confessions extracted under inhuman treatment. According to the CPT, however, the treatment applied in these cases cannot be considered as torture.

Article 16

Question 25

Average number of inmates					
Year	Capacity (persons)	Occupancy (%)	Males (persons)	Females (persons)	Total (persons)
2002	11,169	160	16,785	1090	17,875
2003	11,256	153	16,275	1045	17,320
2004	11,351	145	15,522	1001	16,523
2005	11,307	145	15,461	1006	16,467

Distribution of inmates by age				
Age (years)	Number (persons)/on date			
	31.12.2002	31.12.2003	31.12.2004	31.12.2005
14-17	50	44	41	44
18-24	2392	2292	2037	1768
25-29	2787	2788	2547	2326
30-39	5077	4221	4323	4156
40-49	2158	2232	2224	2185
50-59	649	761	820	832
60-	147	180	178	157
Total	13,260	12,464	12,180	11,468

The table does not contain data on those in pre-trial detention.

171. Central measures have been taken to alleviate the overcrowding of penitentiary institutions in Hungary and there are plans for further measures to be taken. The result of these is already making an impact. During the second half of 2002, there were 2000 inmates in the three

facilities of the Budapest Remand Prison: this number decreased to 1652 by 31st December 2003. The current headcount (14.08.2006) is 1517 inmates. The Budapest Remand Prison has no jurisdiction for action on its own; any further improvement is dependent on government decisions. The Prison Service administration is making continuous efforts to handle the issue of overcrowding locally; however, this problem can only be solved in the long term with the establishment of new capacities in accordance with government resolutions in force and the wider application and use of alternative sentencing. There are only few opportunities left to improve overcrowding and to increase the number of cells in already existing facilities. Overcrowding undoubtedly has a negative impact on the general morale among inmates. However, in light of the current possibilities, we can only alleviate the problem by improving the handling and the support of inmates.

Question 26

172. After its visit in 2003 the CPT visited Hungarian police cells again in 2005. Subject to its financial possibilities and with a view to the recommendations of the CPT, the Police Force takes all necessary actions to improve the circumstances of detention. In 2006 the following modernization work has been carried out:

- a) The CPT recommended replacing the too narrow beds (180-190×60 centimetres) in the cell of the Szeged Police Department. These beds were really narrower and shorter than the standard size applied at present to beds in cells (200×90 centimetres). 20 beds have been replaced for HUF 20 million.
- b) In the framework of the 2003 European Union PHARE country programme the following modernization works have been carried out to improve the conditions of detention:

	Institution	Work done	Net expenses (EUR)	Starting date of works	Termination of works
1.	Baranya MRFK (County Police HQ)	Cell replacement of the electric cables, wires, etc.	42 820	1.12.2005	06.30.2006
2.	Bács-Kiskun MRFK	Cell replacement of the water pipes and related equipments	91 333		
3.	Hajdú-Bihar MRFK	Cell Replacement of doors and windows	65 328		
4.	Pápa RK	New room for persons committed to the police station	65 516		
5.	Mátészalka RK	New room for persons kept in custody	222 276		
6.	Békés MRFK	Complete renovation	425 037		01.10.2006
7.	Szabolcs-Sz-B MRFK	Complete renovation	411 526		
Total:			1 323 836		

173. With an investment of HUF 500 million a new immigration centre in conformity with EU standards was built for the Border Guard Service in Nyírbátor. The building, in the design and construction of which civil organisations took an active part, was finished by 2005. The cell is

equipped with a consulting room where regular consulting hours are held. In addition, medical supervision is ensured day and night by doctors employed by the Border Guard Service.

174. The Border Guard Service is planning (partly using funding from the Schengen Fund) further renovations and reconstructions of the immigration centres and branch premises where persons are committed to by border guards, in particular on the territory of the Kiskunhalas Border Guard Directorate.

175. Medical control and treatment is provided in compliance with the relevant laws and the rules of the profession (*lege artis*). According to Section 17 subsections (1) and (2) of the Order of Police Cells, detainees shall be placed in a cell only after having undergone a preliminary medical examination, and the doctor's opinion shall be taken into consideration. The doctor shall put in writing his opinion as to whether a detainee can be held in a cell or should be placed separately. The aim of the preliminary medical examination is to identify the persons whose state of health might deteriorate despite the medical treatment administered in the cell and to identify the persons whose condition might be infectious. Medical treatment provided during the detention aims at preventing the deterioration of health resulting from detention and the worsening of health problems already existing before detention. If the doctor thinks that the medical care of a person cannot be ensured in the cell, he will make arrangements for the proper placement of the person concerned. If the doctor treating the detainee deems it necessary, the detainee shall be taken to a hospital or an outpatient clinic.

176. The department of the Attorney General's Office supervising the lawfulness of the implementation of sentences and providing legal protection evaluates the lawfulness of treatment every year. According to the summary report of 2005, positive changes took place in this field. The treatment of detainees was basically in accordance with international standards, with the requirements laid down in the recommendations and with the relevant law. Only occasional shortcomings were disclosed. In light of available data it can be concluded that *in respect of the lawfulness of treatment there has been a clearly perceivable positive tendency for years*. The report explains this fact by the comprehensive supervision carried out by the prosecutor's office and by the commitment of the heads of institutions.

177. Aware of the number of inmates and problems of overcrowding, the Minister of Justice and Law Enforcement gave the task to study the measures that could significantly improve the factors influencing the general morale of inmates. Following this, the daily rations and supplements were increased by 10%. As a result of this, the diet has become more varied, inmates will receive fruits, fruit juice and vitamin rich foods more frequently. The money that can be spent on personal commodities has also been increased, thus in lower security and transitional groups this is 90%, in medium security 85% and in high security 80% of the wages earned. Basic amenities for every inmate are paid for from the budget. The number of showers per week has increased from one to two for those in cells without warm water. We have instituted measures to ensure that inmates can access gyms more frequently and have initiated the installation of outdoor sports equipment. We have also ordered the installation of more public telephone booths in order to increase the frequency and duration of calls between inmates and their relatives. We have also ordered that the daily routine be revised in order not to have the activities of the different groups of inmates occur at the same time (i.e. wake up etc.). We have

also proposed the introduction of an afternoon rest period. We have urged that inmates could receive packages more frequently than the minimum set forth in legislation.

178. The official probation officer service was reorganised and started operation from 1 July 2003 with an aim to promote the release process and the social reintegration of inmates.

Response to question on health care:

A. The CPT commented that a revision of the health care services in the Budapest Remand Prison should take place, since the delegation received numerous complaints from inmates for delays in getting to a doctor, a nurse and especially a dentist.

179. There are three dentists providing dental care for about 1500 inmates in the Budapest Remand Prison, each of them working 30 hours a week. In comparison to capacities in Hungary (4000 adult inhabitants/dentist/30 hours a week) this service is significantly better. The issue is regulated by Government Resolution 43/1999 (III.3.) on the detailed rules of financing through the Health Insurance Fund.

180. The Budapest Remand Prison has a medical staff of 8 full time (40 hours a week) and 2 part time physicians as well as the number of auxiliary personnel set forth in law to provide continuous medical attention and care for the inmate population. This ratio is by far better than the average of the Hungarian health care service system.

181. The above also applies to dental screening. Services covered by insurance for inmates in penal institutions, including the Budapest Remand Prison are more comprehensive in scope than what is set forth in the Ministry of Health Decree 4/2000 (II. 5.) on general practitioner, paediatric and dental services covered by insurance for Hungarian citizens. The above mentioned regulation also covers basic services in the field of dental and oral care, including checks, treatment and care, dental screening, inflammation detection, dental care during pregnancy and emergency treatment. In the case of inmates, this activity also comprises conservational treatment and in certain cases prosthetic interventions.

B. The CPT requested information on the procedures followed for inmates diagnosed as HIV positive (i.e. whether all HIV positive inmates are transferred to Tököl, regardless of manifested AIDS). The CPT objected to the fact that inmates diagnosed as HIV positive are in segregation together.

182. The collocation of those diagnosed after screening requested voluntarily or after information briefings is substantiated by medical-professional reasons. It is impossible to provide continuous care, adequate medical treatment according to individual health and immune status in every single penal institution. Treatment of proven HIV positive inmates is provided by the Department of Dermatology and Venereology or the HIV-ward of the "Szent László" Hospital, both of which are in Budapest and have the professional knowledge, laboratory background and the therapeutic authority for such activity. Living close to the capital is an added advantage for civilian patients as well. It saves the patients from long and tiring travel, crowds and the unnecessary risk of opportunistic infections that could be detrimental to their immune status. This benefit is also particularly important for inmates.

183. It is known that in order to provide professionally adequate treatment for HIV positive patients, regular control is necessary along with visits by medical experts as well as an undisturbed life style. According to paragraph (4), Section 1 of the Ministerial Decree, free, medical health care covered by insurance “shall primarily be provided by the Central Hospital of the Prison Service and by the Judicial and Observation Psychiatric Institute (IMEI) and inmates shall be obliged to use their services”. The current arrangement is fully in line with professional expectations and the regulations mentioned above.

184. It falls within the purview of the prison service to decide on where the convict should spend his sentence. Despite this, those known to be HIV positive are informed that they are to be placed separately – in a specially designated institution – in order to receive adequate care. So far no one has raised a complaint because of this.

185. By transferring HIV positive inmates to the Tököl facility – collocated with the Central Prison Hospital – beside the different daily routine and undisturbed life style the prison service is able to provide the continuous attendance of an expert in infectious diseases, an internal physician and rapid access to other experts, necessary instruments and laboratory background. The regular participation and outstanding possibilities of the expert doctors of the HIV ward also allow the provision of expensive antiviral treatment, by which the condition of the patient can be improved, the process of the illness slowed down and a symptom free status achieved.

186. In case of manifested AIDS or the deterioration of the HIV positive inmate’s condition, steps are taken for clemency and an interruption of the sentence in the majority of the cases. The patient is in these cases transferred to the special in-patient ward of the “Szent László” Hospital in Budapest.

C. The CPT requested information on the medical standards applied in the health care institutions of the prison service, as well as the cooperation between the prison health service and the National Health Service.

187. Every health service provider belonging to the prison service system has the necessary permits issued by the competent health authority (National Public Health and Medical Officer Service). The regional offices of the Service perform their professional oversight function through regular inspections.

188. Medical standards are set forth in Decree 60/2003 (X. 20.) of the Ministry of Health, Social and Family Affairs on the minimum conditions required for the provision of medical services. If any of these minimum requirements are not met, the competent authority will not issue a licence.

189. All services available within the Hungarian health system are also available to inmates with a view to their progressive medical treatment. The legal framework for this is provided by Act 80 of 1997 on social security services and those eligible for private pension, as well as Government Decree 195/1997 (XI.5.) on the implementation of the Act, according to which inmates enjoy the same rights as all others insured, except for financial benefits (i.e. payment for sick leave, other supplements etc.).

190. Paragraph (2) of Section 6 of Government Decree 217/1997 (XII.1.) on the implementation of Act 83 of 1997 on services covered by mandatory health insurance provides that those arrested, in pre-trial detention, under an incarceration order or serving an enforceable sentence (hereinafter referred to as inmates) will – by virtue of the fact that they are deprived of their freedom – have access to health care within the prison service holding them or if this cannot be provided, have access to the medical service provider designated by the prison service.

191. The above mentioned legislation provides for the conditions of cooperation, but medical institutions of the prison service and those working in basic care are striving to maintain adequate and daily operational ties with outside service providers. Although from time to time there are delays in the mechanism towards those in the inmate population, all in all it can be said that the cooperation with the medical institutions run by local governments and other providers is good.

Question 27

192. In order to decrease overcrowding, the justice administration has introduced the following measures in accordance with recommendation R (99) 22 of the Committee of Ministers to Council of Europe Member States concerning prison overcrowding and prison population inflation:

193. The Criminal Code was recently amended, and a part of those earlier excluded from eligibility have again been given the right to conditional parole. As a result, the number of those given conditional parole increased from 6372 in 2002 to 8803 in 2003 (33%).

Also as a result of this amendment the judges, when sentencing, are no longer bound to follow the rule of a medium sentence. This on the long term will decrease the total time spent in prison, and thus can be a tool to alleviate conditions of overcrowding.

The practice of applying alternative sentences is also expected to reduce overcrowding in prisons.

The new Act on Criminal Proceedings entered into force on 1 July 2003. Thanks to the newly introduced measures (dictated by the situation), the number of those in pre-trial detention decreased by 553 by the end of 2003. 147 persons were let out on bail.

194. As a result of the penal policy decisions the prison population decreased by 1331 persons (7.4%) in comparison to the previous year.

195. The overall prison capacity decreased by 90 places. This, however, is only a temporary decrease due to the necessary renovation works in two facilities. After the end of these works there will be another 291 modern places available.

196. Despite this temporary decrease of capacities, the occupancy indicator of prisons has improved from 160% to 145%.

197. The National Prison Service Headquarters has a separate organisational unit tasked with the distribution of prisoners in accordance with the occupancy rate of the different prison facilities. If the number of inmates exceeds the capacity in a given facility, this unit will arrange for a reallocation of inmates.

198. The budget of the Ministry does not allow the launch of a new facility development from public finances, only the continuation of construction started, which beside an increase in capacity also provides more decent conditions.

The construction of the Veszprém County Remand Prison was finished, the new facility with a capacity of 214 person was inaugurated on 26 June 2003.

The reconstruction of the Sopronkőhida Strict and Medium Regime Prison, which started in 1997, was also finished.

The public call for tenders for the increase in capacity of the Szabolcs-Szatmár-Bereg County Remand Prison has been prepared. We have already notified our supervisory authority that additional funds will be required.

199. As a result of the lack of central budgetary resources the following projects have not been finished or started:

- a) 100 places for female inmates in North-eastern-Hungary,
- b) the transformation and extension of the Martonvásár unit of Baracska National Prison,
- d) the extension of the Solt unit of Állampusztá National Prison,
- e) an extension of the Nagyfa National Prison,
- f) improvement of the facilities and equipment used by the prison medical service system.

200. The following works of extension and renovation have taken place in 2000-2005:

- a) Building of Unit III of the Budapest Strict and Medium Regime Prison (628 places – in 2000)
- b) Sátoraljaújhely Strict and Medium Regime Prison (80 places – in 2000)
- c) Sopronkőhida Strict and Medium Regime Prison (220 places – in 2003)
- d) Bács-Kiskun County Rooming-in Ward (20 places – in 2003)
- e) Szeged Strict and Medium Regime Prison Unit II. (230 places – in 2002)
- f) Regional Juvenile Prison, Szirmabesenyő (115 places – in 2002)
- g) Jász-Nagykun-Szolnok County Remand Prison (70 places – in 2002)
- h) Veszprém County Remand Prison (214 places – in 2003)
- i) Inauguration of the Transfer Block of the Budapest Strict and Medium Regime Prison (2004)

j) Fejér County Remand Prison (10 places – in 2004)

201. 800 inmates will be housed in the Public-Private Partnership (PPP) financed new facility in Szombathely from the first half of 2007, while 700 new places will be available in Tiszalök. A 50 person facility for juvenile offenders built from EU Phare funds in Pécs will be operational from the second half of 2006. The opening of these new facilities will further reduce the current overcrowding to about 125-130%.

Question 28

202. In accordance with the tasks defined in Government resolutions 2072/1998 (III.31.) and 2147/2002 (V.10.), the Regional Juvenile Facility has already been constructed within Facility “B” of the Borsod-Abaúj-Zemplén County Remand Prison in 2002.

The rooming-in facility for mothers and their children has been built in the Wéber Endre street facility of the Bács-Kiskun County Remand Prison. The building has 20 living quarters furnished with a toilet, a basin, a bunk, a cot and diaper changing table, along with all necessary medical and social facilities. The same facility has a 10 person capacity quarter to be used for holding juvenile female inmates. Also, prosecutorial supervisions have become more frequent for the sake of prevention.

Question 29

203. ELTE University Faculty of Law, Criminal Law Department staff carried out numerous surveys among the prison inmates, with a view to studying the criminal law and criminology implications of domestic violence, especially emphasizing crime prevention. Findings of such surveys are useful to us in our daily work.

204. The data collection phase of the MIP research organised by the Central European University on the post-prison reintegration of women finished in the autumn of 2004, and the summary research papers have been prepared. In order to publish the findings of the research, a conference on “Women after prison in Hungary” was held on 30 March 2005 with the participation of all the organizations who play an important role in preparing the life of women after prison and in tangibly supporting their reintegration.

205. There are preparations for a cooperation agreement with MONA – Hungarian Foundation for Women. The purpose of the cooperation is to record our services and activities rendered in the framework of the winning project bid of MONA “ALTRA: Prison support and treatment program for victims and perpetrators of domestic violence in the inmate population”. The project is to be realized with the support of the European Commission’s Justice, Freedom and Security Directorate, within the Daphne II Program, in the framework of support agreement 2005-1/067/W.

206. Main areas of cooperation:

- a) Research, interviews and professional consultation with prison staff;

- b) Organization and execution of training to prison staff on domestic violence;
- c) Implementation of individual and group „pilot” treatment with the participation of inmates for victims and perpetrators of domestic violence.

207. Organizing programs for inmates sentenced specifically for acts of domestic violence – including rape and sexual harassment – and training for prison staff requires great attention and thorough preparation. The perpetrators of such crimes may be subject to some reprisal from other inmates, thus they do their utmost to keep the crime they committed a secret. At the same time this topic is touched upon and discussed by numerous personality development and release oriented programmes and training. Several prison institutions have submitted a joint bid with other non-governmental organizations for the competition of the AVP-Hungary Association. This programme also deals with the management of aggression.

Question 30

208. The text of the provision on trafficking in human beings (Section 175/B of the Criminal Code), as in force since 1 April 2002, is as follows:

I. Trafficking in human beings, Section 175/B

209. Whosoever sells, purchases, conveys or receives another person or exchanges a person for another person, recruits persons for such purpose, transports, accommodates, hides or gets a person for another person commits a felony offence and shall be punishable with imprisonment of up to three years.

210 The punishment shall be imprisonment between one to five years if the criminal act is committed

- a) against a person who has not completed his eighteenth year,
- b) against a person deprived of personal freedom,
- c) for the purpose of forced labour,
- d) for the purpose of sodomy or sexual intercourse,
- e) for the purpose of prohibited use of human body,
- f) as part of a criminal organisation, or
- g) in business-like manner

211. The punishment shall be imprisonment between two to eight years if the criminal act has been committed

a) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator or

b) for the purposes specified under points *c)-e)* of subsection (2)

(i) with force or menace

(ii) by deceit

(iii) by tormenting the injured party.

212. The punishment shall be imprisonment between five to ten years if the criminal act has been committed

a) to the injury of a person specified under point *a)* of subsection (3) or for a purpose specified under points *a)-b)* of subsection (2) or in the manner specifies under point *b)* sub-points 1-3. of subsection (3)

b) for the purpose of making forbidden pornographic images.

213. The punishment shall be imprisonment between ten to fifteen years or life imprisonment if the criminal act is committed to the injury of a person under the age of twelve

a) for a purpose specified under points *c)-e)* of subsection (2)

b) in a manner specified under point *b)* sub-points 1-3 of subsection (3) or

c) for the purpose of making forbidden pornographic images.

214. Whosoever makes preparations to engage in trafficking in human beings commits a misdemeanour offence and shall be punishable with imprisonment of up to two years.”

215. As it can be seen from the wording of the law the conduct shall amount to an aggravated form of trafficking in human beings if its purpose is sodomy or sexual intercourse. Such conduct is threatened with an even more severe punishment if it is committed with the use of force or menace or by tormenting the injured party. Trafficking in human beings for the purpose of making forbidden pornographic images is sanctioned with an even more severe punishment. The punishment shall be imprisonment between ten to fifteen years, or life imprisonment if the criminal act is committed to the injury of a person under the age of twelve.

Question 31

216. Section 174/B of the Criminal Code determines the crime of violence against a member of a national, ethnic, racial or religious group. The prosecution examines the cases concerning racism against prisoners annually. The complaints for racism occasionally refer to

violent acts as well, but usually these cannot be proved (in the last three years examined such provable violent acts have not occurred).

Question 32

217. Ten years ago the Police Force launched a grant program for secondary school pupils of Roma origin in disadvantageous situation, supporting them to become police officers. This program was widened in 2000 as a result of which since the 2000/2001 academic year talented Roma pupils inclined to become police officers but lacking financial resources have been able to receive grants in any county in Hungary. Their boarding, books and equipment for school are paid by the Police Force which also provide grants for them, with varying amounts depending on school results. In return, they are expected to continue their studies at the Police Academy or at a post-secondary school for policing and to produce good academic results. In earlier years, two to four study contracts were concluded each year, but in 2004 ten secondary school pupils signed such a contract. In the future the Government wishes to rely more heavily on the network of Roma co-ordinators and Roma media in directing young Roma to the policing profession.

218. In 2004 Government decree No. 1021/2004 (III. 18.) on the Government program on the social integration of the Roma population and related measures entered into force. For the implementation of the tasks specified under the Government decree in respect of the Police Force the Head of the National Police Department issued Decree No. 32/2004 (X. 12.) in which it unified the Roma related tasks of the police. It maintains the practice in effect since 1999, according to which complaints filed by persons belonging to the Roma minority about treatment or measures amounting to or felt as an instance of negative discrimination shall be examined with special care.

219. There is regular co-operation between the police authorities and the Roma minority. Most typical examples of this co-ordination are joint programs and forums.

Other

Question 33

220. Hungary welcomed the entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and has considered positively its ratification. As a first step, the Ministry of Foreign Affairs along with the Ministry of Justice is examining the harmonisation of existing national laws and mechanisms with the regulations of the Protocol for the time being. As for designating a national mechanism, however, it must be added that the Public Prosecution Service already conducts regular and thematic examinations in places of deprivation of liberty for the sake of prevention of torture and other cruel, inhuman or degrading treatment or punishment.

Question 34

221. The 2006 plan for legislation schedules for the second half of 2006 to amend Act No 4 of 1978 on the Criminal Code and of other criminal laws. The amendments will probably enter into force in the spring of 2007. They will enact a new provision into the Criminal Code under the title of *misuse of prohibited goods* and will complete the provision governing the *violation of international economic prohibition* (Section 261/A) in order to make Hungarian law comply with the provisions of Council Regulation No. 1236/2005/EC of 27 June 2005 on the trade of goods suitable for executing death penalty or for torture and other cruel, inhuman or degrading treatment.

222. Appendix II of the Regulation lists the goods which cannot be used for any practical purposes except for executing death penalty or for torture or other cruel and inhuman or degrading treatment. Appendix III lists the goods which can be used – among others – for such purposes as well.

223. Violation of the import and export prohibition of the goods listed in Appendix II shall amount to conduct prohibited under the provision governing violation of international economic prohibition and it shall be punishable with an imprisonment of up to five years as a ground rule. Goods listed in Appendix III shall be prohibited under the provision governing unlicensed foreign trade activity (Section 263/D of the Criminal Code) and under the new provision of misuse of prohibited goods (Section 263/D of the Criminal Code). The former provision shall be applicable in lack of licence, while the latter provision shall be applicable to goods which cannot be licensed under Hungarian law.

Question 35

224. The amendment of the Criminal Code and of other criminal laws affects human rights in so far that it threatens to impose more severe penalties for certain conducts. Section 261 of the Criminal Code (terrorist acts) shall be amended as follow:

225. According to the Convention on suppressing the financing of terrorism funding a terrorist act or raising money for a terrorist act shall be punishable even in that case if the act is intended to be committed not in a terrorist group but individually or in a form not attaining the level of organised terrorist group. By inserting into subsection (4) of Section 261 of the Criminal Code – governing conducts amounting to preparation for terrorist act – an exhaustive list of the conducts amounting to preparation and the prohibition of providing means and raising money for terrorist acts Section 261 of Criminal Code shall become a sui generis provision governing preparatory conducts whose attempts shall also be punishable.

226. Furthermore, the amendment under way shall complete the provisions on misuse of radioactive substance (Section 264 of the Criminal Code) and misuse of the operation of nuclear facilities and shall also punish preparation to these crimes. As a result of this amendment Hungarian law will fully comply with the provisions of the International Convention on the suppression of nuclear terrorist acts.

227. The terrorist acts committed in Madrid in March 2004 and in London in July 2005 provoked a response from law enforcement authorities and the Ministry of Interior. Response measures to the terrorist threat took the form of *joint measure* (Joint measure No. 1/2004 (III).

18.) of the Head of the National Police Force and the Head of the Border Guard Service on the implementation of the policing tasks necessitated by the terrorist act committed in Madrid) or *instruction* (Instruction No. 29/2005 (BK 15.) of the Minister of Interior on the unified implementation of actions taken against terrorism), thus they do not contain restrictions affecting human rights.

228. It must be mentioned that the criminal and investigatory authorities regularly supply information to the National Security Agency with whom they work in close co-operation.

Budapest, 20 September 2006